

No. A13-872

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State of Minnesota  
In Court of Appeals

THOMAS V. ENGFER,

*Relator,*

vs.

GENERAL DYNAMICS ADVANCED INFORMATION SYSTEMS,

*Respondent,*

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

*Respondent.*

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RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## **LEGAL ISSUE**

Tom Engfer received \$31,397.50 in money from a supplemental-unemployment-benefits plan established by General Dynamics Advanced Information Systems Inc. Because the supplemental benefits under the plan met the definition of wages under Minnesota law, the amounts were deducted from the unemployment benefits payable to Engfer from the state. Engfer argued that he was entitled to both the supplemental benefits and the state-provided unemployment benefits because his supplemental benefit plan qualified under ERISA.

Unemployment Law Judge Jessica Mount concluded that ERISA provisions were not relevant to whether the funds Engfer received under his supplemental benefits plan constituted wages under Minnesota law.

## **STATEMENT OF THE CASE**

The sole question before this court is whether the definition of “wages” found in the Minnesota Unemployment Insurance Law is preempted by the Employee Retirement Income Security Act. Tom Engfer established a benefit account with the Minnesota Department of Employment and Economic Development (the “Department”) in December 2011. In January 2013, the Department became aware that Engfer had received additional funds from his previous employer that he had not reported to the Department. A Department administrative clerk determined that Engfer’s supplemental unemployment

benefits constituted wages and were therefore deductible from his weekly unemployment benefits.<sup>1</sup> This determination resulted in an overpayment of benefits that Engfer already received.<sup>2</sup> Engfer appealed that determination, and Unemployment Law Judge (“ULJ”) Jessica Mount held a de novo hearing. The ULJ concluded that Engfer was ineligible for unemployment benefits for the weeks in which he received supplemental unemployment benefit payments from General Dynamics Advanced Information Systems, Inc. (“General Dynamics”) that exceeded his unemployment benefit amount.<sup>3</sup> Engfer filed a request for reconsideration with the ULJ, who affirmed.<sup>4</sup>

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Engfer under Minn. Stat. § 268.105, subd. 7(a) (2012) and Minn. R. Civ. App. P. 115. The Department is charged with the responsibility of administering and supervising the unemployment insurance program.<sup>5</sup> Unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not from employer funds.<sup>6</sup> The Department’s interest therefore carries over to the Court of Appeals’ interpretation and application of the

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<sup>1</sup> E-1. Transcript references will be indicated as “T” with the page number following. Exhibits in the record will be indicated “E-” with the number following.

<sup>2</sup> See Minn. Stat. § 268.105, subd. 3a(b) (2012).

<sup>3</sup> Appendix to Department’s Brief, A5-A9.

<sup>4</sup> Appendix, A1-A4.

<sup>5</sup> Minn. Stat. § 116J.401, subd. 1(18) (2012).

<sup>6</sup> Minn. Stat. § 268.069, subd. 2 (2012); *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 376 (Minn. 1996); see also *Jackson v. Minneapolis Honeywell Regulator Co.*, 47 N.W.2d 449, 451 (Minn. 1951). Unemployment benefits are paid from state funds, even though taxes paid by employers helped create the fund.

Minnesota Unemployment Insurance Law. The Department is thus considered the primary responding party to any judicial action involving an unemployment law judge's decision.<sup>7</sup>

### STATEMENT OF FACTS

Engfer worked as a software developer for General Dynamics for 32 years, when he was laid off due to lack of work on December 21, 2011.<sup>8</sup> His final annual salary was approximately \$92,000.<sup>9</sup>

After being laid off, Engfer was given an option to participate in an Employee Transition Benefit (ETB) plan from General Dynamic.<sup>10</sup> Under this plan, Engfer would be compensated by General Dynamic "with the pay differential between what [he] got from unemployment and [his] actual pay."<sup>11</sup> Engfer was thus required to apply for unemployment benefits through the State of Minnesota, and then contact the benefit-management firm each week to inform the company of his "continued eligibility for state unemployment compensation."<sup>12</sup> Under the terms of this plan, Engfer would receive unemployment benefits during the first, non-payable week of his state benefit account, if he had insufficient earnings to qualify for an unemployment account, and if he exhausted state

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<sup>7</sup> Minn. Stat. § 268.105, subd. 7(e).

<sup>8</sup> T. 12-13.

<sup>9</sup> T. 13.

<sup>10</sup> E-4.

<sup>11</sup> T. 14.

<sup>12</sup> E-6.

benefits before the plan expired.<sup>13</sup> Based on his years of service, Engfer qualified for 26 weeks of ETB payments.<sup>14</sup> Engfer could reject the ETB plan, in which case he would have been eligible for two weeks of severance pay.<sup>15</sup>

Engfer opted to participate in the ETB plan. Engfer established an unemployment benefit account with the Department and qualified for a weekly benefit amount of \$597.<sup>16</sup> He then received \$2,369.26 on a bi-monthly basis from General Dynamics under the ETB plan.<sup>17</sup>

### STANDARD OF REVIEW

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Engfer's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.<sup>18</sup> Issues of law, including constitutional issues and issues of statutory interpretation, are reviewed de novo.<sup>19</sup>

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<sup>13</sup> E-6.

<sup>14</sup> T. 14.

<sup>15</sup> T. 16.

<sup>16</sup> T. 20.

<sup>17</sup> E-6

<sup>18</sup> Minn. Stat. §268.105, subd. 7(d) (2012).

<sup>19</sup> See *Weir v. ACCRA Care, Inc.*, 828 N.W.2d 470, 472 (Minn. App. 2013); *Abdi v. Dep't of Emp't & Econ. Dev.*, 749 N.W.2d 812, 814-15 (Minn. App. 2008).

## ARGUMENT

Minnesota law provides that an applicant for unemployment benefits is ineligible if the applicant is receiving “severance pay, bonus pay, sick pay, and any other payments . . . paid by an employer because of, upon, or after separation from employment, but only if the payment is considered wages at the time of payment under section 268.035, subdivision 29.”<sup>20</sup> Wages include

payments made to supplement unemployment benefits under a plan established by an employer, that makes provisions for employees generally or for a class or classes of employees under the written terms of an agreement, contract, trust arrangement, or other instrument. The plan must provide supplemental payments solely for the supplementing of weekly state or federal unemployment benefits. The plan must provide supplemental payments only for those weeks the applicant has been paid regular, extended, or additional unemployment benefits. The supplemental payments, when combined with the applicant’s weekly unemployment benefits paid, may not exceed the applicant’s regular weekly pay. The plan must not allow the assignment of supplemental payments or provide for any type of additional payment. The plan must not require any consideration from the applicant and must not be designed for the purpose of avoiding the payment of Social Security obligations, or unemployment taxes on money disbursed from the plan.<sup>21</sup>

Engfer does not challenge the ULJ’s decision that the General Dynamic plan meets the definition of wages found in section 268.035, subdivision

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<sup>20</sup> Minn. Stat. § 268.085, subd. 3(a).

<sup>21</sup> Minn. Stat. § 268.035, subd. 29 (a)(12) (2012).

29(a)(12).<sup>22</sup> Engfer’s only argument on appeal is that this provision of the Minnesota Unemployment Insurance Law is preempted by federal law, namely ERISA.

ERISA “subjects to federal regulation plans providing employees with fringe benefits. ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans.”<sup>23</sup> ERISA sets out “various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans.”<sup>24</sup>

ERISA also includes a preemption provision, which states: “the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.”<sup>25</sup> An “employee benefit plan” is defined as including “an

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<sup>22</sup> Return-3; Appendix, A5-A9. The ULJ concluded that the General Dynamic plan did not meet the definition of “wages” because the plan disbursed a weekly supplemental payment to Engfer during the state’s non-payable week, if Engfer had insufficient earnings to qualify for a state unemployment account, and if Engfer exhausted his state unemployment benefit account before his supplemental plan balance was exhausted. Thus, because the supplemental plan provided for payments beyond those weeks Engfer would be paid unemployment benefits, the amounts received under that plan were deemed “wages” under the statute and subject to deduction from Engfer’s weekly unemployment benefit amount.

<sup>23</sup> *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983).

<sup>24</sup> *Id.* at 91. An “employee welfare benefit plan” includes any program that provides contingency benefits, such as unemployment. 29 U.S.C. § 1002(1) (2012).

<sup>25</sup> 29 U.S.C. § 1144(a) (2012).

employee welfare plan,”<sup>26</sup> and an “employee welfare plan” means “any plan, fund, or program which is . . . established or maintained by an employer . . . to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants . . . benefits in the event of . . . unemployment.”<sup>27</sup>

In deciding whether federal law preempts a state statute, the court’s task is to discern Congressional intent in enacting the relevant statute.<sup>28</sup> The purpose of ERISA preemption was “to avoid a multiplicity of regulation in order to permit the national uniform administration of employee benefit plans,”<sup>29</sup> and to “minimize the administrative and financial burden of complying with conflicting directives among the States of between States and the Federal Government.”<sup>30</sup> “In analyzing whether ERISA’s preemption section [applies], as in any preemption analysis, the purpose of Congress is the ultimate touchstone.”<sup>31</sup> Importantly, the court must operate on the assumption that “the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.”<sup>32</sup> Thus, the United States Supreme Court has clarified that a state law

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<sup>26</sup> 29 U.S.C. § 1002(3) (2012).

<sup>27</sup> *Id.* at (1).

<sup>28</sup> *Hewlett-Packard Co. v. Diringer*, 42 F. Supp. 2d 1038, 1043 (D.Colo. 1999).

<sup>29</sup> *Id.* (quoting *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 657 (1995)).

<sup>30</sup> *Id.* (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990)).

<sup>31</sup> *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 8 (1987) (quotation omitted).

<sup>32</sup> *Dillingham*, 519 U.S. 325 (quotation omitted).

“relate[s] to” a covered employee benefit plan for purposes of ERISA preemption if the law has “a connection with” or “a reference to” such a plan.<sup>33</sup>

The definition of wages found at section 268.035, subd. 29(a)(12) does not “relate to” a covered employee benefit plan. The U.S. Supreme Court has recognized that

State laws which have only an indirect economic influence on ERISA-governed plans, and do not bind plan administrators in a particular way, preclude uniform administrative practice, or preclude provision of a uniform interstate benefit package, do not ‘relate to’ ERISA plans within the meaning of section 1144(a) and, thus, are not thereby preempted.<sup>34</sup>

The case of *Diringer* is instructive. In *Diringer*, the defendant applied for and was found eligible to receive workers compensation benefits.<sup>35</sup> But the decision of the administrative law judge “did not take into account the value of employee benefits” provided by the defendant’s employer “through ERISA-governed employee benefit plans.”<sup>36</sup> The issue for the federal district court was whether “the value of the ERISA-plan benefits [should be included] in the computation of her workers’ compensation award.”<sup>37</sup> Specifically, the employer challenged the Colorado statute governing the definition of wages, which provided

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<sup>33</sup> *California Div. of Labor Standards Enforcement v. Dillingham Const. N.A., Inc.*, 519 U.S. 316, 324 (1997).

<sup>34</sup> *Id.* (citing *Travelers Ins. Co.* 514 U.S. at 659-50).

<sup>35</sup> 42 F. Supp. 2d at 1040.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

that “wages” included “reasonable value of board, rent, housing, lodging, or any other similar advantages received from the employer.”<sup>38</sup>

The federal district court concluded that the Colorado workers’ compensation law was not preempted by ERISA. Looking at the fact that the workers’ compensation act did not “bind plan administrators or prevent them from maintaining a uniform administrative package,” the court reasoned that the statute was not the type of law Congress intended to preempt by the ERISA provisions.<sup>39</sup> A similar result is warranted here.

The challenged statute, Minn. Stat. § 268.035, subd. 29(a)(12), is only a definition of wages and has nothing to do with the uniform administration of employee benefit plans on a national scale. This state statute imposes no burden on the design and administration of employee benefit plans, it would not frustrate an employee benefit plan, and it does not require employers to conform to the wage law articulated in the state statute. Instead, the wage definition addresses only whether certain benefit payments will affect how much an applicant might

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<sup>38</sup> *Id.* at 1044 (citing Colo. Rev. Stat. § 8-47-101(1)-(2) (1986 & Supp. 1987)).

<sup>39</sup> *Id.* at 1045; *see also Farrell v. Am. Heavy Lift Shipping Co.*, 805 So.2d 336, 344 (La. App. 2001) (concluding that because the state statute including vacation pay in a calculation of unemployment benefits, even when the pay was related to a union plan covered by ERISA, the statute “did not relate to or seek to regulate ERISA plans in anything more than the way in which laws of general application would affect citizens in their dealings with one another,” and was not preempted by ERISA); *Lawrence Paper Co. v. Gomez*, 897 P.2d 134, 935 (Kan. 1995) (concluding that a state statute including fringe benefits in a weekly wage calculation was not preempted by ERISA).

receive in state-funded unemployment benefits in any given week. Employers are free to create, manage, and administer benefit plans as they see fit. The statute

does not mandate which payment-security option an employer must exercise[,] [i]t does not mandate that employers set up ERISA-covered benefit plans for their employees or control the terms of any such plan should an employer elect to provide one[,] [and] [e]mployers may provide, refuse to provide, modify, or cancel any ERISA-covered benefit plan without violating any provision [of the law].<sup>40</sup>

And whether an individual is eligible for state-provided unemployment benefits is wholly separate. As in *Diringer*, the state's wage law "do[es] not bind plan administrators, or prevent them from maintaining a uniform administrative practice or providing a uniform interstate benefit package."<sup>41</sup>

Moreover, the purposes of ERISA preemption are not implicated in this case. The state's wage law does not require employers to keep certain records, to make certain benefits available, to process claims in a certain way, or to comply with certain fiduciary responsibilities.<sup>42</sup> Nothing about this state's wage definition touches or concerns an employer's administration of a supplemental unemployment benefit plan, and notably, there has been no claim by the employer or the firm managing the benefits that the state's wage law "in any way hindered its ability to operate its . . . plan in uniform fashion."<sup>43</sup> The challenged law is concerned only with the amount of state-provided unemployment benefits an

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<sup>40</sup> *Lawrence Paper Co. v. Gomez*, 897 P.2d 134, 138 (Kan. 1995).

<sup>41</sup> *Id.*

<sup>42</sup> *See Coyne*, 482 U.S. at 9.

<sup>43</sup> *See id.* at 14.

individual is entitled to. Engfer asserts that “ERISA’s preemption provision is in place to protect from precisely the outcome of Engfer’s case,” but his assertion is incorrect. The clear purpose behind ERISA’s preemption provisions is to minimize the burden on employers from complying with differing state directives when administering employee benefits plans. The purpose was not to ensure that employees are eligible for state-provided unemployment benefits. And it seems highly unlikely that Congress intended to supersede state authority to calculate weekly unemployment benefit amounts in enacting ERISA.<sup>44</sup> General Dynamic is free to offer and administer the ETB plan, but applicants may not then be eligible for certain portions of their state-provided unemployment benefit amounts.

Because section 268.035, subdivision 29(a)(12) is not preempted by ERISA, the ULJ did not err in applying the state’s definition of wages to Engfer’s case.

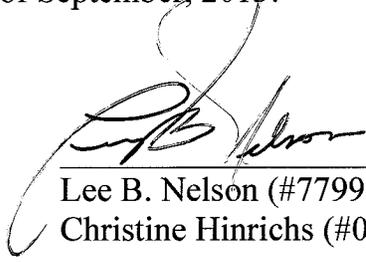
## CONCLUSION

Unemployment Law Judge Jessica Mount correctly concluded that the payments Engfer received under the General Dynamic plan were wages, rendering Engfer ineligible for benefits for a set period of time. The Department requests that the Court affirm the decision of the Unemployment Law Judge.

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<sup>44</sup> See *Ciampi v. Hannaford Bros. Co.*, 681 A.2d 4, 9 (Me. 1996).

Dated this 16<sup>th</sup> day of September, 2013.



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