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Illinois Supreme Court: Biometric Claims by Union Workers Covered by Collective Bargaining Agreements Are Not Immune from Federal Labor Law Preemption

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In this article, the authors explain the decision by the Illinois Supreme Court in Walton v. Roosevelt University*, which represents a rare win from that court for employers under the Illinois Biometric Information Privacy Act.*

Agreeing with earlier decisions by the U.S. Court of Appeals for the Seventh Circuit, the Illinois Supreme Court has ruled in *Walton v. Roosevelt University*[1] that federal labor law preempts employee claims for violations of the Illinois Biometric Information Privacy Act (BIPA)[2] when the employee is covered by a collective bargaining agreement (CBA) that contains a broad management rights clause – even when the clause makes no mention of BIPA or other similar civil statutes.

According to the Illinois Supreme Court, such claims "must be resolved according to federal law and the agreement between the parties."[3] This decision affirms a unionized employer's ability to rely on a defense of federal preemption, and it results in uniformity concerning the applicability of federal law when an employer invokes a broad management rights clause from a CBA in response to a BIPA claim, whether the claim is asserted in federal or state court. The court's decision halted, at least for the time being, the otherwise steady stream of unfavorable BIPA court cases for employer defendants over the past few years in Illinois.

Perhaps more importantly, the decision serves as a reminder that courts historically have shown great deference to a mutually bargained

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for agreement between labor and management, which effectively allows a unionized employer (or, in many instances, both employer and union) to argue that the interpretation of the CBA supersedes an otherwise applicable state or local law or regulation of the workplace on federal preemption grounds.

BACKGROUND

William Walton (Walton), a former campus safety employee at Roosevelt University (Roosevelt) and a member of Service Employees International Union Local 1, filed a complaint in state court against Roosevelt alleging that Roosevelt required him and similarly situated employees to enroll scans of their "hand geometry" in a biometric timekeeping device, without Roosevelt having established a written data retention policy made available to the public and without obtaining employee consent, in violation of BIPA.[4]

Relying upon the Seventh Circuit's decision in *Miller v. Southwest Airlines Co.*,[5] Roosevelt moved to dismiss the complaint, alleging that Walton's BIPA claims were preempted by Section 301 of the Labor Management Relations Act[6] (LMRA).[7] As a bargaining unit employee, the manner in which Walton clocked in and out was covered by a sufficiently broad management rights clause in the CBA and, thus, Roosevelt argued, Walton's BIPA claim was preempted by the LMRA.[8]

The Circuit Court of Cook County, Illinois, found *Miller* distinguishable and denied Roosevelt's motion to dismiss, holding that preemption was inapplicable because a claim under BIPA "is not intertwined with or dependent substantially upon consideration of terms of a collective bargaining agreement where a person's rights under BIPA exist independently of both employment and any given CBA."[9]

Thereafter, Roosevelt filed a motion to reconsider or, in the alternative, to certify a question for immediate appeal.[10] The Circuit Court denied the motion to reconsider, but it certified the issue for interlocutory appeal.[11]

Specifically, the Circuit Court asked whether "Section 301 of the Labor Management Relations Act (29 U.S.C. [] § 185 [(2018)]) preempt[s] [BIPA] claims (740 ILCS 14/1) asserted by bargaining unit employees covered by a collective bargaining agreement?"[12]

THE APPELLATE COURT DECISION

The Appellate Court for the First District of Illinois, relying upon both *Miller* and *Fernandez v. Kerry*,[13] a Seventh Circuit decision that found that BIPA claims asserted by bargaining unit employees covered by a CBA were preempted under federal law, answered the question in the affirmative, holding that the federal decisions "reached the proper conclusion [that BIPA] contemplates the role of a collective bargaining unit acting as an intermediary on issues concerning an employee's biometric

information."[14] The appellate court concluded that Roosevelt met its burden to demonstrate that the claims are preempted under federal law.[15]

Therefore, "Walton and his fellow unionized employees [were] not prohibited from pursuing redress for a violation of their right to biometric privacy – they [were] simply required to pursue those rights through the grievance procedures in their collective bargaining agreement rather than in state court in the first instance."[16]

THE ILLINOIS SUPREME COURT'S RULING AND ITS IMPLICATIONS

The Illinois Supreme Court granted leave to appeal and agreed, unanimously, with the appellate court's decision, and it also answered the certified question in the affirmative. Noting the importance of maintaining a uniform body of law in interpreting federal statutes,[17] the Illinois Supreme Court deferred to *Miller* and *Fernandez*, which held that unions constituted authorized agents under BIPA and that whether the union consented to the collection and use of a plaintiff's biometric data through the management rights clause is a question to be addressed in accordance with the CBA.[18] Indeed, the Illinois Supreme Court noted that *Miller* and *Fernandez* are not "without logic or reason" and "[g]iven the language in the CBA and the LMRA, it is both logical and reasonable to conclude any dispute must be resolved according to federal law and the agreement between the parties."[19]

Historically, both courts and legislative bodies have deemed many types of employee civil lawsuits as preempted by the LMRA where an underlying dispute would depend on analysis of a CBA and would be subject to the CBA's dispute resolution process. Indeed, since the U.S. Supreme Court's decision in *Allis-Chalmers Corp. v. Lueck*,[20] courts have routinely held that state common law claims, such as invasion of privacy, fraud and misrepresentation, defamation, and breach of contract, are preempted by the LMRA.[21] In addition, the LMRA preempts claims arising under state workers' compensation laws and state human rights statutes that protect employees from discrimination and retaliation claims based on race, national origin, and sex.[22]

Notwithstanding the broad applicability of LMRA preemption, courts have limited the preemptive reach of the LMRA where analysis or interpretation of the CBA is not necessary to resolve the dispute. Relying upon the U.S. Supreme Court decision in *Lingle v. Norge Division, Magic Chef, Inc.*,[23] several lower courts have found certain types of claims[24] to survive preemption challenges brought under the LMRA. As examples, courts have held that claims to enforce mechanics' liens and certain negligence claims that do not arise from or require the interpretation of a CBA are beyond the reach of the preemptive force under the LMRA.[25] Courts have also held that, where certain intentional tort claims (such as intentional infliction of emotional distress) are not rooted in any violation of the terms and conditions of a CBA, such claims instead are sufficiently rooted in state tort law and, thus, should not be preempted.[26]

However, while BIPA was enacted to protect the privacy of employees, and not just those of consumers, regarding their biometric information, the court in *Walton* viewed the CBA to sufficiently relate to the subject of employee time records and use of time clocks, and thus, it held that a BIPA claim by an employee covered by that CBA does not survive LMRA preemption.

This is consistent with other Illinois state laws or local ordinances that have given way to a CBA when it arguably addresses the subject and/or needs to be interpreted as part of any resolution of the dispute. For example, local and state paid leave statutes, such as the Chicago Paid Sick Leave Ordinance,[27] the Cook County Paid Sick Leave Ordinance,[28] and the Illinois Paid Leave for All Workers Act[29] (effective January 1, 2024), provide that the respective laws do not interfere, waive, or limit an employee's right to compensation or benefits promised and bargained for in a CBA.

Likewise, the Illinois Wage Payment and Collections Act[30] defers to a CBA if it provides for a different arrangement for the payment of wages.

Whereas both unions and management presumably agree that leave benefits and wage payments require the interpretation of a CBA that they have mutually agreed upon, it remains to be seen whether unions will take the position that the grievance-arbitration process in a CBA should be the exclusive dispute resolution process for biometric claims brought by members of a bargaining unit.

CONCLUSION

Walton represents a rare win for BIPA defendants before the Illinois Supreme Court, which prior to the *Walton* decision has predominantly accepted plaintiffs' arguments in BIPA-related matters. For employers with unionized workforces, *Walton* greatly limits the ability of employees covered under broad management rights clauses within CBAs to pursue lawsuits, both individual and class-based, asserting claims under BIPA in either state or federal court.

Rather, under *Walton,* union-represented employees must grieve employment-related BIPA claims through the designated dispute resolution procedure as set forth in their CBA. When negotiating an initial or renewal CBA, employers should consider bargaining over consent and the applicable procedures for collecting biometric identifiers or biometric information through timekeeping devices or other means, where applicable.

Finally, such employers should review their CBAs to ensure inclusion of appropriate language in the management rights clauses in light of the *Walton* decision so as to capture employer policies and procedures that may implicate BIPA and further steer any biometric claims to grievance-arbitration on an individual, rather than class, basis, and they should be ready to argue LMRA preemption if individuals and their plaintiffs' attorneys file suit in court.

NOTES

1. Walton v. Roosevelt Univ., 2023 IL 128338, ¶ 31 (Ill. Mar. 23, 2023).

2. 740 ILCS 14/1, et seq.

3. Walton, 2023 IL 128338, ¶ 31.

4. Id. ¶ 4.

5. Miller v. Sw. Airlines Co., 926 F.3d 898, 903 (7th Cir. 2019).

6. 29 U.S.C. § 185.

7. Walton, 2023 IL 128338, ¶ 5.

8. Id. ¶ 31.

9. Id. ¶ 6 (internal quotations omitted).

10. Id. ¶ 7.

11. Id.

12. Id.

13. Fernandez v. Kerry, Inc., 14 F.4th 644 (7th Cir. 2021).

14. Walton, 2023 IL 128338, ¶ 10.

15. Id. ¶ 12.

16. Id. (internal quotations omitted).

17. Id. ¶ 24.

18. Id. ¶¶ 26–30.

19. Id. ¶ 31.

20. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) (holding that "when resolution of a state-law claim is substantially dependent upon analysis of the terms of a [CBA], that claim must either be treated as a Section 301 [LMRA] claim or dismissed as pre-empted by federal labor-contract law").

21. See, e.g., PACE Int'l Union v. Wise Alloys, 642 F.3d 1344 (11th Cir. 2011) (finding that state-law fraud counterclaims were preempted); Haggins v. Verizon New England, Inc., 648 F.3d 50 (1st Cir. 2011) (finding that LMRA Section 301 preempted employees' state-law privacy claims); Garley v. Sandia Corp., 236 F.3d 1200 (10th Cir. 2001) (finding that LMRA Section 301 preempted defamation claim but not conspiracy or retaliation); Bartholomew v. AGL Res., Inc., 361 F.3d 1333 (11th Cir. 2004) (finding that state-law tortious interference claim was preempted by LMRA Section 301); Jones v. Gen. Motors Corp., 939 F.2d 380 (6th Cir. 1991) (finding that breach of contract was preempted by LMRA Section 301). The Railway Labor Act is similarly preemptive in the presence of a CBA. See Hawaiian Airlines v. Norris, 512 U.S. 246 (1994) (finding that the Railway Labor Act preempts claim for retaliation under Hawaii whistleblower statute where dispute required interpretation of CBA).

22. See e.g. Sullivan v. Raytheon Co., 262 F.3d 41 (1st Cir. 2001) (Massachusetts retaliation claim was preempted); Reece v. Houston Lighting & Power Co., 79 F.3d 485 (5th Cir. 1996) (race discrimination claim was preempted when it was based on denial of promotion and training addressed by the CBA).

23. Lingle v. Norge Div. Magic Chef, Inc., 486 U.S. 399 (1988).

24. See, e.g., Detabali v. St. Luke's Hosp., 482 F.3d 1199 (9th Cir. 2007) (ruling on a race discrimination and retaliation claim); Owen v. Carpenter Dist. Council, 161 F.3d 767 (4th Cir. 1998) (ruling that a wrongful discharge claim was not preempted); Ralph v. Lucent Techs., 135 F.3d 166 (1st Cir. 1998) (finding that disability discrimination claims were not preempted).

25. In re Bentz Metal Prods. Co., 253 F.3d 283 (7th Cir. 2001) (finding that state-law mechanic's lien was not preempted); Steelworkers v. Rawson, 495 U.S. 362 (1990) (finding that negligence-based claims of injuries that were sustained from breaking up a union meeting on the employer's premises were not preempted by LMRA); Pa. Nurses Ass'n v. Pa. State Educ. Ass'n, 90 F.3d 797 (3rd Cir. 1996) (finding that state-law tort claims for the purposes of defrauding plaintiff's right to represent various groups of workers were not preempted by the LMRA because the assertions were not grounded in the CBA).

26. Trans Penn Wax Corp. v. McCandless, 50 F.3d 217 (3d Cir. 1995) (finding that the LMRA did not preempt a wrongful termination claim because the employee did not assert violations of the terms and conditions of the CBA); Albertson's Inc. v. Carrigan, 982 F.2d 1478 (10th Cir. 1993) (finding that the LMRA did not preempt an employee's claim of conspiracy by the employer, where the employer accused the employee of shoplifting).

27. Ord. No. 16-4229.

28. MCC § 6-105.

29. 820 ILCS 192 et seq.

30. 820 ILCS 115/1 et seq.