No. 31425 – General Motors Corporation v. Hubert J. Smith and The West Virginia Human Rights Commission

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OF WEST VIRGINIA

Maynard, Chief Justice, dissenting:

I dissent because I believe that Mr. Smith's disability claim is clearly preempted by the federal Labor Management Relations Act (hereafter "LMRA").

This Court held in Syllabus Point 4 of *Greenfield v. Schmidt Baking Co., Inc.*, 199 W.Va. 447, 485 S.E.2d 391 (1997) that "[a]n application of state law is pre-empted by § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 (1947) (1994 ed.), only if such application requires the interpretation of a collective-bargaining agreement." Our holding in *Greenfield* was based on the Supreme Court's determination that "[a] state rule that purports to define the meaning or scope of a term in a [labor] contract suit . . . is preempted by federal labor law." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210, 105 S.Ct. 1904, 1911, 85 L.Ed.2d 206 (1985). Further, "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim or dismissed as pre-empted by federal labor-contract law." *Id.*, 471 U.S. at 220, 105 S.Ct. at 1916 (citation omitted). Preemption under the LMRA is grounded in substantial part on the desire for uniformity in the interpretation of labor contracts. The Supreme Court has explained:

> The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation. Thus, questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. Any other result would elevate form over substance and allow parties to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract.

Allis-Chalmers Corp., 471 U.S. at 211, 105 S.Ct. 1911.

On several occasions, this Court has found that state law claims were preempted by the LMRA. For example, in *Tolliver v. Kroger Co.*, 201 W.Va. 509, 498 S.E.2d 702 (1997), the plaintiff employee filed an action for intentional infliction of emotional distress and assault and battery against her employer based on allegations that her supervisors "watched her perform inventories" and "yelled at her." *Tolliver*, 201 W.Va. at 514, 498 S.E.2d at 707. We concluded that § 301, if properly raised, preempted the intentional infliction of emotional distress claim because "Mrs. Tolliver's claim centered on her job duties and the performance of those duties. The purpose of a CBA ["collective bargaining agreement"] is to resolve disputes between the employer and the employee relating to the rates of pay, hours of work, and conditions of employment." *Id.* We further

explained that "[t]here can be no dispute. The very essence of Mrs. Tolliver's claim resulted from her job performance and her work relationship with her immediate supervisor. As such, resolution of Mrs. Tolliver's intentional infliction of emotional distress claim necessarily requires interpretation and application of the CBA." 201 W.Va. at 515, 498 S.E.2d at 708. We concluded, however, that Kroger waived § 301 preemption by failing to raise it.

Likewise, in *Chapple v. Fairmont General Hospital, Inc.*, 181 W.Va. 755, 384 S.E.2d 366 (1989), this Court found that § 301 preemption applied. There, after the plaintiff was fired for insubordination, she sued her former employer alleging breach of employment contract. The employer/employee relationship was covered by a collective bargaining agreement that provided that "the Hospital shall have the right to . . . discharge or otherwise discipline an employee for just cause." 181 W.Va. at 757, 384 S.E.2d at 368. We concluded that § 301 of the LMRA preempted the plaintiff's state contract law claim, and opined:

> The collective bargaining agreement in the instant case defines a grievance as "a dispute raised by an employee or the Union involving interpretation or application of any provision of this Agreement, including any discipline or discharge of an employee in the bargaining unit." Obviously this dispute between appellant and the Hospital involving her discharge is clearly covered by the collective bargaining agreement.

181 W.Va. at 759, 384 S.E.2d at 370.

As set forth in the majority opinion, Mr. Smith worked under a collective

bargaining agreement between the United Auto Workers union and GM which provided:

> (f) Retirement as follows:
>
> (1) An employee who retires, or who is retired under the terms of the Pension Plan, shall cease to be an employee and shall have seniority canceled.
>
> (2) An employee who has been retired on a permanent and total disability pension and who hereby has broken seniority in accordance with subsection (1) above, but, who recovers and has pension payments discontinued, shall have seniority reinstated as though the employee had been on a sick leave of absence during the period of disability retirement, provided however, if the period of disability retirement was for a period longer than the seniority the employee had at the date of retirement, the employee shall, upon the discontinuance of the disability pension, be given seniority equal to the amount of seniority the employee had at the date of such retirement.

According to a local agreement between the Martinsburg GM plant and the local union, if a retiree meets the two criteria to return to work set forth in paragraph 64(f)(2) above, he or she then may be returned to the job held before retirement. The sole issue in this case is whether Mr. Smith meets these criteria, and this issue must be decided by federal, not state law.

First, a federal question clearly appears on the face of Mr. Smith's July 24, 1998, complaint filed with the Human Rights Commission. Paragraph six of the complaint states, "[p]ursuant to the GM Collective Bargaining Agreement, ¶ 64(f)(2) [Exhibit One] Smith is eligible to have his seniority reinstated if he recovers and has his pension payment

discontinued." Clearly, Mr. Smith's claim is based on a provision of the collective bargaining agreement. He has no right under West Virginia law to have his seniority reinstated after he retired and ceased to be an employee of the company. Rather, such a right is granted only by the collective bargaining agreement. The very essence of Mr. Smith's claim is that he has met the conditions necessary for reinstatement of seniority, *i.e.*, recovery and discontinuation of his pension payments, but that GM has violated the agreement by failing to reinstatement his seniority.

Also, Mr. Smith's claim requires the interpretation of a term of the collective bargaining agreement, specifically the term "recover." Said another way, resolution of Mr. Smith's disability discrimination claim is substantially dependent upon analysis of the provision of the collective bargaining agreement that says that a retiree receiving a permanent and total disability pension and who has broken seniority but who recovers and has pension payments discontinued shall have seniority reinstated. As stated by the Supreme Court in *Allis-Chalmers, supra,* "questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law[.]" 471 U.S. at 211, 105 S.Ct. at 1911. Therefore, the interests of interpretive uniformity and predictability require that the term "recover" in the collective bargaining agreement be interpreted by reference to federal law instead of state tort law. Otherwise, the interpretation of the term "recover" in GM's collective bargaining agreement may depend upon the jurisdiction in which the claim is

brought. Such a result would be at odds with federal labor law.

Let me be perfectly clear. This is not a case in which the applicable discrimination law can be applied without reference to the collective bargaining agreement. A determination of Mr. Smith's qualification to have his seniority reinstated can be made *only* with reference to the collective bargaining agreement. Specifically, as a retiree on a permanent and total disability pension, Mr. Smith is qualified to have his seniority reinstated *only* if he recovers and has his pension payments discontinued. In other words, the crux of the issue is whether the employer's conduct in denying reinstatement of seniority to Mr. Smith is consistent with the terms of the collective bargaining agreement. Otherwise, there is nothing in state law that provides to Mr. Smith the right to have his seniority reinstated. It must be emphasized that Mr. Smith did not apply for an entry level job with GM as a new applicant. If these were the facts, our State law would govern. Instead, Mr. Smith wants to be reinstated to his power sweeper job at the same level of seniority he enjoyed upon retirement. Nothing outside of the terms of the collective bargaining agreement grants him this right.

In sum, the majority opinion is anti-labor. It ignores clear precedent and sidesteps federal labor law and policy, all in a misguided attempt to help a single retired employee who already has a remedy under the collective bargaining agreement. By taking this unfortunate route, the majority opinion permits collective bargaining agreements to be

challenged by state law. The result is a grave disservice to union workers who depend upon the sanctity of their collective bargaining agreements to provide them with secure employment and benefits. Accordingly, for the reasons stated above, I respectfully dissent.