BYU Law Review

Volume 1985 | Issue 4 Article 14

11-1-1985

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CASE NOTES

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I. INTRODUCTION

Workers often are exposed to hazardous chemicals in the modern workplace, without knowing the hazards they face.[1] In response to repeated urgings to remedy this problem,[2] the Occupational Safety and Health Administration (OSHA) recently promulgated a standard for hazard communication to warn employees of potential dangers from chemicals in the workplace.[3] The standard expressly preempts state law, but only within the manufacturing sector,[4] the sole area in which its requirements apply.[5] Congress has also provided for preemption of any occupational safety or health issue for which a federal standard is in effect.[6]

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1. New Jersey State Chamber of Commerce v. Hughey, 600 F. Supp. 606, 610 (D.N.J.), *aff'd in part*, 774 F.2d 587 (3d Cir. 1985).

2. United Steelworkers v. Auchter, 763 F.2d 728, 731-32 (3d Cir. 1985).

3. 29 C.F.R. § 1910.1200 (1985). The federal standard does not require that chemicals be tested for hazards. Instead, it is designed to disseminate existing information. *Id.* § 1910.1200(a)(1). Chemical manufacturers and importers must evaluate hazards, *id.* § 1910.1200(d), by searching at least certain specified literature, *id.* § 1910.1200, app. B. The standard then provides for labeling containers of hazardous chemicals, *id.* § 1910.1200(f), and disseminating material safety data sheets containing information on hazards and how to deal with them, *id.* § 1910.1200(g). Manufacturing employers, the only employers covered by the standard, *id.* § 1910.1200(a)(1), are to list known hazardous chemicals in the workplace, and they must plan and implement training programs, *id.* § 1910.1200(e), as well as make material safety data sheets available to employees, *id.* § 1910.1200(g). The federal standard has important limitations: no labeling of piping systems is required, as they are excluded from the definition of "container," *id.* § 1910.1200(c); trade secrets are generously protected, *id.* § 1910.1200(i); and, most importantly, the program applies only in the manufacturing sector, *id.* § 1910.1200(a)(1).

4. *Id.* § 1910.1200(a)(2).

5. *Id.* § 1910.1200(a)(1).

6. Occupational Safety and Health Act, Pub. L. No. 91-596, § 18(a), 84 Stat. 1590, 1608 (1970) (codified at 29 U.S.C. § 667(a) (1982)).

At first glance, no conflict exists; OSHA's standard is supreme within its sphere of coverage, while states seem free to regulate for the benefit of nonmanufacturing workers. However, two ambiguities cast doubt on this division of federal and state authority. First, an OSHA publication seems to have claimed a preemptive effect covering the entire field of hazard communication regulation.[7] Second, the federal statute's preemption provisions could be read as automatically preempting an entire field of regulation if an OSHA standard applies to any portion of it. The validity of all existing state hazard communication laws turns on resolution of these ambiguities.

In *United Steelworkers v. Auchter*, the Court of Appeals for the Third Circuit ruled that the issue of preemption outside the manufacturing sector was not ripe for review.[8] This note analyzes *United Steelworkers* and contends that although the ruling on ripeness was defensible, the court properly could have found sufficient ripeness and resolved the issue. The note then explores the doctrines of express and implicit preemption and concludes that OSHA's standard should have no preemptive effect outside the manufacturing sector.

II. *United Steelworkers:* A Decision Not to Decide

A. *Background: The* Chamber of Commerce *Case*

Less than three months before arguments in *United Steelworkers*, and long after briefs had been submitted, the federal district court for the District of New Jersey ruled in *New Jersey State Chamber of Commerce v. Hughey* that OSHA's standard did not preempt state law outside the manufacturing sector.[9]

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7. OSHA Instruction STP 2-1.113, Office of State Programs, April 9, 1984, at D(4), states that "it is OSHA's position that pursuant to section 18 of the Act, this standard preempts State requirements in the area of occupational hazard communication, except in States operating OSHA approved State plans." Although this passage does not affirmatively assert preemption outside the manufacturing sector, it fails to limit the assertion of preemption to that sector.

8. 763 F.2d 728, 735-36 (3d Cir. 1985).

9. 600 F. Supp. 606, 621 (D.N.J. 1985). *Chamber of Commerce* was decided January 3, 1985, *id.* at 606; *United Steelworkers* was argued March 18, 1985, 763 F.2d at 728.

Counsel for the following parties and *amici curiae* provided the author with briefs from *United Steelworkers:* American Iron & Steel Institute (August 3, 1984); American Medical Student Ass'n (June 4, 1984); Chemical Manufacturers Ass'n (August 3, 1984); Commonwealth of Massachusetts (May 25, 1984); National Paint and Coatings Ass'n, Inc. (August 6, 1984); State of Connecticut (June 1, 1984 and reply brief, September 6, 1984); State of New Mexico and New Mexico Health and Environment Dept. (June 4, 1984); State of New York (May 25, 1984 and reply brief, September 27, 1984); State of

Several parties had challenged New Jersey's Worker and Community Right to Know Act,[10] mainly on the basis of federal preemption.[11] The court concluded that the OSHA standard preempted state hazard communication regulation in the manufacturing sector,[12] but noted that states were free to regulate where no federal standard is in effect. Since the federal standard is expressly limited to the manufacturing sector, the court concluded that "[n]o OSHA hazard communication standard is in effect for non-manufacturing employers."[13]

Part III of this note will argue that the court's ultimate conclusion is correct: OSHA's standard should not preempt state law outside the manufacturing sector. Nevertheless, the issue is not as easily decided as the court's brief analysis would indicate. Complexity arises from multiple ambiguities in the wording of section 18(a) of the Occupational Safety and Health Act (OSH Act or the Act): "Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under [section 6 of the Act]."[14]

The first problem is that the section does not define "issue." If hazard communication is an occupational safety and health issue, then OSHA has a standard in effect with respect to it, preempting the entire field of hazard communication regulation. This could be true despite the standard's express limitation of preemptive effect to the manufacturing sector.[15] If, instead, the "issue" is regulation of hazard communication outside the manufacturing sector, no standard is in effect and no preemption exists under section 18(a). Second, the statute does not affirmatively declare that OSHA standards preempt state law; it says only that under certain circumstances state law is not preempted. Third, section 18(a) at most involves only express preemption. Even where no federal standard is in effect, the doctrine of implicit preemption could bar enforcement of state regulations.

West Virginia (May 25, 1984); and United Steelworkers of America (May 25, 1984 and reply brief, August 27, 1984).

10. N.J. STAT. ANN. § 34:5A (West Supp. 1985).

11. *Chamber of Commerce*, 600 F. Supp. at 608.

12. *Id.* at 617-19.

13. *Id.* at 621.

14. 29 U.S.C. § 667(a) (1982).

15. 29 C.F.R. § 1910.1200(a)(2) (1985).

B. The Steelworkers *Case*

Unlike *Chamber of Commerce, United Steelworkers* was an action for judicial review of the OSHA standard, not a challenge to state law.[16] Therefore, one would not expect to find any preemption analysis. However, several parties and *amici curiae* were interested in the effect of the federal standard on state law,[17] and the court of appeals reached the preemption issue. In the court's view, the federal standard preempted state law within the manufacturing sector.[18] However, the court declined to rule on preemption outside the manufacturing sector, finding the issue not ripe for review.[19] The court also noted that the possibility of inseverability, an issue not litigated in the case, weighed against ruling that states were free to regulate to protect nonmanufacturing employees.[20]

Several aspects of this decision merit comment. First, the court did not mention *Chamber of Commerce.* This omission is understandable; the earlier case was decided less than three months before argument in *United Steelworkers* and long after briefs had been filed. However, if the preemption issue was not ripe for review when *United Steelworkers* was decided, it proba-

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16. The procedure by which the *Steelworkers* parties sought review is worthy of comment. Section 6(f) of the OSH Act, 29 U.S.C. § 655(f) (1982), routes judicial review of OSHA "standards" to the federal courts of appeals. Yet the petitioners argued that this OSHA rule was not a § 6 standard with preemptive power under § 18(a), but a "regulation" promulgated under the authority conferred in § 8(g)(2), 29 U.S.C. § 657(g)(2) (1982). According to the court, § 8 regulations are reviewable in federal district courts, not courts of appeals. 763 F.2d at 733. Thus, those parties who categorized the OSHA rule as a regulation were in the same breath claiming that they had chosen a forum without jurisdiction to hear their petition. *Id.*

Furthermore, the court confronted a paradox. If it found the OSHA rule to be a regulation, it would have to dismiss the petition for review for lack of jurisdiction. Yet district courts within the Third Circuit presumably would be bound by its characterization of the OSHA rule as a regulation, to which § 18(a) preemption would not apply. *Id.* at 733-34. Thus, a ruling that the court could not decide the merits would itself decide tha merits of the case. This result indicates that Congress could better have placed review of both types of agency rules in a single level of the federal judicial system.

17. 763 F.2d at 735.

18. *Id.* at 736.

19. *Id.* at 735-36. As this note was being readied for publication, the court released its decision in the appeal of *Chamber of Commerce.* New Jersey State Chamber of Commerce v. Hughey, 774 F.2d 587 (3d Cir. 1985). Though the court purported to decide "the question not resolved by *Steelworkers*," *id.* at 592, it ruled only as to specific provisions of the New Jersey Worker and Community Right to Know Act, *id.* at 593-96. Therefore, the court's ruling leaves uncertain the effect of OSHA's standard on other laws, outside the manufacturing sector.

20. 763 F.2d at 736.

bly was not ripe for review several months earlier. Therefore, since the District of New Jersey is within the Third Circuit, *United Steelworkers* seemed to invalidate *sub silentio* the portion of *Chamber of Commerce* that found states free to regulate hazard communication outside the manufacturing sector.[21]

Another problem is that the court prematurely raised the issue of inseverability—that is, whether after a portion of a law is invalidated the remainder should stand alone.[22] This question could not arise unless the court first found that the federal standard had no preemptive effect outside the manufacturing sector, for if federal preemption extended to the entire field of hazard communication regulation, the entirety of any state hazard communication law would be invalid.

Finally, the ripeness issue was much less one-sided than the court's opinion indicates. The court simply noted that, at trial, the secretary of labor did not assert any preemptive effect outside the manufacturing sector.[23] However, the state of Connecticut had informed the court of an OSHA instruction, signed hy Assistant Secretary Auchter, stating that "it is OSHA's position that pursuant to Section 18 of the Act, this standard preempts State requirements in the area of occupational hazard communication, except in States operating OSHA approved State plans."[24] On its face, this instruction is not limited to the manufacturing sector; rather, it purports to preempt all state laws in the area of hazard communication. Further, the instruction was an official interpretation, signed by the head of the agency and not "labeled as tentative or otherwise qualified by arrangement for reconsideration." Therefore, the court could have found it had the feature of expected conformity, was final, and thus was reviewable.[25] So, on one interpretation of the OSHA instruction, the court properly could have found the preemption issue ripe for review.

However, the OSHA instruction may display nothing more than imprecision in writing, especially in light of the OSHA

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21. On appeal, the court in fact upheld *Chamber of Commerce* to some extent, 774 F.2d 592-96, but did not address the impact of its *Steelworkers*' "ripeness" dictum on the earlier case.

22. 16 Am. Jur. 2d *Constitutional Law* § 260 (1979).

23. 763 F.2d at 735.

24. Reply Brief for State of Connecticut at 5, *United Steelworkers* (*citing* OSHA Instruction, *supra* note 7, at D(4)).

25. *See* National Automatic Laundry and Cleaning Council v. Schultz, 443 F.2d 689, 702 (D.C. Cir. 1971).

standard's limited assertion of preemption. Also, the Supreme Court emphasized in *Abbott Laboratories v. Gardner*, a case involving state and federal labeling requirements for prescription drugs, that the question of ripeness focuses on the extent to which agency policies have "formalized" and their effects have been felt "in a concrete way."[26] Although the OSHA instruction once might have indicated a formalized policy, at trial the agency did not assert preemption beyond the manufacturing sector.[27] Thus, any policy of preemption outside that sector could have ceased to be formalized.

In sum, the court's disposition of the preemption issue is problematic. OSHA's stance at trial lends some support to the court's conclusion that the issue was not ripe. However, OSHA's earlier statement, the decision in *Chamber of Commerce*, and the significant interest of the parties all suggest that the court could, and perhaps should, have ruled on the merits.

III. Preemption of State Regulation of Hazard Communication Outside the Manufacturing Sector

After *United Steelworkers*, the scope of preemption of OSHA's hazard communication standard was still unclear. Three questions were unanswered: whether section 18(a) of the Act provided for express preemption; whether any preemption under section 18(a) extended beyond the manufacturing sector; and whether, absent such express preemption, state regulation was invalid under the doctrine of implicit preemption.

A. Section 18(a) and Express Preemption

Section 18(a) of the OSH Act provides that "[n]othing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under [section 6 of the Act]."[28] As one *United Steelworkers* litigant noted, this says only when preemption is not intended; it does not affirmatively declare that OSHA standards ever preempt state laws.[29] However, this seems a strained construction of the

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26. 387 U.S. 136, 148 (1967).

27. *United Steelworkers*, 763 F.2d at 735.

28. 29 U.S.C. § 667(a) (1982).

29. Brief for Commonwealth of Massachusetts at 26, Massachusetts v. Auchter, *consolidated with* United Steelworkers v. Auchter, 763 F.2d 728 (3d Cir. 1985).

wording. The courts in *Chamber of Commerce* and *Steelworkers* had no difficulty deciding that section 18(a) expressly preempted state law, at least within the scope of coverage of an OSHA standard.[30] Other courts likewise have found express preemption.[31] Therefore, an argument to the contrary would probably be unsuccessful; section 18(a) must provide for at least some preemption.

B. Preemptive Scope of the OSHA Hazard Communication Standard Under Section 18(a)

The scope of express preemption depends on the breadth given section 18(a)'s language. If the broad phrase "hazard communication" is itself a section 18(a) issue, then since the OSHA standard deals with hazard communication, a standard is in effect with respect to that issue. Under this reading of section 18(a), OSHA's standard preempts all state regulation of hazard communication. However, since the OSHA standard applies only in the manufacturing sector, it may be "in effect" only with respect to the issue of hazard communication regulation in that sector. That was the conclusion in *Chamber of Commerce*.[32] Under that reading, nothing in the OSH Act preempts state law outside the manufacturing sector.

This latter interpretation best furthers the Act's primary purpose. In the Act's introductory section, Congress declared its

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30. *See supra* notes 12-13 & 18 and accompanying text.

31. The *Chamber of Commerce* court stated that § 18(a) had consistently been construed as providing for express preemption of state law where OSHA standards were in effect. 600 F. Supp. at 618. Of cases cited to support that proposition, two are of particular importance. Five Migrant Farm Workers v. Hoffman, 136 N.J. Super. 242, 345 A.2d 380 (Law Div. 1975), dealt with state and federal inspection requirements for migrant workers' camps. The state court first found that § 18(a) provided for express preemption, then invalidated the stete requirements under an analysis which seemed more appropriate to implicit preemption. In Stanislawski v. Industrial Comm'n, 99 Ill. 2d 36, 457 N.E.2d 399 (1983), Illinois had adopted OSHA's standards as ite own law. In an action based on willful violation of the state standards, the state court found those standards invalid; § 18(a) was found to preempt all state laws duplicating the coverage of federal standards unless contained in OSHA-approved plans.

The state courts should have had a strong motivation to read § 18(a) as not providing affirmatively for preemption. By doing so, they would have upheld forum law. Therefore, the fact that these courts ruled in favor of preemption without even discussing the ambiguity in the wording of § 18(a) strongly suggests that other courts would do likewise.

32. 600 F. Supp. at 621. On appeal, the Third Circuit affirmed this result but did not discuss the ambiguity. Rather, the court apparently assumed that safety and health "issues" are no more hroad than the coverage of a federal standard. 774 F.2d at 592-93.

"purpose and policy" to be "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions."[33] In *Whirlpool Corp. v. Marshall*, the Supreme Court declared this goal of safe and healthful working conditions for all workers to be "the fundamental objective of the Act."[34] The Court also stated that safety legislation was to be "liberally construed to effectuate" its safety purpose.[35] Although liberal construction normally makes federal law broadly applicable, here a construction that liberally fulfills the safety purpose of the Act restricts federal power by narrowing preemption under section 18(a). It would frustrate, not effectuate the safety purpose of the Act to find that OSHA, by promulgating a standard to protect only a certain segment of the work force, could not only leave the others without federal protection, but also bar the states from protecting them. Therefore, to fulfill the fundamental purpose of the Act, express preemption under section 18(a) should extend no further than the segment of the work force to which OSHA's standard applies.[36]

C. The Doctrine of Implicit Preemption and State Jurisdiction over Hazard Communication Outside the Manufacturing Sector

If OSHA's hazard communication standard is not entitled to section 18(a)'s express preemption beyond its sphere of coverage, the sole remaining question is whether considerations other than the OSH Act may implicitly preempt state regulation of hazard communication outside the manufacturing sector.

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33. 29 U.S.C. § 651(b) (1982).

34. 445 U.S. 1, 11 (1980). In this case, two workers refused to perform assigned tasks they felt were highly dangerous. An OSHA regulation gave workers a right to refuse to perform dangerous tasks under some circumstances. 29 C.F.R. § 1977.12 (1985). The Supreme Court, relying on the safety motivation of the OSH Act as fundamental, dismissed strong arguments that Congress had rejected proposals to allow such a right and upheld the regulation as within the agency's regulatory power.

35. 445 U.S. at 13.

36. In the *Chamber of Commerce* appeal, the Third Circuit used an abbreviated version of this same analysis and reached the same result. 774 F.2d at 593. Therefore, at least within that circuit, it now seems clear that § 18(a) does provide for express provision, limited to workers covered by the OSHA standard. However, in finding that § 18(a) provided for express preemption, the court simply relied on its *Steelworkers* decision. Thus, the *Chamber of Commerce* appeal actually sheds less new light on the preemption question than one might assume.

1. Overview of implicit preemption

Federal law may preempt state regulation on a given subject even though Congress has not expressly so provided.[37] The Supreme Court, in *Hillsborough County v. Automated Medical Laboratories, Inc.*,[38] provided a summary of the doctrine of implicit preemption. State law is preempted when federal regulations are so comprehensive as to leave "no room" for further restrictions, when "the federal interest is so dominant" as to preclude local regulation, or when the federal and state laws actually conflict.[39] This conflict may take either of two forms: physical impossibility of compliance with both sets of regulations, or frustration of federal objectives by enforcement of state law.[40] Under this doctrine, the OSHA hazard communication standard should not preempt state law outside the manufacturing sector.

2. Application of the doctrine

a. Intent to occupy an entire field of regulation. Initially, in examining intent to occupy an entire field of regulation, one must ask whose intent is relevant—that of Congress or of the regulatory agency. Here such an inquiry is particularly important because the agency, OSHA, has not expressed its intent with precise consistency.[41] *Hillsborough County* clarifies this question. There, federal regulation of commercial suppliers of blood plasma allegedly preempted more stringent state standards. The Supreme Court initially indicated that the intent either of Congress or of the regulatory agency could suffice.[42] However, the Court then noted that the agency's intent would not he dispositive if it were "inconsistent with clearly expressed congressional intent."[43] Thus, if Congress has expressed its in-

37. *See* 2 AM. JUR. 2D *Administrative Law* § 214 (1962).

38. 105 S. Ct. 2371 (1985).

39. *Id.* at 2375 (citing Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)).

40. *Id.*

41. *See supra* notes 23-27 and accompanying text.

42. 105 S. Ct. at 2375-76.

43. *Id.* at 2376. Silkwood v. Kerr-McGee Corp., 104 S. Ct. 615, 622-26 (1984), provides further support for the conclusion that congressional intent controls over agency intent. Congress had delegated exclusive authority to regulate the safety of nuclear power plants to a federal agency. The resulting regulations admittedly were comprehensive. At issue was whether those regulations preempted a state law tort claim for punitive damages for injuries allegedly caused by radiation exposure. The Court recognized that imposing punitive damages would be closely akin to allowing state regulation of

tent with respect to preemption, its intent controls over that of OSHA.

Congress seems to have intended to preempt state law no further than the segment of the work force to which OSHA's standards apply. The best evidence of congressional intent is the OSH Act itself. In section 18(a), Congress indicated that it did not intend to fetter the states on any issue with respect to which OSHA had no standard. This indication is augmented by the Act's declaration of a policy of "encouraging the states to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws."[44] Also, to effectuate the fundamental safety goal of the Act, one must restrict the preemptive effect of OSHA standards to the precise segment of the work force protected by those standards; Congress, seeking to provide safety for all workers, would not have intended to allow OSHA, by withholding its own protection, to foreclose state protection as well. Therefore, under this first strand of implicit preemption analysis, it appears that Congress did not intend to occupy the entire field of hazard communication regulation.[45]

b. Dominance of federal interest. Under the second strand of the implicit preemption doctrine, state regulation is barred if the federal interest is sufficiently dominant. Again *Hillsborough County* is informative. The Court there spoke of foreign affairs as a field in which a dominant federal interest would preempt state regulation, unlike "the regulation of health and safety matters," which is "primarily, and historically, a matter of local concern."[46] Clearly, state hazard communication standards are "the regulation of health and safety matters." Therefore, absent other considerations, this second strand of analysis should not result in preemption of state hazard communication standards.

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nuclear safety. Yet, in refusing to find preemption, the Court looked to the intent of Congress, not that of the agency.

44. Occupational Safety and Health Act, Pub. L. No. 91-596, § 2(b)(11), 84 Stat. 1590, 1591 (1970) (codified at 29 U.S.C. § 651(b)(11) (1982)).

45. OSHA's refusal to protect nonmanufacturing employees could itself be an expression of intent—an intent either to have employers outside the manufacturing sector remain unburdened by regulations (in which case state law arguably would be preempted) or merely to refrain from imposing *federal* standards on those employers. However, one need not decide whether OSHA intended its lack of coverage to be preemptive; such an intent would conflict with the clearly expressed congressional intent to provide safe and healthful conditions for all workers.

46. 105 S. Ct. at 2378.

The Court indicated, however, that special considerations could remove regulation from "the health-and-safety category" and demonstrate an "overriding national concern."[47] Here, the primary national concern that prompted OSHA to attempt even limited preemption of state law was a desire for uniformity, to avoid heavy burdens on interstate commerce.[48] However, although the OSH Act embodies a concern for commerce,[49] the fundamental purpose of that law is to protect workers. Of course, Congress need not disregard all costs in pursuing a goal;[50] perhaps some burdens on commerce might be so great that Congress would have sacrificed worker safety to avoid them. Absent such a heavy burden on commerce, however, the national concern for commerce is not "overriding"; rather, it should be subordinated to the primary goal of worker safety. Here no excessive burden on commerce should occur; if non-uniform state laws threaten such a burden, OSHA can remedy the harm by promulgating a federal hazard communication standard effective outside the manufacturing sector. Such a standard would preempt state laws under section 18(a), restoring uniformity. Since the Act's fundamental safety purpose favors state regulatory jurisdiction in the absence of federal protection, and since any harm to the federal interest in uniformity could easily be remedied, the second strand of analysis weighs against implicit preemption.

c. *Impossibility of compliance with both federal and state law.* Although a particular state law might impose duties incompatible with those imposed by OSHA,[51] the general concept of state regulation of hazard communication outside the manufacturing sector is not incompatible with federal regulation within that sector. Theoretically, state requirements could be identical to those of OSHA. Even if some requirements differed, they would apply largely to different groups; the federal standard would regulate the manufacturing sector, while state laws would apply in other areas. True, some overlap might exist; an em-

47. *Id.*

48. Hazard Communication: Final Rule, 48 Fed. Reg. 53,279, 53,283 (1983).

49. 29 U.S.C. § 667(c)(2) (1982).

50. *See, e.g.*, Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Dev. Comm'n, 461 U.S. 190, 222 (1983).

51. The Third Circuit's opinion in *Chamber of Commerce* appeal recognized this possibility; its implicit preemption analysis (covering only the "actual conflict" strand, with its two components, impossibility and frustration of purpose) focused specifically on the provisions of the challenged New Jersey law. 774 F.2d at 593-96.

ployer might have some workers in manufacturing and some in nonmanufacturing classifications. But even in these cases, the question of impossibility of compliance would depend on the provisions of specific regulations at issue. Therefore, this strand of analysis should not yet deny states the power to regulate hazard communication outside the manufacturing sector.

d. Frustration of the purposes of federal law. Discussion of this point need not long detain the reader. As has been stated, the Supreme Court has found that the fundamental purpose of the OSH Act is to assure every worker a safe and healthful workplace.[52] State laws, far from frustrating that purpose, increase the safety of workers whom OSHA has chosen not to protect. Therefore, this final strand of implicit preemption analysis does not bar state regulation of hazard communication outside the manufacturing sector.

IV. Conclusion

In *United Steelworkers v. Auchter,* a federal court of appeals chose not to decide whether OSHA's hazard communication standard, covering only the manufacturing sector, preempted state regulation of hazard communication outside that sector. Had the court decided the issue, it should have concluded that the OSHA standard has no preemptive effect, express or implied, beyond its sphere of coverage. Section 18(a) of the OSH Act, construed in light of the Act's fundamental purpose of assuring worker safety, provides for express preemption of state law no further than the precise segment of the work force to which an OSHA standard extends protection. As for implicit preemption, Congress did not intend to occupy the entire field of hazard communication regulation, the federal interest is not so dominant as to exclude states from regulating, and no actual, proven conflict exists between state and federal regulations. Therefore, states should be free to impose hazard communication requirements outside the manufacturing sector.

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52. *See supra* note 34.