LETTER OPINION
2007-L-02

January 30, 2007

Honorable Merle Boucher
House of Representatives
District 9
State Capitol
Bismarck, ND 58505

Dear Representative Boucher:

Thank you for requesting my opinion on potential legal problems with a provision contained in 2007 HB 1454 governing a state minimum wage rate and collective bargaining agreements. Specifically, your question deals with subsection 3 of the proposed new provision which would prohibit collective bargaining agreements from tying wage increases to increases in the state minimum wage rate. For the reasons outlined below, it is my opinion that a court faced with the question would likely declare subsection 3 of section 1 of 2007 HB 1454 preempted under federal law.

Congress has enacted comprehensive legislation governing labor relations which affect interstate and foreign commerce. The National Labor Relations Act and its amendments embody the national labor policy of the United States, addressing collective bargaining between employers and unions. Disputes and the rules that apply to collective bargaining have been placed within the special competence and primary jurisdiction of the National Labor Relations Board.[1]

Arising as a consequence of the Supremacy Clause of the United States Constitution, federal preemption of state law occurs when there is a direct conflict between state and federal law making compliance with both an impossibility, or when state law stands as an obstacle to the full accomplishment of the objectives sought by Congress.[2] In addition, preemption is applied where necessary to preserve the primary jurisdiction of an agency charged with implementing federal law. Questions of preemption under the National Labor Relations Act typically involve matters that are subject to the primary jurisdiction of the

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[1] San Diego Building Trades Council v. Garmon, 359 U.S. 236, 238, 245 (1959).
[2] Brown v. Hotel & Rest. Employees & Bartenders Int'l Union Local 54, 468 U.S. 491, 501 (1984)

National Labor Relations Board[3] or matters that Congress sought to leave unregulated and therefore subject to unrestrained bargaining between the parties.[4]

Under the National Labor Relations Act, issues of wages, hours, and working conditions are mandatory subjects of collective bargaining.[5] Although federal law does not necessarily concern itself with the substantive terms of the agreement, federal law does prohibit state interference with privately negotiated solutions to problems involving mandatory subjects of collective bargaining.[6] The provision at issue here does not merely establish a uniform minimum labor standard,[7] but rather removes from the bargaining table certain means of dealing with the uncertainty of future competitiveness of wages.

Because the provision at issue directly regulates and affects the collective bargaining process itself, and the means by which wages, a mandatory subject of collective bargaining, will be determined, it is my opinion that a court faced with the question would likely declare subsection 3 of section 1 of 2007 HB 1454 preempted under federal law.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.[8]

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[3] Garmon supra.
[4] Machinists v. Wis. Employment Relations Comm'n, 427 U.S. 132, 138 (1976).
[5] 29 U.S.C.A. § 158(d); Ford Motor Co. v. N.L.R.B., 441 U.S. 488, 495 (1979).
[6] N.L.R.B. v. Insurance Agents' Intern. Union, AFL-CIO, 361 U.S. 477 (1960); Int'l Brotherhood of Teamsters Union v. Oliver, 358 U.S. 283, 286, 293 (1959).
[7] Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1, 22, 23 (1987).
[8] See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).