

Tell Me Why with a Side of Fries: Second Circuit Rules Fast Food Employers Must Comply with New York Notice of Discharge Requirements

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On January 5, 2024, the U.S. Court of Appeals for the Second Circuit, in *Rest. Law Center, New York State Rest. Ass'n v. City of New York, et al.*, [No. 22-491](#) (2nd Cir. 2024), held that a New York law protecting workers in the fast-food industry from arbitrary termination or reduction in hours was not preempted by the National Labor Relations Act ("NLRA") or unconstitutional pursuant to the dormant Commerce Clause.

Background

In 2020, the New York City Council enacted legislation protecting fast-food workers by adopting a Wrongful Discharge Law, which prohibits fast-food employers with 30+ locations (measured nationally) from arbitrarily firing or reducing the hours of a fast-food worker. Such employers are now required to provide notice explaining why the worker was discharged or had their hours reduced. The law also allows said workers to arbitrate claims of alleged violations.

The Restaurant Law Center and the New York Restaurant Association ("Plaintiffs") challenged the Wrongful Discharge Law on the basis that it was preempted by the NLRA and unconstitutional under the Dormant Commerce Clause. Plaintiffs argued that conditions to discharge and arbitration are topics suitable for employers and labor unions to collectively bargain, and therefore, fall under the exclusive jurisdiction of the National Labor Relations Board. Further, they argued that the law unfairly burdens interstate commerce by placing these restrictions on New York employers, which is unconstitutional.

The district court granted Defendants' motion for summary judgment, rejecting the Plaintiffs' claims; Plaintiffs appealed to the Second Circuit. The Second Circuit concluded the law is neither preempted nor unconstitutional.

Wrongful Discharge Law Not Preempted by the NLRA

The basis of Plaintiffs' preemption challenge is under *Machinists* preemption, which provides that

states and localities may not interfere with the collective bargaining process. Here, the court rejected this argument because states can regulate substantive labor standards, even if states cannot affect the process of labor negotiations. Indeed, the court held that *Machinists* preemption does not limit a state's broad police power to regulate substantive labor practices, and the best example of the exercise of this power is minimum wage rates. Like wages, according to the court, terms of discharge can be negotiated during collective bargaining, but setting minimum standards on this topic is firmly within the state's authority.

The court also rejected the argument that law is preempted because it can prevent employers from utilizing lockouts as a self-help weapon during labor disputes. Plaintiffs argued that since lockouts qualify as a form of discharge, the for-cause provision of the law would restrict use of lockouts. The court actually agreed that this argument "may raise preemption problems," but found the argument speculative and not enough to prevail on a *facial* challenge of the law.

Wrongful Discharge Law Did Not Violate Dormant Commerce Clause

The court also determined that the law (which only affects employers with 30 or more locations, whether in New York or elsewhere), does not violate the Dormant Commerce Clause because it is not facially discriminatory and does not harbor a discriminatory purpose.

The Dormant Commerce Clause "acts as a constitutional safeguard against economic protectionism, subjecting regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors to heightened scrutiny." Thus, a law that does not confer a competitive advantage to local businesses at the expense of out-of-state competitors is unlikely to be deemed unconstitutional.

Since the Law does not discriminate against interstate commerce, the court applied the permissive balancing test under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Under *Pike*, an incidental burden imposed on interstate commerce is permissible unless it clearly exceeds the local gains. Here, the court found that many benefits and reasons associated with the Law outweighed any hypothetical cost imposed on the interstate fast food industry:

"The City enacted the Wrongful Discharge Law to protect vulnerable fast-food employees from the financial hardships—e.g., homelessness, food insecurity, loss of resources to pay for child care—caused by arbitrary reductions in hours and terminations. It did so after compiling ample legislative findings concerning substandard working conditions in the industry, including abusive workplace practices, pervasive unjustified firings, and the resulting economic instability for a vulnerable class of workers."

The court rejected the argument that the law was unconstitutional under the Dormant Commerce Clause because the law applied evenly between in-state and out-of-state fast food restaurants, and benefitted many.

Takeaways

After a number of attempts to organize fast food workers throughout the country have fizzled, the Wrongful Discharge Law was enacted by a progressive legislature to raise the floor in terms of substantive labor protections for this class of workers. Since the creative challenges to the law asserted in this case have been rejected, the law will remain in effect. Notably, however, the court concluded that facial challenges to the law did not warrant invalidating the law but left open the

possibility that a future challenge based on application of the law could. This bears watching as the law continues to go into effect. Plaintiffs may also seek *certiorari* from the U.S. Supreme Court, who may be more perceptive to the arguments raised in this case.

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