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Local Government Law

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Illinois local governments cannot pass their own ordinances regulating organized labor

BY MICHAEL COSGROVE

International Union of Operating Engineers Local 399 v. Village of Lincolnshire, Nos. 17-1300 & 17-1325 (7th Cir. Sep. 28, 2018)

The Village of Lincolnshire, in an attempt to curtail labor union power, passed an ordinance to (1) forbid the inclusion of union-security or hiring-hall provisions in collective bargaining agreements, (2) forbid the mandatory use of hiring halls, and (3) forbid dues check-off arrangements. The Village claimed it could pass such an ordinance because it could exercise the power granted to the State of Illinois through section 14(b) of the National Labor Relations Act ("NLRA"). Section 14(b) allows states to bar compulsory union membership as a condition of employment. Illinois does not

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Code Revision Commission v. Public.Resource.Org: Copyright of laws and public works

BY PETER J. ORLOWICZ

When legislators write laws and judges issue decisions, it is not usually a controversial principle that the text of these laws and decisions are not protected by copyright. In fact, section 105 of the Copyright Act specifically states, in part, that "[c]opyright protection under this title is not available for any work of the United States Government…." The law has not been so clear, however, when state legislatures or governmental bodies have incorporated copyrightable third-party standards or editorial material into the official laws and regulations. Recently, the U.S. Court of Appeals for the Eleventh Circuit considered a version of this question in *Code Revision Commission, State of Georgia v. Public.Resource.Org., Inc.*, No. 17-11589 (11th Cir. Oct. 19, 2018) and identified three factors to consider in determining

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have such a bar. The Village claimed that, in the absence of a state law forbidding the Village to legislate labor law, it had to power to do so.

A collection of labor unions sued the Village claiming th at the ordinance violated the Supremacy Clause because the NLRA and Labor Management Relations Act ("Taft-Hartley Act") preempted the Village's ordinance.

In most instances, state law must yield to federal law. The U.S. Supreme Court has held that the NLRA occupies the field of labor law – meaning that federal labor law is supreme to state labor law. However, section 14(b) of the NLRA permits states to modify some points of labor law

The seventh circuit court first noted that the only part of the Village's ordinance that could go into effect was the agency-shop provision as only the federal government could restrict the use of hiring halls and dues-checkoffs. The court then examined whether section 14(b) authorizes a state's political subdivisions to act in the area of labor law.

The Village argued that the state could delegate its power to restrict agency shops to its political subdivisions. However, the court disagreed for myriad reasons. Since the ordinance would only impact labor in the Village, employers dealing with the Village would have to constantly evaluate if they were complying with the Village's ordinance, other political subdivision's ordinances, state law, and federal law. The United States has over 90,000 general and special-purpose governments. If each had the power to pass its own labor laws, it would create an "administrative nightmare." The ordinance also did not limit its effect to employees whose primary situs was in the Village, as required by case law. Summarizing, the "consequences for the uniformity of national labor law would be catastrophic."

However, as the seventh circuit acknowledges, the issue of whether a local law, such as a municipal ordinance, rather than a state law, falls within section 14(b) is far from a settled question. The sixth circuit held that section 14(b) does allow local laws to regulate union-security clauses. A circuit split means that the issue could be taken up by the Supreme Court.

The court further acknowledged that a municipality may be liable for damages if it tries to pass such an ordinance. In this case, the plaintiff-unions brought their damages claim too late in the process, but damages could be awarded in a similar situation. ■

Code Revision Commission v. Public.Resource.Org: Copyright of laws and public works

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"whether a written work is attributable to the constructive authorship of the People" and not copyrightable as a result. The factors which the eleventh circuit identified as characteristics of a document that represent the law as constructively authored by the public are:

1. The law is written by particular public officials who are entrusted with the exercise of legislative power;
2. The law is, by its nature, authoritative; and
3. The law is created through certain, prescribed processes and deviating from these processes deprive it of legal effect.

Factual Background

Georgia's official state code (the "official code" or "O.C.G.A.") includes not only statutory text enacted by the legislature, but also annotations that include commentaries, advisory opinions from the state bar and attorney general, and other reference notes. Although the annotations are

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considered part of the official code, the annotations do not generally carry the force of law. The annotations were initially prepared by Matthew Bender & Co., Inc., an operating division of LexisNexis, in exchange for, in part, the exclusive right of publication. However, final editorial control of the annotations rests with the Code Revision Commission, a governmental body established by the Georgia General Assembly, and the state of Georgia claimed copyright in the annotations (but not the statutory text) in its own name. In 2013, Public.Resource.Org ("Public Resource"), a non-profit organization headed by Carl Malamud, purchased a full set of the printed O.C.G.A. for the purpose of republishing the official code to the public, free of charge. The Code Revision Commission (acting on behalf of the state and its legislature) argued that this republication infringed on the state's copyright and eventually sued for injunctive relief in the U.S. District Court for the Northern District of Georgia. Public Resource counterclaimed, seeking a declaratory judgment that the State of Georgia could not hold a valid copyright in any part of the O.C.G.A. The district court found in favor of Georgia, concluding that the annotations lacked the force of law and, therefore, were not in the public domain. The district court also rejected Public Resource's defense of fair use. Public Resource then appealed to the eleventh circuit.

The People as "Author"

The eleventh circuit reversed, finding "that the People are the ultimate authors of the annotations. As a work of the People the annotations are inherently public domain material and therefore uncopyrightable." In reaching this conclusion, the court acknowledged that the foundations of this rule were "generally implicit and unstated," but emphasized the lengthy history and line of authority resulting from the U.S. Supreme Court's cases that establish, with respect to certain governmental works, the "author" of the work should be treated as the general public when the work represents an exercise of the people's sovereignty. In particular, the court relied on *Banks v. Manchester*, a Supreme Court decision that held state court judges could not be considered the "author" of a judicial decision for copyright purposes because judges receive a fixed public salary and can have no pecuniary interest in the fruits of their judicial labors, even as the Supreme Court acknowledged that the issue was fundamentally a public policy question. The Eleventh Circuit pointed out that other courts of appeals have extended the principle to apply to state statutes and municipal building codes enacted into binding regulations, but not to private listings of motor vehicle values or coding systems incorporated into or required by regulation, tax maps created by a county assessor's office, or terms of a restrictive covenant entered into by a municipality.

The eleventh circuit's opinion strongly asserted the role of popular sovereignty in the principle that laws cannot be copyrightable because lawmakers and judges are acting as the People's agents in drafting laws and decisions. As a result, the people must be considered the constructive author of such documents for purposes of copyright law, and any document that falls into this classification must be inherently in the public domain and not subject to copyright. With this principle established, the eleventh circuit identified three essential characteristics that "make the law what it is," and thereby would make a particular writing or work noncopyrightable:

The law is written by particular public officials who are entrusted with the exercise of legislative power; the law is, by nature, authoritative; and the law is created through certain, prescribed processes, the deviation from which would deprive it of legal effect. Each of these attributes is a hallmark of law. These characteristics distinguish written works that carry the force of law from all other works. Since we are concerned here with whether a work is attributable to the constructive authorship of the People, these factors guide our inquiry into whether a work is law or sufficiently law-like so as to be subject to the rule in *Banks*.

In comparing these characteristics to the annotations in the O.G.C.A., the eleventh circuit concluded that the annotations possessed all three. Specifically, the court identified the fact that the Code Revision Commission held final editorial control of the annotations, provided highly detailed instructions to LexisNexis for what materials must be included and how they are prepared, and exercised direct supervision of LexisNexis during the process. The court also noted how the Georgia General Assembly must formally vote annually to adopt the O.C.G.A. as the official state code, including the annotations. Although the annotations do not purport to carry the force of law in the way that the statutory text does, the court placed weight on the annotations being made an inextricable part of the code and given the state's approval and authority. The court also noted that Georgia state courts favorably cite to annotations as authoritative sources on statutory meaning and legislative intent, and that the act of the legislature to adopt the code with its annotations transforms them into official comments authored by the same body that wrote the statutes, conferring special significance and meaning on them in comparison to an unofficial annotated code or interpretive document. Finally, the court noted the process by which the Georgia legislature reviews and approves the work of the Code Revision Commission and adopts the code (with annotations) as official is very similar (though not identical) to the legislative process for enacting statutes, insofar as both houses of the Georgia General Assembly must vote on a legislative act which is signed into law by the Governor. This process of bicameralism and presentment, the court found, was an essential element of lawmaking and the exercise of sovereign power, which was present in the adoption of the official code.

Because the annotations in the official code are authored by the right state officials, in the right manner to exercise sovereign power, and have authoritative legal significance, the court held that no part of the O.C.G.A. was copyrightable, and therefore reversed and remanded to the district court with instructions to enter judgment for public resource.

Significant Lessons

The eleventh circuit's decision should not be interpreted to mean that all works of a state or local government employee are inherently non-copyrightable; in fact, the court took pains to distinguish its three essential characteristics from the bright-

line rule enacted by Congress against copyright for any work of the United States government in 17 U.S.C. § 105. Rather, the rule in *Banks* as applied in *Code Revision Commission* "is concerned with works created by a select group of government employees, because only certain public officials are empowered with the direct exercise of the sovereign power." Only those works which meet the three factors identified by the Eleventh Circuit would be uncopyrightable. Although the eleventh circuit's decision is not binding on Illinois federal courts, the analysis is based in federal copyright law, not in any substantive state law (other than the factual circumstances surrounding the drafting and adopting of the annotations at issue in the case). Finally, municipalities that incorporate third-party standards for building codes, fire protection, or other areas into local ordinances may wish to consider the three factors in deciding how best to adopt the standards in a way that will be most easily accessible to the public. ■

General attorney, United States Railroad Retirement Board, Office of General Counsel. The statements and views expressed in this article are entirely Mr. Orlowicz's own, and do not represent the views of the Railroad Retirement Board or the United States Government.

1. See *Wheaton v. Peters*, 33 U.S. 591 (1834) (holding that the Reporter of the Supreme Court could not hold copyright in the written opinions of the Court) and *Banks v. Manchester*, 128 U.S. 244 (1888) (holding that neither a state court judge nor the reporter who compiled the opinions were an "author" of the work under the Copyright Act).
2. 17 U.S.C. § 105.
3. *Code Revision Commission, State of Georgia v. Public.Resource.Org, Inc.*, No. 17-11589 (11th Cir. Oct. 19, 2018), slip op. at *28.
4. *Id.* at *28.
5. O.C.G.A. § 1-1-7.
6. *Code Revision Commission*, *supra* note 3 at *5.
7. *Id.* at *20.
8. *Banks v. Manchester,* 128 U.S. 244, 253 (1888).
9. *Howell v. Miller*, 91 F. 129 (6th Cir. 1898).
10. *Veeck v. Southern Building Code Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002) (*en banc*).
11. *CCC Information Services, Inc. v. Maclean Hunter Market Reports, Inc.*, 44 F.3d 61 (2nd Cir. 1994).
12. *Practice Management Information Corp. v. American Medical Ass'n*, 121 F.3d 516 (9th Cir. 1997), amended, 133 F.3d 1140 (9th Cir. 1998).
13. *City of Suffolk v. First American Real Estate Solultions*, 261 F.3d 179, 193 (2nd Cir. 2001).
14. *John G. Danielson, Inc. v. Winchester-Conant Properties, Inc.*, 322 F.3d 26 (1st Cir. 2003).
15. *Code Revision Commission*, *supra* note 3 at *28.
16. *Id.*
17. *Id.* at *38.

Manuel v. City of Joliet reconsidered by the seventh circuit on remand: Court rules that pretrial wrongful detention claim accrues at the end of detention

BY YORDANA WYSOCKI

Previously, the U.S. Supreme Court ruled in *Manuel v. City of Joliet, et al.*, No. 14-9496 (3/21/2017), that pretrial detainees may challenge the legality of their pretrial detentions under the Fourth Amendment after a probable cause determination has been made. The Supreme Court left unresolved the issue of whether Manuel's claims were barred by the two-year statute of limitations and remanded the case to the Seventh Circuit Appellate Court for a decision on the issue.

The seventh circuit issued a decision in September on the statute of limitations issue in *Manuel v. City of Joliet*, No. 14-1581 (9/10/2018). Manuel had sued the police after being arrested for possession of unlawful drugs on March 18, 2011. A judge decided that he would be held in jail pending trial on the same day but on May 4, 2011, the prosecutor dismissed the charges after it was determined that the pills Manuel had were legal. Manuel was released the following day. He was detained for a total of 47 days. Manuel filed suit on April 22, 2013.

The court considered the possible dates for when Manuel's claim accrued, or the statute of limitations began running. The City argued that Manuel's claim accrued when the judge held him pending trial and made a determination that there was probable cause to hold him. Manuel argued that the limitations clock started on May 4, 2011, when his position was vindicated by dismissal of the prosecution. The court rejected both arguments and found that the clock started ticking on May 5, 2011, the day Manuel was released from pretrial detention. The court reasoned that the wrong inflicted on Manuel was wrongful detention—that he was detained unlawfully without probable cause—and thus the period of limitations should depend on the dates of detention. This made Manuel's claim timely, and therefore the court remanded the case to the lower courts for Manuel's claim to proceed. ■

Case summaries: Recent cases of local government interest

BY JAMES FEROLO, MATT DIONE RITA ELSNER, BRIAN FLYNN, JOSHUA HERMAN, PHIL LENZINI, AND SONNI WILLIAMS

Illinois Supreme Court

Property Tax Code

Oswald v. Hamer, 2018 IL 122203 (September 20, 2018). Section 15-86 of Property Tax Code, which provides for a charitable property tax exemption to eligible not-for-profit hospitals and their hospital affiliates, does not on its face violate section 6 of article IX of the Illinois Constitution, which authorizes General Assembly to enact legislation providing for an exemption. A hospital applicant seeking a section 15-86 charitable property tax exemption must document the services or activities meeting the statutory criteria, and must show the subject property meets the constitutional test of exclusive charitable use.

Illinois Appellate Court

Administrative Review

Boggio v. Mudge, 2018 IL App (3d) 170432 (October 17, 2018). Highway commissioner for township vacated 0.45 miles of a one-lane road. Circuit court upheld commissioner's decision. Highway Code requires that every order entered shall contain an express finding that alteration or vacation of township or district road will be in public and economic interest and will deprive residents or owners of proximate land of reasonable access elsewhere. Purported substantial economic benefit to public that commissioner concluded will occur from closing the road is purely hypothetical unless township has approved finite plans for improvements, and is contrary to manifest weight of evidence. No evidence in record supported this conclusion.

Employee Benefits

Dawson v. City of Geneseo, 2018 IL App (3d) 170625 (October 23, 2018). The Illinois Appellate Court for the Third District (Appellate Court) affirmed a trial court's decision dismissing Plaintiff's complaint against the City of Geneseo (City). Plaintiff (a retired former employee of the City) filed a class action suit to challenge the City's reduction of its health insurance contribution as a violation under the pension protection clause of the Illinois Constitution. The Appellate Court ruled in favor of the City, holding that the benefit is not one that is protected by the pension protection clause from being diminished or impaired by the City.

Environmental Law

Will County v. Village of Rockdale, 2018 IL App (3d) 160463 (July 5, 2018). (Modified upon denial of rehearing 11/27/18.) Village Board conditionally approved siting application for approval for a pollution control transfer station. Pollution Control Board properly found that Village Board had jurisdiction to review siting application, that amendment to application was proper, and Village Board's decision on various statutory criteria was not against manifest weight of evidence.

Municipal Law

Giannakopoulos v. Adams, 2018 IL App (1st) 162364 (October 29, 2018). Court erred in granting summary judgment for Plaintiff on his claim under Illinois Municipal Code, permanently enjoining Defendants from storing or servicing their business-related vehicles and equipment and from otherwise engaging in business-related activity on their property. Before annexation the Village knew that property was not used for residential purposes and that it would not conform to the R-1-A zoning regulations. Village intended to annex the property 'as-is", as a prior legal nonconforming use, and did not intend to require Defendant owners to restrict, change, or discontinue commercial use of their property. Village had a long-standing practice to annex all nonconforming properties "as-is." Defendants' use of property is not in violation of Village's ordinances.

Municipal Law

City of Springfield v. Ameren Illinois Co., 2018 IL App (4th) 170755 (November 13, 2018). Court erred in granting City's motion for summary judgment in its declaratory judgment action. Ameren has a statutory right to continue to serve its customers in recently annexed areas, under amended Municipal Code. Nothing in record shows that contractual agreement currently exists granting city a contractual right to service the newly annexed areas.

Pensions

City of Countryside v. City of Countryside Police Pension Board of Trustees, 2018 IL App (1st) 171029 (September 28, 2018). Court held that city's police officers had received more in pension benefits than they were entitled to because their pensions had been incorrectly calculated. City's labor attorney and police union's attorney signed a "Letter of Understanding" in 2002 as to benefits and calculation of same. Although retirees may have proceeded in reliance on Pension Board's original computations, public interest in enforcing Pension Code and ensuring solvency of local fund make take priority over retirees' expectations, and thus City's claims were not barred by laches or estoppel. Arbitrator did not address whether calculation method conformed to Pension Code or Department of Insurance regulations. Governing contract is the collective bargaining agreement (CBA), unmodified by Letter of Agreement, and CBA does not support application of Letter.

Covello v. Village of Schaumburg Firefighters' Pension Fund, et al., 2018 IL App (1st) 172350 (September 25, 2018). The Illinois Appellate Court for the First District (Appellate Court) affirmed the decision of a circuit court, which affirmed the Village of Schaumburg Firefighters' Pension Fund and the Board of Trustees of the Village of

Schaumburg Firefighters' Pension Fund (collectively, Pension Board) denying line-of-duty disability pension benefits to Covello. Covello claimed he could no longer work as a firefighter because he suffered from post-traumatic stress disorder triggered by a specific duty-related incident. The Appellate Court held that the record amply supported the Pension Board's factual finding that an act of duty was not a causative factor contributing to Covello's permanent disability.

Property Taxes

Reno v. Newport Township, 2018 IL App (2d) 170967 (September 25, 2018). Plaintiff filed class-action complaint challenging a permanent road tax assessed on properties in township, alleging violation of Property Tax Extension Limitation Law, as levy was not submitted for approval of voters at general election. Court properly dismissed complaint, as Plaintiff's exclusive remedy is through tax-objection procedures in Article 23 of Property Tax Code.

Real Estate Taxes

Berrios v. Cook County Board of Commissioners, 2018 IL App (1st) 180654 (September 21, 2018). County Assessor and private attorney filed complaint challenging application and validity of various provisions of the Cook County Ethics Ordinance. Court properly granted summary judgment to Defendants. Ordinance's $750 contribution limit is constitutional, and does not violate first amendment. Ordinance is within home rule The cap-lifting provision in Section 9-8.5(h) of Election Code refers only to state limits imposed by Section 9-8.5(b) and does not affect any locally imposed limits. The $750 limit in Ordinance does not conflict with Election Code.

Standing

Cedarhurst of Bethalto Real Estate, LLC v. The Village of Bethalto, et al., 2018 IL App (5th) 170309 (October 12, 2018). The Illinois Appellate Court for the Fifth District (Appellate Court) affirmed a trial court's order dismissing Plaintiff's complaint against the Village of Bethalto (Village) and its mayor and trustees (collectively, Defendants). Plaintiff (an operator of a local residential nursing home) alleged that the Defendants must regulate development near the St. Louis Regional Airport pursuant to the Village's comprehensive plan (that required the Village to create an airport overlay district), and that the Village violated this plan. The Appellate Court ruled in favor of the Village, holding that Plaintiff did not have standing to pursue its claims against Defendants, and the comprehensive plan was only an advisory document and not mandatory.

Tort Immunity Act

Andrews v. Metropolitan Water Reclamation District of Greater Chicago, 2018 IL App (1st) 170336 (November 5, 2018). The Illinois Appellate Court for the First District (Appellate Court) reversed a trial court's decision entering summary judgment against Plaintiff (the wife of a construction worker who was severely injured on a job site). Defendant (Metropolitan Water Reclamation District of Greater Chicago) did not meet its evidentiary burden of showing that it exercised discretion when allowing workers to use an unsafe method while descending into a settling tank. Plaintiff's allegations of willful and wanton supervision were sufficient to defeat a motion to dismiss. The case was remanded for further proceedings.

Patricia Doyle and Brian Doyle v. Village of Tinley Park and Malone & Moloney, Inc., 2018 IL App (1st) 170357 (September 28, 2018). The Illinois Appellate Court for the First District (Appellate Court) affirmed a trial court's grant of summary judgment in favor of the Village of Tinley Park (Village), thereby granting the Village discretionary immunity. Plaintiffs (the Doyles) filed a negligence suit against the Village and a subdivision developer after their home sustained structural damage due to drainage problems. The Appellate Court found that the Village was entitled to discretionary immunity because the Village employed discretion at every step of the process in attempting to remedy the Doyles' drainage issue, and the Village officials exercised their judgment in utilizing the Village's limited manpower and budget.

Use Tax

Horsehead Corp. v. Illinois Department of Revenue, 2018 IL App (1st) 172802 (September 24, 2018). Respondent Illinois Department of Revenue issued to Petitioner 2 notices of tax liability for its failure to pay use taxes on its purchases of metallurgical coke between 1/07 and 6/11. Petitioner filed petition for review with Illinois Independent Tax Tribunal, which affirmed notices of tax liability and imposed tax, interest, and penalties of about $1.5 million. Tax tribunal did not commit clear error in determining that purchases did not qualify for exemption under Section 3-50(4) of Use Tax Act, and in upholding penalties.

Zoning

Ryan v. Zoning Board of Appeals of the City of Chicago, 2018 IL App (1st) 172669 (November 8, 2018) Cook Co., 4th Div, (McBRIDE) Reversed and remanded. Over Plaintiff's objection, City Zoning Board of Appeals (ZBA) granted a 2.5-inch reduction to the standard 24-inch setback required between the side of Plaintiff's home and the new home next door. Plaintiff filed complaint for judicial review of ZBA's decision. Court erred in dismissing complaint on grounds that caption of her summons listed ZBA and did not expressly include owner of home next door to Plaintiff. Format and contents of summons adequately notified owner of home of pending administrative review action and her opportunity to respond and vested circuit court with personal jurisdiction over her. Caption included "et al.," in lieu of owner's actual name, but it was followed by clear statement on face of summons that owner was a "defendant" to action.

U.S. Supreme Court

Age Discrimination

Mount Lemmon Fire District v. Guido, et al., No. 17-587 (November 6, 2018). The United States Supreme Court (USSC) affirmed a judgment from the United States Court of Appeals for the Ninth Circuit, holding that state and local governments are "employers" covered by the Age Discrimination in Employment Act of 1967 (ADEA), regardless of their size. Guido and a coworker, both firefighters, sued the Mount Lemmon (Arizona) Fire District after they were terminated following a budget shortfall, alleging that their termination violated ADEA. USSC agreed,

interpreting the definitional provision in ADEA to include all state and local governments as employers. This holding is consistent with the Illinois Human Rights Act, which includes the definition of "employer" as any political subdivision of the state without regard to the number of employees.

Seventh Circuit

Election Law

Illinois Liberty PAC v. Madigan, No. 16-3585 (September 13, 2018). Dist. Ct. did not err in dismissing three of four counts in plaintiffs' section 1983 action alleging that campaign contribution limits set by Ill. Disclosure and Regulation of Campaign Contributions and Expenditures Act (Act) violated plaintiffs' First Amendment rights. Supreme Ct. precedent precluded plaintiffs from prevailing on contention that Act improperly: (1) set lower contribution limits for individuals than for corporations; (2) allowed political parties to make unlimited contributions to candidates during general election; and (3) lifted contribution limits for all candidates in race if one candidate's self-funding or support from independent expenditure groups exceeded $250,000 in state-wide race or $100,000 in any other election. Moreover, Dist. Ct. could properly reject plaintiff's fourth claim pertaining to ability of legislative caucus committees to make unlimited contributions to candidates during general election, where said legislative caucus committees are sufficiently similar to political party committees that can make unlimited contributions to candidates in general elections.

Federal Power Act

Village of Old Mill Creek v. Star, Nos. 17-2433 & 17-2445 Cons. (September 13, 2018). Dist. Ct. did not err in granting defendant's motion for summary judgment in action alleging that Ill. statute, which essentially subsidized some of Ill. nuclear generation facilities by requiring generators of power via coal or gas to purchase zero emission credits, was preempted by Federal Power Act, because it impinged on Federal Energy Regulatory Commission's (FERC) power to regulate sale of electricity through auctions. Plaintiffs-association of electricity producers and municipalities conceded that state may take several steps that could affect price of power, and FERC indicated that instant statute did not interfere with interstate auctions and was not otherwise preempted. Moreover, state policy that affects price only by increasing quantity of power available for sale is not preempted by federal law, and instant statute did not discriminate against interstate commerce where it imposed greater costs only on Illinois plants through required purchase of zero emission credits.

First Amendment

Bogart v. Vermilion County, Illinois, No. 18-1719 (November 26, 2018). Dist. Ct. did not err in granting defendant-County's motion for summary judgment in plaintiff's section 1983 action, alleging that defendant violated her First Amendment rights by terminating her from her Financial Resources Director position after Republican became Chairman of County Board and engaged in political retaliation. Record showed that under Elrod, 427 U.S. 347 and Branti, 445 U.S. 507, plaintiff's job description, which included requirement that she perform work at direction of County Board Chairman, and that she assist County Board members with long and short-term financial plans involving revenue and expenditures, entailed substantial policymaking authority and discretion that fit within exception to First Amendment's general ban on political patron dismissals.

Labor Law

International Association of Machinists District Ten v. Allen, No. 17-1178 (September 13, 2018). In action challenging Wisconsin's Act 1 of 2015, which attempted to change rules for payroll deductions that allowed employees to pay union dues through dues check-off authorizations that lasted only 30 days, as opposed to one year, as set forth in Taft-Hartley Act, Dist. Ct. did not err in finding that 30-day dues check-off provision was preempted by Taft-Hartley Act's one-year dues check-off provision. Supreme Ct., in *Sea Pak*, 400 U.S. 985, found that nearly identical attempt by state to impose different dues check-off standard than one-year period set forth in Taft-Hartley Act was preempted. Moreover, fact that Sea Pak was resolved through summary decision did not require different result. Ct. also observed that Wisconsin statute's provision to shorten dues check-off authorization time frame was improper attempt to short-circuit collective bargaining process. (Dissent filed.)

Legislative Immunity

McCann v. Brady, No. 18-2175 (November 26, 2018). Dist. Ct. did not err in dismissing on grounds of legislative immunity plaintiffs-state senator and one of his constituents' section 1983 action alleging that defendant-Senate Minority Leader violated their First Amendment rights by denying plaintiff-state senator certain resources granted to defendant for distribution to other Republican senators, where: (1) plaintiff state senator had been elected to Senate as Republican; and (2) defendant expelled plaintiff state senator from Senate Republican Caucus following state senator's decision to run as Conservative Party candidate for Governor. Legislative Immunity applies only to legislators acting in their legislative capacity, and instant decisions by defendant about who is included within Republican Caucus and how to allocate resources to Caucus members are protected under said privilege. Ct. further noted that defendant's decisions at issue in instant complaint did not serve to constructively evict plaintiff-state senator from state Senate, where state senator had access to other resources that would allow him to have his personal staff and to obtain assistance in drafting legislation.

Ordinances/Due Process

Tucker v. City of Chicago, et al., No. 17-2480 (October 19, 2018). Dist. Ct. did not err in dismissing a complaint against the City of Chicago (City). Tucker, a property owner in the City, was issued a citation for violating the City's yard weed ordinance six months prior. The Seventh Circuit ruled in favor of the City, holding that a six-month delay between a property inspection and notice of a municipal ordinance citation does not violate due process.

Preemption

Electric Power Supply Association, et al., v. Star, et al., Nos. 17-2433 & 17-2445

(September 13, 2018). Dist. Ct. properly granted summary judgment to Defendants (Director of the Illinois Power Agency and others). Plaintiffs (an association that represents electricity producers and municipalities) sued Defendants alleging that an Illinois statute subsidizing some of the state's nuclear generation facilities is preempted by the Federal Power Act. The Seventh Circuit ruled in favor of Defendants, holding that Illinois policy affecting price within the state is not preempted by federal law. The statute at issue did not discriminate against interstate commerce.

International Union of Operating Engineers Local 399, et al., v. Village of Lincolnshire, et al., Nos. 17-1300 & 17-1325 (September 28, 2018). The United States Court of Appeals for the Seventh Circuit (Seventh Circuit) affirmed a federal district court judgment holding that three provisions in a Village of Lincolnshire (Village) ordinance that attempted to add or change aspects of industrial-labor relations established by the National Labor Relations Act of 1935 (NLRA) were preempted. The Seventh Circuit ruled against the Village and concluded that all three provisions at issue invaded territory that is already occupied by federal law and are therefore preempted. Also, Section 14(b) of NLRA does not permit local governments on their own authority to ban agency-shop, hiring hall or checkoff agreements -- all of which were aspects in the ordinance at issue.

Qualified Immunity

Estate of Williams v. Cline, No. 17-2603 (August 31, 2018). Remand was required for Dist. Ct. to reconsider defendants-police officials' motion for summary judgment in plaintiff-decedent's section 1983 action, alleging that defendants used excessive force when arresting plaintiff, where, according to plaintiff, use of said force resulted in decedent's death. Defendants argued that they were entitled to qualified immunity, and record showed that all 11 defendants played different roles in apprehending decedent during incident in which defendants believed that plaintiff was attempting armed robbery and was fleeing scene after being observed by defendants. While Dist. Ct., in denying defendants' summary motion, found that contested facts existed with respect to liability of all defendants, Dist. Ct. erred in failing to make individualized assessment of facts with respect to each defendant, especially where each defendant had different degree of contact with plaintiff and had different assigned responsibilities with respect to plaintiff's apprehension and investigation of plaintiff's alleged armed robbery.

Strand v. Minchuk, No. 18-1514 (November 8, 2018). Dist. Ct. did not err in denying defendant-police officer's motion for summary judgment in plaintiff's section 1983 action alleging that defendant used excessive force during physical altercation between plaintiff and defendant arising out of defendant's issuance of parking tickets, where defendant ultimately shot plaintiff in abdomen after, according to plaintiff, plaintiff had placed his hands in air and announced that he was surrendering. While defendant insisted that he was entitled to qualified immunity based on plaintiff's conduct in choking him prior to his alleged surrender, Ct. of Appeals held that reasonable jury could find that plaintiff no longer posed immediate danger at time he was shot, and that trial was necessary to resolve status of altercation at time defendant fired his weapon at plaintiff. Ct. further noted that plaintiff had disputed defendant's recollection of altercation, and that case law indicated that plaintiff had right to be free of deadly force unless plaintiff had placed defendant in imminent danger or was actively resisting arrest at time of use of deadly force.

Res Judicata

DeCoster v. Waushara County Highway Dept., No. 18-2387 (November 15, 2018). Plaintiff could not proceed on his action under Uniform Relocation Assistance and Real Property Acquisition Act (RARPA) seeking additional attorney fees, arising out of plaintiff's prior state court action against defendant seeking compensation for land needed for road project. Plaintiff sought more than $110,000 in attorney fees in prior state court action that resulted in $7,100 settlement for plaintiff's land, and state court found that plaintiff was entitled to only $31,561 in attorney fees. As such, res judicata applied to preclude plaintiff from seeking additional attorney fees in instant action, where both actions concerned same transaction, and where plaintiff could have sought relief under RARPA in prior state court action. Moreover, state court determined that attorney fee award exceeding $31,561 would be unreasonable, and state court's resolution of that issue is conclusive on attorney fee issue. ■