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NATIONAL BANK ACT PREEMPTS STATE EMPLOYMENT DISCRIMINATION LAW

The Ohio Court of Appeals has denied an appeal by a discharged bank officer who claimed she had been the victim of sex discrimination during her employment with the Champaign National Bank in Ohio. (*Boesch v. Champaign Nat'l Bank, Ohio Ct. App., No. 24014, 6/30/08*). The court relied on the doctrine of federal preemption of conflicting state law.

The federal National Bank Act provides that national banks have the power:

to elect or appoint directors, and by its board of directors to appoint a president, vice president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places."

Boesch sued under Ohio's civil rights law that prohibits employment discrimination. The court ruled that the "at pleasure" language in the federal law conflicted with the restrictions of the Ohio law, and therefore the lower court was correct in granting summary judgment to the bank on Boesch's sex discrimination claim on the basis of preemption. The court noted that national banks must comply with *federal* anti-discrimination laws, such as Title VII or the Equal Pay Act.

However, the appeals court reversed the lower court's grant of summary judgment on another claim that Boesch was discharged in retaliation for complaining about gender and pay discrimination. The National Bank Act's preemption of state law claims only applies if the termination procedures strictly comply with the Act. Here there was a question of fact raised as to whether Boesch was terminated by the board of directors, or whether it had appropriately delegated that authority to the bank's CEO. The dismissal of Boesch's claims against Futura Banc Corp., Champaign National Bank's holding company, was upheld on the grounds that she failed to show she was an employee of the holding company.

Practice Pointer:

- The board should authorize the appointment and termination of all bank officers, and their involvement should be recorded in the minutes in order to benefit from the preemption of state employment laws which often are easier for employees to access and may go further than federal EEO laws.