1972

Labor Law - Overtime Wages - Interstate Motor Carriers Can be Obligated to Pay Overtime Wages in Accordance with the District of Columbia Minimum Wage Law

Frank H. Griffin III

Follow this and additional works at: http://digitalcommons.law.villanova.edu/vlr
Part of the Labor and Employment Law Commons

Recommended Citation
Available at: http://digitalcommons.law.villanova.edu/vlr/vol18/iss2/10

This Note is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository. For more information, please contact Benjamin.Carlson@law.villanova.edu.
should not be permitted to frustrate the peaceful settlement of disputes to
the detriment of the public's interest.82

Should it become evident that employers and the courts take undue
advantage of Avco's narrow anti-strike injunction such that it fosters a
situation similar to that which the Norris-LaGuardia Act was intended
to correct,83 the application of a presumption of arbitrability to such cases
should be reconsidered. However, it is not believed that the narrow situa-
tions in which strike injunctions are available will lead to such a result;
the necessary safeguards are built into the basic requirements for the
issuance of the injunction.84

The decision of the instant case further clarified and necessarily ex-
panded the situations in which a Boys Markets injunction can be obtained.
It properly demonstrates that there need not be mutual ability to initiate
arbitration of a dispute for the parties to be "contractually bound to arbi-
trate." The application of the presumption of arbitrability, coupled with
the determination of when parties are bound to arbitration, leads to the
proper enforcement of the contractual obligations of both parties, without
relinquishing any legal right the parties had under the collective bargain-
ing agreement.

J. Michael Fieglein

LABOR LAW — OVERTIME WAGES — INTERSTATE MOTOR CARRIERS
CAN BE OBLIGATED TO PAY OVERTIME WAGES IN ACCORDANCE WITH
THE DISTRICT OF COLUMBIA MINIMUM WAGE LAW.

Williams v. W.M.A. Transit Co. (D.C. Cir. 1972)

Plaintiffs, 92 bus drivers, brought a class action suit against their
employer, W.M.A. Transit Company,1 to recover unpaid overtime com-
pensation allegedly due them under the District of Columbia Minimum
Wage Act (DCMWA).2 The trial court granted the defendant's motion
to dismiss, reasoning that, since a great majority of defendant's vehicles

82. Curtin, Boys Markets and the No-Strike Injunction, 57 A.B.A.J. 863, 866
(1971).
83. See notes 10-13 and accompanying text supra.
84. See notes 35-38 and accompanying text supra.

1. Defendant operated contract, charter, and route bus service in and around
the District of Columbia. Defendant's offices were located within Maryland, yet
very proximate to the District, but no facilities were maintained within the District.
The bulk of defendant's business involved the operation of 84 regular bus routes,
79 of which entered the District. Defendant's drivers were required to have both
District of Columbia and Maryland licenses. Defendant estimated that its drivers
spent, on the average, 38 per cent of their total pay time within the District. Williams
v. W.M.A. Transit Co., 268 A.2d 261 (D.C. Cir. 1970), vacating and remanding
were engaged in interstate commerce, defendant was subject to regulation by the United States Department of Transportation (DOT) and therefore, the DCMWA was inapplicable to defendant's drivers. The District of Columbia Court of Appeals affirmed, holding that Congress intended to extend the coverage of the DCMWA only to those individuals working entirely within the District of Columbia. Plaintiffs then appealed to the United States Court of Appeals for the District of Columbia Circuit. That court vacated the lower court's judgment and remanded, holding that the operative scope of the DCMWA included employees who regularly spent more than 50 per cent of their work time in the District of Columbia and employees who, though they did not regularly spend 50 per cent of their work time in the District or in any particular state, were based in the District and regularly spent a substantial amount of work time in the District. \textit{Williams v. W.M.A. Transit Co.} F.2d (D.C. Cir. 1972).

The noteworthiness of the decision in \textit{Williams} may not be readily apparent. While the holding concerned the operative scope of a local minimum wage statute and while W.M.A. Transit was a local company, it was nevertheless an interstate motor carrier, and the decision can, therefore, be construed as setting precedent which could prove to have a significant impact on the interstate motor carrier industry. The wage structure in much of that industry is not readily adaptable to an hourly overtime wage requirement such as the one established by the DCMWA. The wages of interstate truckers, for example, are determined, not on a strict hourly basis, but rather by means of complex, collectively bargained formulae under which wage rates may vary with the type of trip, type of equipment driven, cargo hauled, distance traveled, terrain, and even road speed. It is obvious that it would be difficult to compute the overtime wages of a trucker, paid according to such formulae, on the basis of time and one-half of a nonexistent hourly rate. The imposition of an overtime wage provision inconsistent with a collectively bargained wage agreement could force the renegotiation of that agreement and, where the wage agreement is industry-wide, that renegotiation could result in significant industrial strife, thereby adversely affecting the national economic climate. Heretofore, labor and management in the trucking industry have success-

4. Id. at 263.
5. The term "based" refers to that place to which an employee reports for duty. F.2d at ....
6. \textit{Id.} at 263.
8. Many of the collectively bargained wage agreements which exist throughout the interstate motor carrier industry do not require hourly overtime payments. \textit{Id.} at 875.
9. \textit{Id.}
fully opposed the imposition of federal overtime wage requirements on the interstate motor carrier industry, and the industry has been generally free from state overtime wage regulation. Since the Williams decision can be read as inviting state regulation of the overtime wages of employees of interstate motor carriers and because of the possible wide-ranging effects of such regulation, the opinion warrants detailed consideration.

In 1935, in response to the rapid growth of interstate motor carrier activity and the plethora of state attempts to regulate it, Congress enacted the Motor Carrier Act, 1935 (the "Motor Carrier Act"). That Act gave, inter alia, the Interstate Commerce Commission (ICC), and subsequently the Secretary of Transportation, the authority and duty to set qualifications and maximum hours of service for certain employees of interstate motor carriers. Three years later, Congress enacted the Fair Labor Standards Act of 1938 (FLSA) as a step towards the elimination of "labor conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency, and general well-being of workers." To accomplish that purpose, the FLSA established among other provisions, minimum wage, maximum hour, and overtime wage standards. In order to avoid the probable conflict inherent in the possi-

10. Id. at 876.
11. In June 1971, the circuit court asked counsel to submit supplementary memoranda concerning whether or not there were any applicable judicial, administrative, or executive rulings from states, whose minimum wage laws did not contain express exemptions from their overtime wage provisions for employees with respect to whom the DOT had the power to regulate maximum hours of service and qualifications (see notes 12-15 and accompanying text infra), concerning whether or not the FLSA motor carrier exemption (see text accompanying notes 17-19 infra) implied that such employees were exempt from the overtime pay provisions of the state statutes. Counsel made inquiry to the 48 continental states, received replies from 29, but found only two rulings on point. F.2d at ___ n.9. The Attorney General of Maine had ruled, in 1966, that the FLSA motor carrier exemption applied to the states, while the Attorney General of Maryland had ruled, in 1970, that the exemption did not apply. Id. at ___. However, less than one year after the Maryland Attorney General had expressed that view, it was evidently repudiated by the Maryland Assembly which amended the Maryland overtime wage provisions to specifically include a motor carrier exemption. Id. at ___. Additionally, the Commissioner of the Connecticut State Department of Labor has since ruled that, effective April 29, 1972, any driver or helper subject to maximum hours regulation by the DOT is exempt from the Connecticut overtime wage requirements. 4 BNA LAB. REL. REP., SLL 16:309 (1972).
13. In 1966, the functions, powers, and duties of the ICC were transferred to the Secretary of Transportation. 49 U.S.C. §§ 1655(e)(6)(A)-(D) (1970). In this note reference will be made to both the ICC and the DOT as is appropriate. Reference will be made to an "ICC-DOT" regulation in situations where regulations may have been promulgated by either or both agencies.
14. The grant of power to set qualifications and maximum hours of service is limited to those employees whose activities involve the safety of operation of motor vehicles engaged in interstate commerce. Those employees have been defined as drivers, drivers' helpers, loaders, and mechanics. 29 C.F.R. §§ 782.0-8 (Supp. 1972). For regulations setting qualifications and maximum driving and on-duty time, see 49 C.F.R. §§ 391.11, 395.3 (Supp. 1972).
17. Id. § 202.
18. Id. §§ 206, 207.
RECENT DEVELOPMENTS

bility of having hours of service regulated by two governmental agencies (by the ICC under the Motor Carrier Act and by the Department of Labor under the FLSA) and in recognition of the ICC’s existing power to regulate the maximum hours of service of certain employees of interstate motor carriers, Congress exempted, from the overtime provisions of the FLSA, “any employee with respect to whom the Interstate Commerce Commission has the power to establish qualifications and maximum hours of service pursuant to the provision of section 204 of the Motor Carrier Act, 1935” (the “motor carrier exemption”).

Until 1966, the FLSA was the only law which afforded minimum wage coverage and protection to men working within the District of Columbia. In that year, Congress completely revised the District’s 1918 minimum wage law, utilizing the FLSA as a guide, by amending the DCMWA to extend coverage to all employees, as defined therein. Specific exemptions were granted from both its minimum wage and overtime provisions, yet the motor carrier exemption, which Congress not


At the time the motor carrier exemption was adopted, Senator Black stated:

It . . . would be certainly unwise to have the hours of service regulated by two governmental agencies . . . [T]he Interstate Commerce Commission, since it has the power and has exercised it, should be the agency to be entrusted with this duty.


20. The District of Columbia’s first minimum wage law was passed in 1918 and was directed toward the protection of women and children. Act of Sept. 19, 1918, ch. 174, 40 Stat. 960. The 1918 law remained, with a few changes, the District of Columbia’s minimum wage statute until 1966, when, finally, men generally were provided minimum wage and overtime protection at the local level. D.C. Code Ann. §§ 36-401 et seq. (1967).


(5) The term "employee" includes any individual employed by an employer, except that such term shall not include—

(A) any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(C) any individual employed in domestic service or otherwise employed, in or about the residence of the employer.

23. D.C. Code Ann. § 36-404 (1967) provides the following exemptions:

(a) The minimum wage and overtime provisions of section 36-403 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined by the Secretary of Labor under the Fair Labor Standards Act of 1938); or

(2) any employee engaged in the delivery of newspapers to the home of the consumer.

(b) The overtime provisions of section 36-403(b)(1) shall not apply with respect to—

(1) any employee employed as a seaman;

(2) any employee employed by a railroad;

(3) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks if employed by a nonmanufacturing
only had written into the FLSA, but also had steadfastly refused to remove from that Act, was not present. As a result of the absence of the motor carrier exemption in the DCMWA, the Commissioners of the District of Columbia interpreted that Act as including, within its overtime provisions, employees of interstate motor carriers.

The instant litigation presented the question of whether the overtime provisions of the DCMWA were intended to be applicable to interstate motor carriers, as the Commissioners had ruled, or whether it was intended that interstate motor carriers be exempt from those provisions, as had been expressly provided in the FLSA. In order to answer that question, the Williams court sought to determine the legislative intent behind the DCMWA as indicated by the statute itself, by a comparison of the statute and the FLSA, and by the resolution of the question whether Congress, by enacting the Motor Carrier Act and the FLSA, had effectively occupied the field of regulation, thereby preempting any local legislation which would purport to regulate the wages and hours of employees with respect to whom the ICC-DOT had the authority to regulate qualifications and maximum hours of service.

The court began its inquiry into the legislative intent by noting: (1) that the general scope of the DCMWA was quite broad; (2) that specific exemptions for certain groups of employees from the Act's overtime requirements were juxtaposed to that broad coverage; and (3) that bus drivers were not among those so exempted. Turning to a consideration of the FLSA, the court noted that the 1966 amendments to the DCMWA were patterned on the FLSA and that, although the FLSA contained a number of exemptions from its overtime requirements which were incorporated in the 1966 amendments, the motor carrier exemption was not one of them. Thus, the court reasoned that this omission should be considered deliberate and indicative of an intent to include interstate motor carriers within the purview of the Act.

The court then considered section 218 of the FLSA which recognizes a state's right to establish a minimum wage higher and/or a maximum work week shorter than those established by the FLSA. The

---

26. Id. at 2d.
27. Id. at 2d.
28. Id.
29. Id. at 2d.
30. Id.
31. Id. at 2d.
32. Id. at 2d.
Recent Developments

The court reasoned that, by "necessary implication," section 218 permitted states to regulate the wages and hours of employees specifically exempted from the FLSA overtime requirements. Giving substantial, if not decisive, weight to the fact that "Congress inserted exemptions [in the DCMWA] from the overtime compensation requirements for seven classes of employees, including the substance, and indeed language, of exemption provisions of FLSA, but omitted the exemption provision set forth in FLSA, § 213(b)(1) [the motor carrier exemption]," the court concluded that the statutory pattern presented a "reasonably clear pattern of intent to withhold from the D.C. Act any exemption for employees, of bus and truck companies, merely because they are subject to ICC regulation due to hours in interstate operations."

The court next considered whether its conclusion concerning legislative intent was valid in light of the argument that a contrary intent could be inferred if state power to regulate overtime wages of certain employees of interstate motor carriers had been preempted, since, in

34. ___ F.2d at ___.
35. Id.
36. Id. at ___. The court's statement appears to be a slight exaggeration. A comparison of the DCMWA and FLSA exemptions indicates that Congress tailored the DCMWA exemptions to fit the local problems and conditions of the District. Compare 29 U.S.C. §§ 213(a), (b) (1970) with D.C. Code Ann. § 36-404(a), (b) (1967).
37. ___ F.2d at ___. The court's finding of a "reasonably clear pattern of intent" is not clearly supported by the legislative history. See text accompanying notes 62-80 infra. However, reluctance to find an exemption not expressly stated has some support. The Supreme Court, in litigation concerning exemptions to the FLSA, has recognized that exemptions from such "humanitarian and remedial" legislation should be narrowly construed, A.H. Phillips, Inc. v. Walling, 324 U.S. 490, 493 (1945), and that specificity in stating exemptions strengthens and supports an implication that employees not so specifically exempted remain within the coverage of the act. Powell v. U.S. Cartridge Co., 339 U.S. 497, 517 (1950).
38. ___ F.2d at ___. The District of Columbia Court of Appeals had decided the case on the basis of the local scope of the DCMWA. 268 A.2d at 264. However, the trial court had questioned the applicability of the DCMWA on the basis of both the local scope of the Act and the "doctrine of federal supremacy in matters concerning interstate commerce," Id. at 261-62. W.M.A. Transit had also argued the latter issue before the instant court. See ___ F.2d at ___. The doctrine of preemption is based on the supremacy clause. U.S. Const. art. VI, § 2. Whenever a state law is in direct opposition to a valid federal law, the state law must fall as invalid under the supremacy clause. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824). If Congress expressly declares that regulations enacted pursuant to constitutionally delegated power are to be exclusive, states cannot regulate the same field. Cf. Campbell v. Hussey, 368 U.S. 297, 302 (1961). When there is both federal and state regulation in the same field and no direct conflict between federal and state law nor any express statement of exclusive federal regulation, whether the state regulation is to be considered invalid and federal preemption implied, is dependent upon an interpretation of the purpose of the federal statute. Preemption will be found when the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

Factors influencing the determination as to whether preemption was intended are: the federal statute itself and its legislative history (see Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 147-50 (1963)); the existence of a pervasive scheme of federal regulation (Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)); the extent of the federal interest in the field (see Perez v. Campbell, 402 U.S. 637, 649-52 (1971)); the degree to which state policy may be adverse to the objectives of the federal act (Hines v. Davidowitz, 312 U.S. 52, 67 (1941));
enacting the 1966 amendments to the DCMWA, Congress purported to be exercising only that power which would be available to a state legislature.\textsuperscript{89} The court determined that the fact that the FLSA motor carrier exemption was designed to eliminate possible conflict in regulation by different government agencies was of "relatively little significance"\textsuperscript{40} to the question of preemption. While agreeing that, in enacting the 1966 amendments, Congress was purported to act as a state legislature,\textsuperscript{41} the court concluded that "state power [to regulate in the field] is not negated by the doctrine of federal pre-emption."\textsuperscript{42} The Williams court was unwilling to accept the proposition that Congress intended to include the motor carrier exemption within the 1966 overtime provisions of the DCMWA solely by relying on "the consequence of the Federal supremacy doctrine."\textsuperscript{43} The court posited that if state power to regulate overtime wages was to be considered preempted, it would have to be by virtue of section 304 of the Motor Carrier Act which granted the ICC the power to regulate maximum hours of service of certain employees of interstate motor carriers.\textsuperscript{44} The court concluded that the vesting of power to regulate maximum hours of service in a federal agency did not necessarily exclude state authority to regulate overtime wages.\textsuperscript{45}

Turning to the issue of concurrent power, the court looked to the Supreme Court decision in \textit{Welch v. New Hampshire}\textsuperscript{46} to support its conclusion that there was no necessary conflict between state overtime regulations and federal maximum hours regulation.\textsuperscript{47} \textit{Welch} involved a New Hampshire statute which provided for a maximum hour limitation on continuous motor vehicle operation by one driver.\textsuperscript{48} After passage of

\begin{flushright}

and the need for national uniformity of regulation (\textit{see} Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 143-44 (1963)).

The general purpose of the doctrine of preemption was aptly articulated in \textit{Amalgamated Ass'n of Motor Coach Employees v. Lockridge}, 403 U.S. 274 (1971), wherein the Court stated:

The Constitutional principles of pre-emption, in whatever field of law they operate, are designed with a common end in view: to avoid conflicting regulation of the conduct by various official bodies which might have some authority over the subject matter.

\textit{Id.} at 285-86.

\textsuperscript{39} \textit{See}, e.g., 112 Cong. Rec. 750 (1966) (remarks of Senators Javitts and Morse to the effect that, in passing the minimum wage bill, Congress was acting like a state legislature); \textit{H.R. Rep. No. 91-1672, 91st Cong., 2d Sess. 61 (1970)} (reference to the DCMWA as a local legislative enactment).

Another aspect of the preemption issue not raised in the instant case is whether the DCMWA itself should be considered "preempted" to the extent that it conflicts with the FLSA motor carrier exemption. Apparently, it is possible that congressional action concerning the District of Columbia may be considered "superseded" by a prior "national" enactment. \textit{See} \textit{Perez v. Campbell}, 402 U.S. 637, 654-56 (1971) (dicta).

\textsuperscript{40} \textit{...} F.2d at \textit{...}.

\textsuperscript{41} \textit{Id.} at \textit{...}.

\textsuperscript{42} \textit{Id.}

\textsuperscript{43} \textit{Id.}

\textsuperscript{44} \textit{Id.}

\textsuperscript{45} \textit{Id.}

\textsuperscript{46} 306 U.S. 79 (1939).

\textsuperscript{47} \textit{...} F.2d at \textit{...}.

\textsuperscript{48} 306 U.S. at 80.

\end{flushright}
the Motor Carrier Act but before the ICC had promulgated specific rules regulating hours of service pursuant to the authorization contained therein, the Welch Company was cited for violations of the New Hampshire statute. As a defense, the Welch Company argued that the New Hampshire statute had been superseded by the Motor Carrier Act. The Supreme Court held that it could not properly be inferred that Congress had intended to supersede any state safety measure prior to the implementation of a suitable federal measure to take its place. It should be noted, however, that the Welch Court assumed, without deciding, that when the federal regulations became operative, the state statute would then be superseded. The Williams court noted that the briefs and record in the instant case did not indicate any actual ICC-DOT regulation of the plaintiffs' hours of service and that, therefore, there was "no basis for finding a termination of the State's concurrent jurisdiction." Relying on Levinson v. Spector Motor Service, the court stated that, even if there were evidence of such federal regulation, there would not necessarily be any inconsistency between such federal regulation of maximum hours of service, for safety purposes, and state regulation of overtime wages for economic purposes. This proposition rested upon a state's legitimate interest in creating job opportunities through the use of overtime wage requirements. The fact that overtime requirements might reduce the number of hours that an employee would work within a maximum hours limit does not necessarily interfere with a regulation which sets the maximum hours limitation.

Having determined that state overtime wage requirements need not be, on their face, in conflict with federal regulations and that the entire field of regulation had not been preempted, the court, nevertheless, recognized that in a given case an overtime wage requirement could be invalid in its application:

It may be that a State overtime pay provision might have to be suspended or terminated as an interference with an ICC-DOT regulation, or as a burden on interstate commerce, but any such contention would have to be supported by an express DOT determination, or a factual showing of burden, and not by abstract conception.

In attempting to ascertain the relevant legislative intent, the court chose not to examine, in detail, the legislative history of the 1966 amend-

49. Id. at 84.
50. Id. at 80-81.
51. Id. at 85.
52. Id. at 84.
53. F.2d at ....
55. F.2d at ....
56. Id.
57. Id.
58. Id.
ments to the DCMWA.59 A thorough examination of that history raises serious questions about the court's conclusions concerning legislative intent and indicates that the court's reasoning may not be as convincing as might appear upon a cursory review. The preenactment history of the 1966 amendments reveals no statement directly concerned with the question before the court. Most discussion focused upon the general minimum wage coverage rather than upon overtime requirements.60 However, the post-1966 history of the DCMWA may be somewhat more revealing and indicative of legislative intent.

In 1970, an amendment to the DCMWA was proposed in the House which would have added an express exemption from the overtime requirements for "any employee with respect to whom the Interstate Commerce Commission has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of part II of the Interstate Commerce Act [the Motor Carrier Act]."61 Commenting on the proposed amendment, the report of the Committee on the District of Columbia stated:

[Y]our Committee finds that the interpretation made by the Commissioner of the District of Columbia of the amendments in that Act of October 15, 1966 (P.L. 89-684) [DCMWA], exceeds any intent of the Congress and is not supported by the most common and elemental rules of legislative construction. Section 602 of this bill thus becomes a necessity as an amendment to present law.62

After reviewing the reasons behind the passage of the Motor Carrier Act, the Committee emphasized that, during the legislative activity culminating in the 1966 amendments of the DCMWA, there had been no indication that any of the federal statutes related to hours of employment in the interstate motor carrier industry should be changed in any way.63 The report continued:

In 1938, when Congress enacted the Fair Labor Standards Act (29 USC 201–209), it was again confronted with the problem establishing hours of employment of persons crossing state boundaries in interstate commerce. Such employees differed from others whose product flowed into interstate commerce although the individual did not depart from the boundaries of the state of employment. The Congress, recognizing the need for uniformity of regulations applying to such interstate employees, provided that employees subject to Interstate Commerce Commission regulations as to qualifications and maximum hours of service be exempt from the hour provisions of the Fair Labor Standards Act. The Congress, in its legislative action on the amend-

---

59. The court did make reference to certain facets of the history. See, e.g., ___ F.2d at ___, n.6, ___, n.13.
62. Id. at 61.
63. Id.
ments to the District of Columbia Minimum Wage Act of 1966, heard no testimony, received no proposals, and made no suggestions in its recommendations, to repeal any part of the Fair Labor Standards Act or otherwise alter the provisions in that Act exempting certain employees of interstate motor carriers from the provisions of the Fair Labor Standards Act. As finally enacted, the amendments to the Minimum Wage Act of the District of Columbia stood as a local legislative enactment to be enforced in conjunction with the provisions of national legislation previously enacted by the Congress. 64

It is clear, then, from this report, that the House Committee did not view the proposed amendment as a new exemption, but rather as a clarification of an already existing exemption. 65

During the House debate on the bill containing the proposed exemption, 66 an amendment was offered which would have stricken the exemption from the bill. 67 That amendment was soundly defeated. 68 The bill then passed the House and was sent to the Senate. 69 The Senate, however, was not receptive to the exemption proposed by the House 70 and passed a bill which contained no such exemption. As a result, two versions of the bill were sent to conference committee. 71

The conference committee produced a compromise bill 72 which provided that employees who would have been exempted by the House proposal would be exempted from the DCMWA overtime provisions only for those

64. Id. The report also contains a short “lesson” on the proper method of interpretation and implementation of laws which is directed at District officials. Id. at 61-62.

65. The report stated: This [exemption] will restore the initial purpose and intent of the Congress which has been misinterpreted and misapplied without legal justification or valid economic purpose to the detriment of the economics of the transportation industry in the District of Columbia. Id. at 65.

66. Congressman Broyhill of Virginia strongly supported the report’s position and maintained:

Section 602 exempts District of Columbia motor carriers which are regulated by the ICC from the provisions of the District of Columbia Minimum Wage Act. The problem in this area is that the District of Columbia Minimum Wage Board has imposed an overtime provision for all motor carrier employees in the District. . . . The Fair Labor Standards Act, on the other hand, exempts all interstate motor carrier employees in the categories of driver, driver’s helper, loader, and mechanic from overtime provisions.

When we passed that Minimum Wage Act of 1966 we did not intend to include people engaged in interstate commerce who are now subject to regulation by the Department of Transportation. This group has been excluded from the Fair Labor Standards Act since 1938. In fact, they were exempt under the law as far back as 1935. When we passed this legislation in 1966, there was no mention in the hearing or on the floor that it would include people who are excluded from the Fair Labor Standards Act.


67. Id. at 41416.

68. Id. at 41417.

69. Id.


work weeks during which they did not spend more than one-half of their work time within the Washington, D.C., metropolitan area, defining the metropolitan area as "the area consisting of the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties and the cities of Alexandria, Fairfax, and Falls Church in Virginia." This conference bill was enacted and became law on January 5, 1971.74

That, however, was not the end of congressional discussion and debate concerning a full motor carrier exemption for the DCMWA. Indeed, the controversy was rekindled less than one year later when an amendment to the DCMWA was proposed in the House. That proposal would have expressly exempted from the overtime requirements of the Act all employees with respect to whom the DOT had the power to regulate qualifications and maximum hours of service.75 The House passed the amendment,76 but again, it was opposed without explanation by the Senate.77 This time, the result of the conference was a compromise which completely abandoned the proposed House amendment and repealed the partial exemption passed the previous year.78 The DCMWA, at least as far as its overtime provisions were concerned, was thereby returned to the same language and form adopted in the 1966 amendments.79

Thus, it is difficult to discern a clear picture of the congressional intent behind the DCMWA overtime provision solely from that Act's legislative history. Only the position of the House is relatively clear. Although nothing was said prior to the enactment of the 1966 amendments to the DCMWA, the post-1966 history shows the House strongly opposed to any interpretation of the Act's overtime provisions which would hold all employees of interstate motor carriers subject to them. However, except for a few, somewhat ambiguous remarks by Senator Eagleton,80 nothing

73. Id. at 10.
79. The conference compromise did not recommend any change in, or the repeal of, the definition of "Washington metropolitan region" that was added to the DCMWA during the previous year. See Id. at 4.
80. See 117 Cong. Rec. 21194 (daily ed. Dec. 10, 1971); 116 Cong. Rec. 42988 (1970). Commenting on the partial exemption compromise reached by the conference committee in 1970, Senator Eagleton stated: "The amendment retains overtime compensation coverage for drivers, drivers' helpers, loaders, or mechanics who spend more than one-half of their workweek in the Washington metropolitan region." 116 Cong. Rec. 42988 (1970). This statement could be construed in a number of ways. For example, it could be argued that the Senate had never intended the 1966 amendments to the DCMWA to embrace the FLSA motor carrier exemption. Such a construction focuses on Senator Eagleton's use of the word "retains." On the other hand, still focusing on the word "retains," it could be contended that the statement merely indicates that the Senate in 1970 had taken the position that any exemption embraced by the 1966 amendments should be eliminated, that the compromise
was said in the Senate explicating its opposition to the House amendments, and the record is devoid of statements demonstrative of the Senate's motivation for that opposition. Lacking a more definitive indication of the Senate's motivation, several explanations are plausible. First, it can be argued that the Senate never recognized an exemption from the DCMWA overtime provisions for any employees of interstate motor carriers. This position views the Senate as being in total opposition to the House and assumes that the Senate intended the 1966 amendments to the DCMWA to include all employees of interstate motor carriers within the coverage of their overtime wage provisions. Such an assumption would view the narrower exemption passed in 1970 as a partial victory for its House proponents, in that it created at least a partial exemption where, therefore, none had existed. The repeal of that partial exemption would, under this view, be seen as the elimination of any exemption and a return to the position of 1966, which embraced no exemption. Second, it can be posited that the DCMWA, as amended in 1966, incorporated the FLSA motor carrier exemption (or did nothing to negate that exemption) but that the post-1966 developments indicate a congressional decision to limit that exemption — first partially and, then, completely. This is a feasible interpretation if the Senate is viewed as having agreed with the House that the exemption did exist in 1966 but as having subsequently decided to eliminate it. Such an interpretation would mean that the DCMWA, as it presently exists, though exactly the same as the 1966 version as far as overtime provisions go, embraces no exemption, but that the 1966 version, which was at issue for the purposes of the instant litigation, did embrace the exemption. Third, it can be argued that the DCMWA, as amended in 1966, embraced the FLSA motor carrier exemption, that the partial

Commenting on the conference compromise reached on the 1971 proposed amendment, Senator Eagleton stated: "Section 707 of the conference substitute amends the District of Columbia Minimum Wage Act to remove from that act an exemption from overtime pay for certain drivers, drivers' helpers, loaders, and mechanics. These employees will now be entitled to overtime compensation as they were prior to the adoption of the exemption." 117 Cong. Rec. 21194 (daily ed. Dec. 10, 1971). This statement could also be construed in several ways. It could be argued that it supports the view that the Senate always opposed the position that the 1966 amendments to the DCMWA embraced any motor carrier exemption. On the other hand, it could be argued that it supports the view that the 1970 partial exemption was a limitation on the previously existing, but not stated, total exemption and that the 1971 amendment represented a return to the total exemption which existed with the 1966 amendments. Such an argument interprets the phrase "as they were prior to the adoption of the exemption" to imply that an exemption did, in fact, exist in 1966. The former interpretation, however, is considerably more feasible, and warrants the conclusion that Senator Eagleton, at least, viewed the 1966 Act as containing no implied exemption.

exemption of 1970 was meant to limit that exemption, but that the action of 1971, which repealed the partial exemption, reinstated the complete exemption. Finally, it could even be argued that, since the 1971 amendment proposed by the House was part of an extensive revenue bill, the Senate refused to accept the amendment merely because a revenue bill of that size and scope was not the proper vehicle for such an unrelated proposal. This argument views the repeal of the partial exemption as a partial compromise with the House.

It is submitted that, in the light of the legislative history and attendant interpretation problems, the court did not adequately treat the question of legislative intent. The court’s conclusion that there was a “reasonably clear pattern of intent” that all employees of interstate motor carriers could be within the purview of the DCMWA overtime provisions might, therefore, be subject to valid criticism. Indeed, it has been forcefully argued, in District of Columbia v. Schwerman Trucking Co., a case currently pending in the District of Columbia Court of Appeals, that the instant court entirely misinterpreted the legislative intent behind the DCMWA overtime provisions and that employees exempted from FLSA overtime

---

82. This argument was made in a case currently pending in the District of Columbia Court of Appeals. Brief for Appellee at 19, District of Columbia v. Schwerman Trucking Co., No. 6412 (D.C. Ct. App., filed Mar. 24, 1972). See note 87 infra.

83. The 1971 proposed exemption was offered as an amendment to H.R. 11341, the District of Columbia Revenue Act of 1971. See 117 CONG. REc. 10920 (daily ed. Nov. 11, 1971). The bill was to provide additional revenue for the District of Columbia and other purposes. See S. Rep. No. 92-489, 92d Cong., 1st Sess. (1971).

84. This argument must face the fact that H.R. 11341 was many faceted. See S. Rep. No. 92-489, 92d Cong., 1st Sess. (1971).

85. House members of the conference committee appear to have viewed the rejection of the House proposed amendment as a defeat. See 117 CONG. REc. 12263 (daily ed. Dec. 10, 1971) (remarks of Mr. Cabell to the effect that the House recoiled on only two minor amendments).

86. Brief for Appellee at 12-15, District of Columbia v. Schwerman Trucking Co., No. 6412 (D.C. Ct. App., filed Mar. 24, 1972). The Schwerman Trucking Company is an interstate motor carrier operating in 30 states and the District of Columbia under numerous ICC and state certificates of authority. Brief for Appellant at 2. The company operated a terminal in the District of Columbia from which it transported bulk cement to Maryland, Virginia, and within the District. The District of Columbia, as assignee in trust for eleven employees of Schwerman, brought an action against the company to recover overtime wages allegedly due the employees under the DCMWA. The plaintiffs were all truck drivers based at the company’s District of Columbia terminal and all spent a substantial amount of their work time outside the District. However none spent more than 49 per cent of his work time outside the District and the Maryland counties of Montgomery and Prince Georges, the Virginia counties of Arlington and Fairfax, and the Virginia cities of Alexandria, Fairfax and Falls Church. Id. at 2-4. The trial court, citing Williams v. W.M.A. Transit Co., 268 A.2d 261 (1970), granted the company’s motion for summary judgment and ordered the suit dismissed. District of Columbia v. Schwerman Trucking Co., Civil No. GS 18328-70 (D.C. Super. Ct., Feb. 25, 1972). The District of Columbia appealed. Brief for Appellant at 4.

87. The District of Columbia Court of Appeals is not bound to follow the decision of the Williams court. As a result of a court reorganization pursuant to the District of Columbia Court Reorganization Act of 1970, D.C. CODE ANN. §§ 11-101 et seq. (Supp. 1971), the District of Columbia Court of Appeals became the highest court in the District, is no longer subject to review by the United States Court of Appeals for the District of Columbia Circuit, id. § 11-102, and is not bound by decisions of that court rendered subsequent to Feb. 1, 1971. M.A.F. v. Ryan, 285 A.2d 310 (1971).
RECENT DEVELOPMENTS

requirements by the motor carrier exemption were never intended to be within the coverage of the DCMWA overtime wage provisions. 88

The court’s discussion of the preemption issue is also subject to question. The court took the position that a state overtime wage provision would not, on its face, necessarily be in conflict with federal regulation. 89

While that position may be correct, it is submitted that another aspect of the preemption question — whether or not the entire field of regulation had been occupied to the exclusion of state regulation — was inadequately dealt with by the Williams court and therefore casts a shadow on the court's resolution of that issue. The court’s discussion of Welch supplied some support for the proposition that concurrent state regulation might be acceptable. 90 However, the cursory nature of the court’s discussion of the entire preemption question, its failure to discuss the existence or nonexistence of a broad federal regulatory scheme (the purpose of which might be thwarted by state regulation), and the fact that the case upon which it strongly relied was decided prior to the promulgation of any regulation pursuant to the enabling statute 91 and, thus, prior to the possible development of a broad scheme of federal regulation, create doubt about the validity of the court’s conclusion that preemption should not be implied. Indeed, the legislative history of the 1966 amendments reveals that the House recognized the existence of a national scheme of regulation 92 and considered federal regulation to be exclusive. 93 The weaknesses in the Williams approach to the preemption issue have been partially brought to light in the Schwerman case, 94 in which it has also been argued that state power to regulate in this field has indeed been preempted. 95

Additionally, the court’s use of section 218 of the FLSA, as evidence of congressional recognition of the power of states to regulate overtime wages of employees who are within the FLSA motor carrier exemption, 96 does not conclusively support its assessment of the preemption issue. The power to improve standards already set is not equivalent to the power to

89. ___ F.2d at ___.
90. A state statute need not be in conflict, on its face, with a federal statute or regulation for a court to find the entire field of regulation to have been preempted and the state statute, therefore, to be invalid. See note 39 supra.
91. ___ F.2d at ___.
94. Id.
96. Brief for Appellee at 9-11, District of Columbia v. Schwerman Trucking Co., No. 6412 (D.C. Ct. App., filed Mar. 24, 1972). It is submitted that Schwerman presents a more attractive vehicle, than did the instant case, for a court to conclude that preemption should be implied. Schwerman Trucking is an interstate motor carrier operating in numerous states, and it, more than the defendant in the instant case, could be drastically effected by any decision which dictated that it is subject to regulation by the numerous states in which it operates.
97. ___ F.2d at ___.
set standards which do not exist. Moreover, the latter does not necessarily flow from the former.

The impact of the instant case, outside the Washington, D.C. area, \(^98\) may depend upon the emphasis given to the different aspects of the opinion. It can be argued that the opinion supports state regulation of overtime wages of all employees of interstate motor carriers. Such an interpretation emphasizes the court's conclusion that "state power [to regulate overtime wages of employees of interstate motor carriers] is not negatived by the doctrine of federal pre-emption" \(^99\) and emphasizes the court's view that there is no inherent inconsistency between federal regulation of maximum hours of service and state regulation of overtime wages. \(^100\) If the opinion is given precedential effect according to that view, it could have substantial adverse effect on the interstate motor carrier industry. State regulation of overtime wages of employees within the FLSA motor carrier exemption, in addition to negating the nationwide effect of that exemption, could seriously interfere with the collectively bargained wage agreements currently operative throughout much of the interstate motor carrier industry, \(^101\) and could precipitate industrial strife resulting in a significant restriction upon the nationwide flow of commerce. \(^102\)

However, the opinion does not require such a broad interpretation. It is submitted that a narrower construction which places emphasis on the court's recognition that, in a given case, state regulation of overtime wages may be invalid as applied, is preferable and supported by the unique circumstances of the case. Moreover, since the local nature of the problem guided the court's approach, the opinion may be significantly distorted if not construed with this factor in mind.

The unique size and location of the District of Columbia \(^103\) creates a situation in which many employees who, under more "normal" geographical circumstances would never be considered employees of interstate motor carriers, fall within that characterization. \(^104\) The plaintiffs in the instant case were essentially local employees \(^105\) who, by a quirk of geographical fate, fell within that category of employees with respect to whom the

---


99. F.2d at ... .

100. Id. at ... .

101. See text accompanying notes 7-10 supra.

102. Hearings, supra note 7, at 872-76.

103. Washington, D.C. covers only 67 square miles and has a population density of 12,401.8 per square mile. In contrast, the smallest state, Rhode Island, covers 1,214 square miles. The District's neighbors, Maryland and Virginia, cover 10,577 and 40,817 square miles respectively. Bureau of the Census, U.S. Dept. of Commerce, Statistical Abstract of the United States: 1971, 14,164 (92d ed.).

104. See Opinion of the Corporation Counsel, District of Columbia, March 17, 1969. The opinion accepts the characterization of local District of Columbia employees — drivers for a local furniture retailer, a local bus company, and a local floor covering company — as employees of interstate motor carriers within the meaning of section 204 of the Motor Carrier Act, 1935. Id. at 5.

105. See note 1 supra.
ICC–DOT had the power to regulate maximum hours of service.106 The preemption argument, in effect, asked the court to disregard the local nature of the case and to deprive the plaintiffs of the protection of the local District statute merely because unique geographical circumstances had included them within a broadly defined107 class of employees.108 Had the court found that state power to regulate overtime wages of employees within the FLSA motor carrier exemption had been preempted, the court would have had difficulty escaping the conclusion that the DCMWA overtime provisions, despite the unique situation at bar, did not cover the plaintiffs. Therefore, in order to be free to consider the operative scope of the local statute as applied to local employees, the court had to first establish that state power to regulate in the field had not been preempted. It appears that the court recognized the inherent problems in resolving the conflict between the local nature of the instant problem and the national scope of the preemption doctrine. Accordingly, the court expressly recognized the possibility that a state overtime wage regulation could be invalid in its application in a given case.109

The above interpretation admits that, although the circumstances of the instant case required a decision that preemption should not be implied, that issue should not be considered settled, but should, most properly, be considered on a case-by-case basis. Thus, an interstate trucking company, paying its drivers on the basis of an industry-wide, collectively bargained wage agreement, could resist the imposition of state overtime wage requirements on the ground that the state requirements constituted a burden on interstate commerce. Further, the company could ask the DOT to make a factual determination that such state requirements were in conflict with federal regulations. On the other hand, a department store paying its local drivers on an hourly basis would have a difficult time resisting state overtime wage requirements solely on the ground that the local drivers occasionally, or even regularly, crossed state boundaries.110 The difficulty with a case-by-case approach to the preemption question lies in the possibility that it could be almost as disruptive as unlimited state authority to regulate the overtime wages and hours of all employees of interstate motor carriers. If states were to attempt to enforce overtime wage requirements for all employees of interstate motor carriers, there would be the overwhelming

106. See note 14 supra.
108. Even though the Motor Carrier Act defines "state" to mean "any of the several States or the District of Columbia," 49 U.S.C. § 303(a)(8) (1970), it would appear that employees in the particular situation that faced the plaintiffs were not specifically intended to fall within that class of employees with respect to whom the ICC had the power to regulate qualifications and maximum hours of service. See S. Rep. No. 482, 74th Cong., 1st Sess. 1-3 (1935); H.R. Rep. No. 1645, 74th Cong., 1st Sess. 3-5 (1935).
109. ___ F.2d at ____.
difficulty in adjudicating the appropriateness of all regulations, as applied to each motor carrier that contested the requirements.  

In conclusion, the instant case would certainly have a significant impact on the interstate motor carrier industry if regarded and applied as a broad precedent which supports all state regulation of overtime wages of all employees of interstate motor carriers. However, while there are elements of the opinion which support such an interpretation, a narrower construction is preferable. If narrowly construed, the instant case may be less disruptive of the interstate motor carrier industry, while still serving as precedent for the local regulation of overtime wages of essentially local employees who, by a quirk of geographical fate, are considered employees with respect to whom the Secretary of Transportation has the power to regulate qualifications and maximum hours of service.

Frank H. Griffin, III

111. It must be observed that any construction of the opinion must deal with the contention that the court's discussion of the preemption issue is but dicta, tangential to its holding. The thrust of the court's inquiry was to discover the relevant legislative intent, and the preemption argument presented but one indication of that intent. The court concluded, prior to considering the preemption argument, that there was a "reasonably clear pattern of intent" that all employees of interstate motor carriers be within the coverage of the DCMWA overtime wage provisions. It is arguable that the court could have concluded that intent to either include or exempt was so clear that there was no need to consider the preemption argument.