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State Employees Entitled To Pay During Budget Impasses, Panel Rules

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State employees covered under the Fair Labor Standards Act of 1938 must still receive their paychecks during a budget impasse, the Pennsylvania Supreme Court has said, overruling a Commonwealth Court decision.

The holding contradicts the Rendell administration's position that "reasonable delays" in pay are permissible under the FLSA, a federal statute.

The court ruled 6-1 — with Justice Jane Cutler Greenspan concurring in the result and Justice Thomas G. Saylor filing a concurring and dissenting opinion — that the FLSA pre-empts Article III, Section 24 of the Pennsylvania Constitution, which prohibits the state governor from paying state employees who are covered by the FLSA and required to work from state treasury money that has not yet been appropriated by the General Assembly.

Chief Justice Ronald D. Castille, writing for the majority, said that under the Supremacy Clause of the U.S. Constitution, Section 6 of the FLSA, which states that "[e]very employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following [minimum] rates[.]" pre-empts Section 24 of the state constitution.

"At the same time that Section 6 requires the prompt payment of wages to the Commonwealth's FLSA-covered employees, Section 24 prohibits the payment of monies out of the Commonwealth's Treasury in order to pay those wages," Castille said. "In these circumstances, it is impossible to comply with both Section 6 of FLSA and Section 24."

Justices J. Michael Eakin, Max Baer, Debra Todd and Seamus P. McCaffery joined in the majority.

In his concurring and dissenting opinion, Saylor disagreed that the FLSA pre-empts the state

constitution in the event of a budget impasse.

In *Council 13 v. Commonwealth*, according to Castille, four state employees were categorized by the state as performing duties that were not critical to the basic health, safety and welfare of Pennsylvanians and told in June 2008 that they may be furloughed on July 1, 2008, if the General Assembly did not pass a budget for the upcoming fiscal year.

The furloughs were the result of a May 2008 Interagency Agreement entered by the Office of the Governor and the State Treasury Department that said, in part, that, in the event of a budget impasse, "FLSA Covered Non-Critical" employees could not "be permitted to perform their duties since the Commonwealth has no authority to make payments to those employees," according to Castille.

In June 2008, the four state workers and a group of unions filed a petition and an application for summary relief in the Commonwealth Court against the state, Gov. Edward G. Rendell, Administration Secretary Naomi Wyatt, Secretary of Budget Mary A. Soderberg and state Treasurer Robin L. Wiessmann.

The state employees argued that the FLSA pre-empts the state constitution and the state countered by saying that, under Section 24, the governor has the authority during a budget impasse to temporarily withhold pay from state workers he believes are not critical to maintaining the basic health, safety and welfare of the public, Castille said.

According to Castille, the Commonwealth Court concluded that "because the payment of wages during a budget impasse would amount to the unlawful spending of state monies, Congress could never have intended for Section 24 to be displaced by Section 6 of FLSA."

But Castille said the Commonwealth Court "made two fundamental mistakes" in its reasoning.

"It disregarded controlling Supreme Court jurisprudence on discerning Congress' intent to preempt and it failed to recognize that when a state law is preempted, state law requirements or prohibitions have no legal effect," Castille said. "Thus, the court's method of analyzing the preemption issue was lacking, and the very premise underlying its conclusion that Section 24 is not preempted by Section 6 of FLSA, i.e., that Congress did not intend to countenance unlawful state spending in times of a budgetary crisis, is erroneous."

Castille also said the FLSA has a saving clause, which allows states and municipalities to enact more protective wage provisions and stricter hour provisions than those included in the FLSA.

"The presence of this savings clause strongly negates any perceived intention on Congress' part to occupy the entire area of wage and hour regulation, and leads us to conclude directly that Section 24 is not preempted through field preemption," Castille said.

Castille said the Interagency Agreement and the decision to furlough certain FLSA-covered employees showed that the Rendell administration recognized it could not satisfy the requirements of both Section 6 and Section 24 during a budget impasse.

"In instances of such conflict, the Supremacy Clause must prevail," Castille said.

But Saylor said in his concurring and dissenting opinion that the defendants "convincingly advocate that a comparison of the FLSA's silence as to the question of prompt payment with the 'explicit and unforgiving' mandate of Article III, Section 24, when considered in conjunction with a presumption against federal preemption, supports the conclusion that this Court should not 'infer that Congress intended to require a State government, its officials and agencies to ignore a foundational pillar of its constitutional form of government by withdrawing State funds to pay wages without approval of its Legislature.'"

Counsel for the state employees, Alaine S. Williams of Willig Williams & Davidson in Philadelphia, called the ruling "a complete victory for the unions."

"Hopefully payless paydays and budget furloughs will be a thing of the past," she said.

Representatives for the state Attorney General's Office could not be reached for comment and a call to the Governor's Office of General Counsel after normal business hours was not immediately returned.

(Copies of the 34-page opinion in Council 13 v. Commonwealth , PICS No. 09-2197, are available from The Legal Intelligencer . Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.) •