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Labor Law Preemption: Court Dismisses Union Employee's Wage And Hour Claims

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A recent ruling from an Illinois appellate court provides a helpful reminder that all wage and hour claims are not created equal. Claims brought by an employee who is represented by a union are sometimes preempted by federal labor law, which generally requires union employees to first pursue their claims through the grievance and arbitration procedure under the applicable union contract. In this case, the employee skipped that procedure altogether and went straight to court, which the court determined warranted the dismissal of the employee's lawsuit.

In *Glasper v. Scrub, Inc., et al.*, the employee-plaintiff, a former janitor at Chicago's O'Hare Airport, filed a lawsuit alleging that her employer violated Illinois' wage payment law by not paying her for alleged off-the-clock work done prior to her shift and during her unpaid lunch break, and by failing to pay her an overtime premium for the additional time worked. Critically, the plaintiff was a member of the Services Employees International Union (SEIU), which negotiated a collective bargaining agreement (CBA) on behalf of the plaintiff and all other employees represented by the SEIU. The plaintiff alleged, however, that separate from the CBA, she and the employer had an "implied agreement" concerning her wages.

The employer moved to dismiss the lawsuit on several different grounds, including that the lawsuit was the plaintiff's third attempt to bring the same

claims. She had been a member of two previously dismissed class and collective action lawsuits, and thus this was her third bite at the apple.

However, the employer's labor law preemption defense won the day. Specifically, the employer argued that the plaintiff's claims were preempted by federal labor law, because assessing the merits of her claims would require the court to interpret the wage, overtime and pay provisions of the CBA. The trial court dismissed the claims as preempted, and the plaintiff appealed. The appellate court affirmed the trial court's dismissal on established preemption principles, which it succinctly summarized:

Federal labor policy provides that when resolving a state law claim that is dependent on the analysis of the terms contained in the [collective bargaining] agreement, the claim must either be arbitrated as required by the CBA or dismissed as preempted under section 301 of LMRA. . . . We have held that when a CBA establishes a grievance and arbitration procedure for disputes arising out of the CBA and the court has determined that the claim on its face is governed by the contract, an employee must attempt to exhaust their contractual remedies before seeking judicial relief. "The exhaustion of administrative remedies is a procedural prerequisite to maintaining a section 301 action." Here, article XVIII of the CBA had a three-step procedure for employees to follow if they have a grievance. Plaintiff did not use this administrative remedy provided in the CBA, which was a prerequisite to filing suit per section 301 of LMRA.

The appellate court had little difficulty concluding that the plaintiff's wage and hour claims were preempted, because the CBA defined the number of hours in a work week, defined the amount of wages and applicable wage rates, and provided a formula to calculate overtime pay. The CBA also spelled out in great detail grievance procedures and arbitration that must be followed by the union in the event of an alleged violation of the CBA by the employer.

The court recognized that "some of the most important functions of a CBA are to establish a negotiated and stable pay structure for employees and to provide mechanism for adequate dispute resolution," such that the plaintiff's claims implicated core topics of bargaining between an employer and a union. In the end, the court ruled that federal labor law preempted the plaintiff's claims, and therefore she was required to pursue them through the grievance and arbitration process under the CBA and exhaust that process before seeking relief in court.

The Scrub decision illustrates a unique defense that can apply to wage and hour claims (and other types of claims) brought by union employees, and an important arrow in an employer's quiver. Employers defending claims brought by union employees would do well to be mindful of the potential preemptive reach of federal labor law.