

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by
Stephen W. Cooper, Commissioner,
Department of Human Rights,
Complainant,

ORDER ON MOTION
FOR SUMMARY JUDGMENT

VS.

USS Great Lakes Fleet, Inc.,
Respondent.

The above-entitled matter is before the undersigned Administrative Law Judge by written submissions of the parties. Respondent filed a Motion for Summary Judgment on November 13, 1989. The last brief was received on January 12, 1990, and the record for this motion closed on that date.

Patrick W. Ritchey, of Reed, Smith, Shaw & McClay, Attorneys at Law, Mellon Square, 435 Sixth Avenue, Pittsburgh, Pennsylvania 15219-1886 filed Respondent's Motion. Erica Jacobson, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101 filed the Memorandum in opposition on behalf of the Complainant, Minnesota Department of Human Rights.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

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1. Respondent's Motion for Summary Judgment on the basis of preemption is DENIED.

Dated: January _17 1990.

PETER C. ERICKSON
Administrative Law Judge

MEMORANDUM

Respondent, USS Great Lakes Fleet, Inc. (hereinafter "Great Lakes"), has moved for summary judgment on the basis of federal preemption of the regulation of health standards for U.S. Merchant Mariners. Respondent's claim of preemption is based on three separate grounds. First, Respondent asserts that the pervasiveness of Federal regulation in the area of maritime employment evinces Congressional intent to exclude State regulation. Second, Great Lakes argues that a need exists for uniformity in maritime employment regulation, precluding enforcement of state law. Third, Great Lakes states that the regulations of the U.S. Coast Guard governing the physical qualifications for Able Seamen directly conflict with the Minnesota Human Rights Act, Minn. Stat. 363, and, therefore, the Minnesota statute is preempted.

Summary judgment is appropriate when no genuine issues of material fact are presented. *Nord v. Herried*, 305 N.W.2d 337, 339 (Minn. 1981). The evidence must be considered in the most favorable light to the non-moving party. *Sauter v. Sauter*, 70 N.W.2d 351 (Minn. 1955). Under Minn. Rule of Civil Procedure 56.05, the party defending the motion must present "specific facts showing there is a genuine issue for trial." Should the Minnesota Human Rights Act be preempted, there would be no issues to be resolved under Minnesota law.

By virtue of the supremacy clause in article VI of the U.S. Constitution, conflicts between federal and state law are resolved in favor of federal law. This supremacy, known as preemption, is clearly demonstrated where federal and state laws are in actual conflict. *M. Dermott y. Wisconsin*, 228 U.S. 115 (1913). Preemption also occurs when state law promotes a result contrary to that sought by federal legislation. *Jones v. Rath Packing Co.*, 97 S.Ct. 1305 (1977). Even if no direct conflict between federal and state law is found, preemption may occur if Congress intended to "occupy the field" to the exclusion of the states. Laurence Tribe, *American Constitutional Law* 384-85 (1978). This may occur through an express statement by Congress. see, *Rath Packing Co.*, 97 S.Ct. at 1315. Preemption may also be inferred through the comprehensive nature of Congressional regulation. see, Laurence Tribe, *American Constitutional Law*, at 386 (citing *Campbell-v. Hussey*, 368 U.S. 297, 301 (1961)).

The existence of some federal regulation does not compel the conclusion that state regulation is preempted. "We start with 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." *Ray v. Atlantic Richfield Company*, 98 S.Ct. 988, 994 (1978) (quoting *Rice-v. Santa-Fe Elevator-Corp*, 67 S.Ct. 1146, 1152 (1947)). No statutory language has been cited which indicates that Congress intended to preempt state anti-discrimination laws when the authority to license Able Seamen was delegated to the Coast Guard. Thus, if preemption is to be found in this case, it must be inferred from Congressional action.

Regarding maritime regulation, cases have held certain areas to be the exclusive province of federal action. In *Atlantic Richfield*, supra, the Supreme Court struck down Washington state regulation of design requirements of tankers as being in direct conflict with the Coast Guard rules governing tanker design. The Court stated:

This statutory pattern shows that Congress, insofar as design characteristics are concerned, has entrusted to the Secretary the duty of determining which oil tankers are sufficiently safe to be allowed to proceed in the navigable waters of the United States. This indicates to us that Congress intended uniform national standards for design and construction of tankers that would foreclose the imposition of different or more stringent state requirements. In particular, as we see it, Congress did not anticipate that a vessel found to be in compliance with the Secretary's permit, . . . would nevertheless be barred by state law from operating the navigable waters of the United States on the ground that its design characteristics constitute an undue hazard.

Atlantic Richfield, 98 S.Ct. at 997. The Court then distinguished ".reasonable, nondiscriminatory conservation and environmental protection measures"; "local smoke abatement law"; and "state inspection to insure safety" as areas which are not preempted. *Id.* at 997-98.

Great Lakes cites Coast Guard regulations which extend to certification of individuals for maritime employment, payment of wages, shipboard accommodations for seamen and discipline. *Great Lakes* maintains that this level of regulation compels the conclusion that federal regulation of maritime employment is pervasive and, therefore, any state law intruding into this area is preempted.

The argument advanced by *Great Lakes* does not identify areas of local concern, left to the states for resolution, as distinct from those matters preempted by federal regulation. *Great Lakes* cites *Northwest Airlines, Inc. v. Gomez-Bethke*, 34 Fair Empl. Prac. Cas. (BNA) 837, 845 (D.Minn. 1984) as authority for holding that the Minnesota Human Rights Act is preempted by the Federal Aviation Act, 49 U.S.C. SS 1301-1522, a regulatory scheme similar to the maritime system. This case differs markedly from the situation in *Northwest Airlines*, however. In *Northwest Airlines*, the State sought to impose a stricter requirement on airlines than the federal regulatory scheme required. This brings *Northwest Airlines* within the holding of *Atlantic Richfield*. More importantly, in *Northwest Airlines*, the prospective employee was seeking to enlist the employer's aid in obtaining the required certification. In this case, the required certification had already been granted by the Coast Guard.

The most compelling argument for distinguishing the holding in *Northwest Airlines* from the present case is found in the language from that case cited by *Great Lakes*:

The comprehensive nature of the federal regulatory scheme clearly indicates an intent on the part of Congress to occupy the field of pilot regulation. The defendants are therefore powerless to regulate in this field, even if their regulation does not conflict with the federal law.

Respondent's Reply Memorandum, at 10 (citing Northwest Airlines, 34 Fair Empl. Prac. Cas. (BNA), at 846 (Emphasis added). Since certification is not at issue, the basis for preemption in Northwest Airlines, is not applicable to this case.

The Coast Guard's rule which is applicable herein stated that epilepsy was a condition disqualifying a person from obtaining an Able Seaman certificate. 46 C.F.R. Ch. I sec. 10.02-5 (1987). The Coast Guard's practice during the relevant period was, when epilepsy was reported, to conduct a case-by-case determination of whether the condition impaired the person's ability to perform the duties of an Able Seaman. Affidavit of Gary R. Kaminski, at 2. When Great Lakes disqualified the holder of an Able Seaman certificate, without any inquiry into that person's ability to perform the duties of the position, Great Lakes was imposing a stricter requirement for employment than was implemented pursuant to the Coast Guard regulation.²

The Coast Guard regulations cited by Great Lakes as preempting the Human Rights Act are not the subject of this dispute. The Coast Guard had already issued an Able Seaman certification to the prospective employee. Great Lakes sought to apply the Coast Guard regulations as adopted by the Seafarers Health Improvement Program (SHIP),³ as physical examination standards. These standards were taken verbatim from the Coast Guard physical requirements, but were not used to achieve the end sought by the federal regulatory scheme. Rather, the standards were used as part of a physical examination required of all new employees. Affidavit of John H. Young, at 2. Great Lakes conducted the physical examination to screen prospective employees, not provide certification to prospective Able Seamen.

Great Lakes' argument that uniformity is required in maritime employment is derivative of the stated justification for federal preemption of state law. *Knickerbocker Ice Co. v. Stewart*, 40 S.Ct. 438, 440-42 (1920). This need for uniformity is less important when the conduct regulated is "historically within the reach of the police power of the state." see, Laurence Tribe, *American Constitutional Law*, at 385, footnote 10 (quoting *Aakew v. American Waterways Operators, Inc.*, 411 U.S. 325, 343 (1973)). "Not only is the hiring of an employee, even for an interstate job, a much more localized matter than the transporting of passengers from State to State but more significantly, the threat of diverse and conflicting regulation of hiring practices is virtually nonexistent." *Colorado Anti-Discrimination-Comm'n-y. Continental-Air Lines*, 372 U.S. 714, 721 (1963). In *Knickerbocker_Ice*, the need for uniformity in worker's compensation for injuries, which would otherwise vary from location to location, justified preemption. When hiring is done, the employer chooses the location and, thereby, which state law

will apply. So long as the state statute does not impose "onerous, harassing, and conflicting conditions on an interstate carrier's hiring of employees that the burden would hamper the carrier's satisfactory performance of its functions," the state statute is not preempted. Continental Air Linea, 372 U.S. at 721-22. Prohibiting employers from discriminating on the basis of a disability when the responsible federal authority has certified an individual as physically fit to perform that job is not an "onerous, harassing or conflicting condition."

The Minnesota Human Rights Act has not been expressly preempted by Congress in the area of certification of Able Seamen. The state prohibition of discrimination is not in direct conflict with the Coast Guard's certification rules. The Human Rights Act does not interfere with the ends sought in the federal regulatory scheme. The federal regulation of maritime employment is not so pervasive as to "occupy the field" to the exclusion of state action. On a motion for summary judgment, the Judge must assess the facts in a light most favorable to the non-moving party. Based upon the pleadings and memoranda of the parties, the Judge has concluded that the Minnesota Human Rights Act is not preempted and therefore, summary judgment is inappropriate.

In its reply brief, Great Lakes requests oral argument on this motion. Under Minn. Rule 1400.6600, request for a hearing on the motion must be made at the time of the original motion. A hearing on the motion should only be ordered if the hearing is "necessary to the development of a full and complete record on which a proper decision can be made." Minn. Rule 1400.6600. The Judge is convinced that the nature of the issues herein and the quality of the memoranda submitted by counsel for the parties has rendered a hearing on the motion unnecessary. Therefore, Great Lakes' request for oral argument on this motion is denied.

P.C.E.

i/ The Court's holding did not extend to invalidating the Human Rights Act under all circumstances. 'This court finds no basis to conclude that Congress intended by 1305 to preempt all forms of aviation regulation by the states, including the regulation of pilot qualifications." Northwest Airlines Inc. v. Gomez-Bethke, 34 Fair Empl. Prac. Cas. (BNA) 837, 844 (D.Minn. 1984).

2/ Ralph Arnold, the charging party herein, received his Able Seaman certification in 1975. Second Affidavit of John Young, at 2. The Coast Guard did not conduct case-by-case reviews until 1979. Affidavit of Gary R. Kaminski, at 2. Great Lakes argues that, since the case-by-case review of medical disqualifications was not available when Arnold received his certification, evidence of such a review should not be considered. Respondent's Reply Memorandum, at 19. The Judge will not inquire into the validity of the certification held by Arnold, because certification is not the issue herein.

I/ SHIP is a "collaborative group" of persons and organizations within the shipping industry, not a federal governmental entity. SHIP adopted the standards used by Great Lakes in this case on October 25, 1982. The U.S. Public Health Service "withdrew" from all "maritime health-related matters" on October 1, 1981. Affidavit of John Young, Exhibit 1.

A/ The result in this case would be different if the medical examination was conducted for the purpose of obtaining certification from the appropriate federal entity. In *Carolina Freight Carriers v. Co Commonwealth, Pennsylvania Human Relations Comm'n* 513 A.2d 579 (Pa. Commw. Ct. 1986), appeal denied, 521 A.2d 934, the employer conducted a medical examination for the sole purpose of obtaining Interstate Commerce Commission certification for its prospective employees. The Court held the Pennsylvania action was preempted and pointed out that the employer had no standards of its own, outside the federal requirements. *Id.* at 580. Similarly, federal rules regarding nuclear power plants may preempt the application of state anti-discrimination laws where the federal rules explicitly set a standard which the employee, through a disability, cannot meet. *Burns International Security Services, Inc. v. Commonwealth Pennsylvania Human Relations Comm'n*, 547 A.2d 818 (Pa. Commw. Ct. 1988). Those cases are in clear contrast to this case, since the Coast Guard has certified the prospective employee fit to serve aboard ship as an Able Seaman.

Implementation of industry-wide employment standards cannot insulate an employer from the application of the Minnesota Human Rights Act. see, *Dept. of Human Rights v. Inland Steel Mining Co.*, HR-81-007-PE (Decision issued April 20, 1983). In *inland*, the employer disqualified an applicant from employment as a general laborer due to a low back anomaly, spondylolisthesis, revealed by pre-employment X-rays. At that time, the iron ore industry in Minnesota had adopted hiring standards which automatically rejected applicants whose X-rays showed any degree of spondylolisthesis, without further inquiry as to the applicants' ability to do the job. This employment practice was found to violate the Human rights Act.

6/ Great Lakes cites one case in which the SHIP standards appear to have been treated as preemptive federal standards. *Civil Rights Comm'n v. American Commercial Barge Line Company*, 523 N.E.2d 241 (Ind. App. 1 Dist. 1988), cert. denied, U.S. 109 S.Ct. 3246 (1989). In that case, the Court first held that Indiana courts have no jurisdiction in maritime employment cases, insofar as operation of a vessel is a traditional maritime activity. The Court relied on *Knickerbocker-Ice and St.-Hilaire Moye, v. Henderson*, 496 F.2d 973 (8th Cir. 1974) to reach this conclusion. Both of those cases dealt with injuries suffered while on navigable waters. Neither of those cases refer to any distinction between federal interests and historical state interests. The Court went on to affirmatively decide that Indiana law interfered with the uniformity of maritime law and the "seaworthiness" doctrine. *Id.* at 244-45. There was no indication in the case as to whether the prospective employee was certified as an Able Seaman, nor was there any indication that the Court considered the holding in *Askew*, 411 U.S. 325 (1973). Since the Indiana Court found that they did not have jurisdiction, the subsequent holdings in the case must be treated as dicta.

