NO. A17-0131

State of Minnesota

In Supreme Court

Minnesota Chamber of Commerce,
Minnesota Recruiting and Staffing Association,
National Federation of Independent Business,
TwinWest Chamber of Commerce, Graco Inc., and
Otogawa-Anschel General Contractors and Consultants LLC,
Plaintiffs-Petitioners,

v.

City of Minneapolis,
Defendant-Respondent.

PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS

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This case involves an issue of crucial importance to employers and employees statewide: may a municipality *mandate* that private employers provide paid employment leave when state law does not? Minneapolis enacted such a mandate, the Minneapolis Sick and Safe Time ordinance (the "Ordinance"). Petitioners moved to enjoin it. The District Court denied Petitioner's motion in part, and the Court of Appeals affirmed. In reaching its decision, the Court of Appeals disregarded this Court's recent precedent on conflict preemption and misapplied the law regarding implied preemption.

The Court of Appeals wrongly held that conflict preemption only applies where an employer *cannot* comply with both an ordinance and related statute. That is not the law, as this Court made clear in its seminal opinion in *Mangold Midwest Co. v. Richfield*, 143 N.W.2d 813 (Minn. 1966) and again in its 2017 opinion in *Bicking v. City of Minneapolis*, 891 N.W.2d 304 (Minn. 2017). Under *Bicking* and *Mangold*, the Ordinance conflicts with state law because the Ordinance prohibits what state law permits (*Mangold*) and adds requirements absent from Minnesota statutes regarding mandated employment leave (*Bicking*).

This Court should grant review to address the Court of Appeals' misapplication of state preemption doctrines and to guide the lower courts. The lower courts will repeatedly face these issues now that Minnesota cities are imposing employment mandates that go beyond the requirements of state law.

ISSUES FOR REVIEW

1. **Does conflict preemption invalidate a city ordinance when the Legislature has adopted statutes on the same subject matter and the ordinance adds requirements absent from state statutes?**

   Despite a contrary statement of law from this Court in *Bicking*, the Court of Appeals held that the conflict preemption doctrine applies *only* where a statute and ordinance are irreconcilable such that an employer could not comply with both the ordinance and statute.

2. **Does conflict preemption apply to invalidate an ordinance that prohibits conduct that state law at least *impliedly* permits?**

   The Court of Appeals acknowledged Petitioners' argument that state law at least impliedly permits employers to decline to offer paid sick leave, and yet ignored precedent clearly holding that an ordinance that prohibits what state law impliedly permits is void under the conflict preemption doctrine.

3. **Do the Legislature's numerous statutes regulating employer-provided leave preempt the field of mandated employment leave?**

   Despite the Legislature's repeated enactments of state law regarding employment leave, the Court of Appeals held that Petitioners were unlikely to prevail on the merits of their argument that the Legislature has so extensively regulated these issues that state law impliedly preempts the Ordinance.

STATEMENT OF THE CASE

State law extensively regulates various forms of employer-provided leave, including sick and safe time leave. State law regulates the circumstances under which certain employees may use leave that an employer chooses to provide, but permits employers the choice not to provide any sick or safe time leave whatsoever, or to provide only unpaid sick and safe time leave. Minn. Stat. § 181.9413; Add.67,70. Moreover, state law provides that these regulations do not apply to employers with fewer than 20 employees in one site. Minn. Stat. §§ 181.940; 181.945, -.946. Add.68-69. The Ordinance, in contrast, requires all employers to provide sick and safe time leave, and further requires employers with six or more employees to provide paid leave. Add.58-61. The Ordinance also purports to regulate non-Minneapolis-based employers, as it defines an "employee" as an individual "who perform[s] work within the geographic boundaries of the City for at least eighty (80) hours in a year . . ." Add.51. The Ordinance took effect on July 1, 2017.

Petitioners are business associations representing a broad base of thousands of Minnesota businesses throughout the state, and individual Minnesota-based businesses, large and small, adversely affected by the Ordinance. Petitioners sued the City on October 13, 2016, seeking a Declaratory Judgment that state law preempts the Ordinance and that the Ordinance

impermissibly extends the City's reach beyond its borders, and an injunction. The district court granted in part and denied in part Petitioners' motion for a temporary injunction. Add.18-19. The district court concluded that Petitioners were likely to prevail on their argument that the City lacked the authority to enforce its Ordinance against employers located outside city limits. Add.37-42. However, the district court found that Petitioners were unlikely to prevail on their preemption claims. Add.25-37. The district court misread the relevant case law, largely from the Court of Appeals,[1] applying this Court's decision in *Mangold*.

The Court of Appeals affirmed the district court's order. Add.1-17. Regarding conflict preemption, the court held that "a conflict only exists if the ordinance and statutory provision are irreconcilable" and that "[t]wo laws are not irreconcilable if 'the ordinance does not permit, authorize, or encourage violation of the statute.'" Add.6. (citing *Mangold*, 143 N.W.2d at 819). The court reasoned that "[e]ven if the statute impliedly permits an employer to decline to offer leave benefits, an employer would not violate the statute by providing the leave benefits required by the ordinance" and that "[i]t may be that the ordinance and the statute simply address separate and distinct aspects of

[1] This Court had not yet issued its opinion in *Bicking* when the district court issued its decision.

employer-provided leave benefits." Add.7. The Court did not address other conflicts between the Ordinance and state law. Add.72.

Regarding implied preemption, the Court of Appeals ignored the extensive state regulation of employer-provided leave. *See* Add.74-76. The Court reasoned that the "sparsity and narrowness of statutory provisions on the subject matter" did not indicate a preemptive intent. Add.8. The court also acknowledged the potential for a "checkerboard of conflicting regulations," yet concluded that this risk was not "dispositive." Add.9.

CRITERIA

Review by this Court is appropriate under Minn. R. Civ. App. P. 117, subds. 2(a), (c), (d). The Ordinance presents an unprecedented expansion of municipal regulatory authority. By mandating employer leave not required by state law, the City exceeded its authority and interfered with the Legislature's regulation of employer-provided leave, a subject of statewide concern.

This case raises critical questions about the proper circumstances in which the doctrines of conflict and implied preemption prohibit a municipality from imposing mandated employment terms on private employers not required by state law. This Court should address these questions now.

ARGUMENT

I. The Ordinance conflicts with state law, and the decision of the Court of Appeals to the contrary is based upon an improperly narrow and pro-regulatory view of conflict preemption.

According to the Court of Appeals, conflict preemption doctrine is drastically limited to apply only to cases in which an employer cannot comply with the ordinance and the statute. Add.6. Thus, under the Court of Appeals' test, municipal mandates that are *more restrictive* and *impose greater regulatory burdens* upon private employers could never be in conflict with state law, and the doctrine of conflict preemption exists only to prevent municipalities from permitting what is prohibited by state law. The Court of Appeals' analysis is directly contrary to this Court's decisions in *Mangold* and *Bicking*.

Numerous decisions make clear that a conflict exists between a statute and ordinance even if it is possible to comply with both. In fact, those were the circumstances presented in this Court's recent opinion in *Bicking*, in which the Court held that a proposed Minneapolis charter amendment that would require police officers to carry their own liability insurance was in conflict with state law. The Court interpreted Minnesota Statute § 466.06 as permitting cities to "secure insurance coverage for punitive damages for torts committed by its employees for which the municipality is otherwise immune from liability and for coverage of the municipality's liability in excess of the liability imposed by law." *Bicking*,

891 N.W.2d at 314 (internal quotations omitted). Yet the proposed amendment would have forbidden the City from indemnifying an officer in an amount greater than required by the statute. *Id*. The Court stated that "*it is clear that the proposed amendment would forbid what the statute permits*" because "the proposed insurance amendment would forbid the City from indemnifying an officer 'against liability in any amount greater than required by State Statute unless the officer's insurance is exhausted,'" which Minnesota Statute § 466.06 permitted municipalities to do. *Id*. at 315 (emphasis added).

In *Bicking*, municipalities could have technically complied with both the statute and the ordinance. A city could secure insurance for its officers' tort liability, while at the same time indemnifying the officer only up to the limit set forth in the statute. *Id*. Nonetheless, this Court rejected the argument that the ordinance and statute were in "harmony" or reconcilable. *Id*. ("Given that the proposed insurance amendment would expressly prohibit what chapter 466 permits the City to do . . . we cannot conclude that the proposed insurance amendment is 'in harmony with' state law.").

Numerous other decisions make clear that a conflict exists where an ordinance prohibits what state law permits, regardless of whether one could technically comply with both by meeting the more stringent regulatory terms not required by state law. *See, e.g.*, *N.W. Residence, Inc. v. Brooklyn Ctr.*, 352 N.W.2d

764 (Minn. Ct. App. 1984) (local regulation denying an operating permit for residential facility was in conflict with the state law, despite the fact that the company could comply with both); *State v. Andersen*, No. A15-0315, 2015 Minn. App. Unpub. LEXIS 932 (Sep. 14, 2015) (ordinance requiring boat running lights was in conflict with state law, even though boaters could have complied with the ordinance and state law).

II. The Ordinance prohibits what state law at least impliedly permits.

The Court of Appeals acknowledged that Minn. Stat. § 181.9413 impliedly permits employers not to provide paid sick leave, which the Ordinance forbids. Add.7. Nonetheless, the court failed to address *any* of the precedent in which a local regulation was determined to be in conflict where the local regulation was more stringent than state law and forbade what state law *impliedly* permitted. Indeed, the Court of Appeals' disregard for this case law eliminates the principle that a statute and ordinance are in conflict "when both the ordinance and the statute contain express ***or implied*** terms that are irreconcilable with each other." *Mangold*, 143 N.W.2d at 816 (emphasis added).

III. The Legislature has preempted the field of employer-provided leave.

The Court of Appeals incorrectly affirmed the trial court's determination that Petitioners were unlikely to prevail on their implied preemption claim. The lower courts' decisions reflect a cramped view of the Legislature's preemptive powers, stemming from the courts' improperly narrow view of the subject matter regulated—a narrowing that conflicted with the Court of Appeals' own precedent: "The subject matter involved cannot be defined so selectively that it is impossible for the state to fully regulate the field." *State v. Gonzales*, 483 N.W.2d 736, 738 (Minn. Ct. App. 1992).

By defining the subject matter as "private-employer provided sick and safe leave," the courts ignored the Legislature's extensive regulation of employer-provided leave in general, thereby negating the Legislature's preemptive intent. *See* Minn. Stat. §§ 181.941-948. The lower courts also extracted from these statutes an invitation for municipal legislation, when in fact the express language of the statutes invites *employers*—not municipalities—to provide additional leave benefits. Add.31-32. The numerous statutes regulating employer-provided leave reflect the Legislature's intent to treat employer-provided leave as a matter of statewide concern, and to preempt municipal legislation of this field.

CONCLUSION

The extent to which the preemption doctrines limit a city's ability to impose mandated employment terms above state law's extensive workplace regulations is an important issue deserving review. The issue is certain to recur. Since enacting the Ordinance at issue in this case, Minneapolis has passed additional mandates on private employers that conflict with state law. In addition, other municipalities have already joined Minneapolis in enacting ordinances of their own that impose improper mandates on private employers. The Court should grant the petition and address these important questions about municipal regulatory authority.

Dated: October 18, 2017

Respectfully submitted,

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Certificate of Compliance

The undersigned counsel for Petitioners certifies that this Petition for Review complies with the requirements of Minn. R. App, P. 132.01 in that it is printed in 13–point, proportionately spaced typeface utilizing Microsoft Word 2010 and contains 1,999 Word Count words, including headings, footnotes, and quotations.

Dated: October 18, 2017

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