

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

**SKY CHEFS, INC.  
dba LSG SKY CHEFS, INC.**

of a Final Order issued by the Seattle  
Office of Labor Standards

Hearing Examiner File:  
**D-17-003**

Department Reference:  
**15MW025**

**ORDER ON MOTION  
FOR SUMMARY JUDGMENT**

The City of Seattle Office of Labor and Standards (“City”) issued a Final Order on Compliance Letter Number 15MW025 (“Order”) on January 3, 2017 to Sky Chefs, Inc. dba LSG Sky Chefs, Inc. (“Appellant”). The Appellant appealed the Order, and filed a motion for summary judgment to dismiss the Order. The City filed a response to the motion, and the Appellant filed a reply to the response. The Hearing Examiner has reviewed the file in this matter including the motion documents.

The Order alleged violations of the minimum wage ordinance Chapter 14.19 Seattle Municipal Code (“SMC”), and the wage theft ordinance Chapter 14.20 SMC (“Ordinances”). The Order requires proof of compliance, compliance monitoring, training and a total financial remedy of \$335,033.39 (including back wages plus interest, monetary remedies/damages to aggrieved parties, and civil penalties and fines to the City).

The Appellant’s motion to dismiss is based on two arguments: (1) that the Ordinances are preempted by Federal law because it was adopted, and the City sought to apply its provisions, during negotiations between Sky Chefs and the employee union, which contravenes Railway Labor Act (“RLA”) provisions prohibiting changes to rates of pay during negotiations; and (2) the City’s charges under the Ordinances are preempted because they implicate “interpretation” of the Sky Chefs and employee collective bargaining agreement (“CBA”).

**I. Railway Labor Act Preemption.**

“Where the pre-emptive effect of federal enactments is not explicit, ‘courts sustain a local regulation ‘unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States.’” *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 747-748, 105 S.Ct. 2380 (1985) (citations omitted).

“In every case, the scope of preemption turns on Congressional intent. *N.Y. State Conference of Blue Cross & Blue Shield v. Travelers Insurance Co.*, 514 U.S. 645, 655, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995). Courts must begin with the ‘starting presumption that Congress does not intend to supplant state law. Indeed, ... where federal law is said to bar state action in fields of

traditional state regulation, we have worked on the ‘assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.’” *Id.* 514 U.S. at 654–55 (citations omitted).” *Air Transport Ass’n of America v. City and County of San Francisco*, 992 F.Supp. 1149, 1165 (N.D.Cal. 1998).

“Preemption of employment standards ‘within the traditional police powers of the State’ ‘should not be lightly inferred.’” *Hawaiian Airlines v. Norris*, 512 U.S. 246, 252, 114 S.Ct. 2239 (1994)(citations omitted).

In this case, Appellants concede that they are required to follow the Ordinances, because state and local minimum wage laws are not generally preempted by federal law. *See, e.g., Filo Foods v. SeaTac*, 183 Wn.2d 770, 357 P.3d 1040 (2015). Appellants argue instead that as applied, during employer and employee negotiations conducted pursuant to the RLA, the Ordinances frustrate the federal scheme contemplated for such negotiations, because provisions in the RLA call for “no changes to rates of pay, rules or working conditions” during the negotiations. Appellant’s Motion for Summary Judgment at 11 (citing 45 USC 152 and 45 USC 156). The Appellants and the union were in negotiations for a new CBA at the time of the City’s enforcement action. *Id.* at 5. The Appellants state that during such negotiations the RLA requires that the “status quo” be maintained concerning rates of pay established by a CBA prior to the initiation of negotiations, and that compliance with the Ordinances cannot be required until such negotiations are concluded with a new CBA. *Id.* at 2. There does not appear to be any case law addressing this issue, and it is a matter of first impression.

#### **A. Preemption of Local Minimum Wage Laws.**

Appellants asserted that if they had to immediately apply the Ordinances’ wage standards during RLA negotiations that the collective bargaining process would be disrupted, because, although Appellants had already offered the union to meet the minimum wage requirements, they or the union would have to forgo other negotiation opportunities for related terms within the contract. Appellant’s Motion for Summary Judgment at 16. In cases where the courts have found that the RLA does not preempt state law, the findings are instructive as to how the preemption analysis should be applied in this instance.

In *Air Transport Ass’n of America v. City and County of San Francisco*, the court reasoned:

States generally may not take actions that alter the balance of power between labor and management in areas deliberately left unregulated by Congress. *Lodge 76, Int’l Ass’n of Machinists and Aerospace Workers, AFL–CIO v. Wisconsin Employment Relations Comm.*, 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976). In *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985), however, the Supreme Court rejected an argument that generally-applicable State laws establishing minimum labor standards for union and non-union workplaces are preempted on this basis. *Metropolitan Life*, 471 U.S. at 751–58. Employers had argued that such laws alter the balance of power between labor and management because they require employers to adopt employment standards that employees otherwise would have had to achieve through bargaining.

*Id.* at 751. The Court held, however, that **such laws are part of the “backdrop” against which both sides negotiate**, *id.* at 757, and observed: “Minimum labor standards affect union and nonunion employees equally, and neither encourage nor discourage the collective-bargaining processes that are the subject of the NLRA.” *Id.* at 755.

992 F.Supp. 1149, 1189-1190 (N.D. Cal. 1998) (emphasis added).<sup>1</sup>

In *Air Transport Ass'n of America*, 992 F.Supp. 1149, the district court found that a City of San Francisco ordinance prohibiting discrimination by contractors with the city was not preempted, because it did not interrupt the balance of power between the employer and labor and “neither encourages nor discourages collective bargaining.” *Id.* at 1190. “The RLA . . . does not preempt state or local efforts to prevent discrimination or set minimal substantive requirements on contract terms.” *Id.* at 1076.

The Ninth Circuit Court of Appeals upheld the district court and stated in its decision:

That the Airlines may have to negotiate with the various unions representing their employees to change the benefits policy is not in conflict with the RLA. A consequence of the states' ability to set minimum standards and prevent discrimination is that employers and unions may face different requirements in different jurisdictions. In some instances, a new state or local law will cause employers and unions to go back to the bargaining table when a current CBA does not comply with the law. This is not at odds with the purpose of the RLA, however. **The RLA envisions employers and unions bargaining in the backdrop of the various federal and state regulations in existence.** See *Metropolitan Life Ins.*, 471 U.S. at 757, 105 S.Ct. 2380. It sets up a process for that bargaining and a means for resolving disputes. It does not create a national policy for uniformity in employee benefits, **nor does it prevent state or local laws that make illegal terms of current or future CBAs that discriminate or fail to provide minimum benefits or protections. The fact that the Airlines may have to go back to the bargaining table or include new provisions in their CBAs to comply with the Ordinance does not frustrate the purpose of the RLA.**

*Air Transport Ass'n of America v. City and County of San Francisco*, 266 F.3d 1064, 1078 (9<sup>th</sup> Cir. 2001) (emphasis added).

Thus, courts have viewed local and state laws as part of the backdrop for bargaining under the RLA, not as the subject of the bargaining itself.<sup>2</sup> Implementing a minimum wage requirement

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<sup>1</sup> The *Air Transport Ass'n of America*, 992 F.Supp. 1149, case concerns the National Labor Relations Act (“NLRA”) while this case concerns the RLA. While employers covered under the RLA are not subject to the provisions of the NLRA, courts look to the NLRA and the cases interpreting it for guidance. See e.g. *Konop v. Hawaiian Airlines Inc.*, 302 F.3d 868, 882 (9<sup>th</sup> Cir. 2002).

<sup>2</sup> “The Supreme Court . . . has expressly held that the preemption doctrine . . . does not ‘give the substantive provisions of private agreements the force of federal law, ousting any inconsistent state regulation . . . it would be remarkable if

during the negotiations would “neither encourage nor discourage the collective-bargaining processes,” as such a requirement is simply a change in the basic backdrop upon which the negotiations must be completed. Further, Appellants failed to clearly identify any other terms or aspects of the negotiations that might be compromised by a requirement for compliance with having to comply with the underlying minimum wage law during negotiations.

### B. Status Quo Standards Under the RLA.

The Appellants argue that the RLA requires that no changes be made to the CBA during RLA controlled negotiations citing several passages from the RLA including:

In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions **shall not be altered by the carrier** until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

45 USC 156 (emphasis added).

**No carrier, its officers, or agents shall change the rates of pay**, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

45 USC 152 Seventh (emphasis added).

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, **no change shall be made in the rates of pay**, rules, or working conditions or established practices in effect prior to the time the dispute arose.

45 USC 155.

In this case, the parties had not refused a request of the Board for arbitration, and so the “status quo” provision in 45 USC 155 did not apply.<sup>3</sup> The status quo provisions of both 45

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employers and employees could agree by private contract to exempt themselves from State law.” *Air Transport Ass’n of America v. City and County of San Francisco*, 992 F.Supp. 1149, 1189 (N.D. Cal. 1998).

<sup>3</sup> According to Appellants there was an abortive attempt on its part to have the matter mediated by the National Mediation Board pursuant to 45 USC 155, but that this mediation did not proceed. Appellant’s Motion for Summary Judgment at 5. There is no indication that the National Mediation Board took any action other than to affirm for the parties that the parties were subject to the RLA’s procedural requirements. The parties resolved their dispute prior to engaging in mediation under the National Mediation Board, and there was no arbitration request initiated by the National Mediation Board that would have implicated the “status quo” provisions of 45 USC 155.

USC 152 and 45 USC 156 require that the *carrier* (employer) make no unilateral changes to rates of pay, rules, or working conditions. These provisions seem to seek to equalize the negotiation position of the employer and employees for purposes of the negotiation, and do not apply to backdrop provisions such as local laws that apply equally to all parties – including any non-union employees - and which “neither encourage nor discourage the collective-bargaining processes.” Thus, according to the plain language of the RLA the status quo prohibition against changes to rates of pay does not apply to the Ordinances, or City enforcement thereof.<sup>4</sup>

### **C. The Purpose of the Bargaining Scheme Established by the RLA.**

“The Railway Labor Act was passed in 1926 to encourage collective bargaining by railroads and their employees in order to prevent, if possible, wasteful strikes and interruptions of interstate commerce.” *Detroit and Toledo Shore Line Railroad Company v. United Transportation Union*, 396 U.S. 142, 90 S.Ct. 294 (1969).

The purposes of the RLA are stated in 45 USC 151a:

The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Similarly, 45 USC 152 First reads as follows:

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Thus, a primary purpose of the RLA is to avoid interruption to commerce due to disputes between carriers and employees. The RLA establishes a framework of bargaining and negotiating for resolving such disputes. The Appellants did not demonstrate that immediate application of the

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<sup>4</sup> “The goal of statutory interpretation is to discern and implement the legislature's intent. In interpreting a statute, this court looks first to its plain language. If the plain language of the statute is unambiguous, then this court's inquiry is at an end. The statute is to be enforced in accordance with its plain meaning.” *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Ordinances during negotiations would disrupt or frustrate the RLA negotiation process, or that interruptions to commerce from union strikes or otherwise might occur. Thus, the purpose of the RLA would not have been frustrated had Appellants immediately complied with the Ordinances.

## II. Interpretation of Collective Bargaining Agreement Preemption.

The Appellant argues that the Hearing Examiner lacks jurisdiction over a challenge to the City's enforcement action under the Ordinances, because a decision on the enforcement action requires the Hearing Examiner to interpret the CBA. Appellant's Motion for Summary Judgment at 18. The Appellant has raised serious questions as to whether interpretation of the CBA will be required for a decision on this matter. The Appellant alleges that the City "engaged in interpretation of the CBA in at least two important aspects," that will similarly require interpretation of the CBA by the Hearing Examiner to reach a decision. *Id.* at 21. However, the City contends that it did not rely heavily on the CBA for the Order, and as such, the Hearing Examiner will need to refer to, but not interpret, the CBA. Both the Appellant's and the City's arguments on this issue are supported by affidavit.

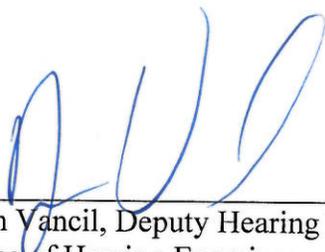
Summary judgments shall be granted only if the pleadings, affidavits, depositions or admissions on file show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. A material fact is one upon which the outcome of the litigation depends. In ruling on a motion for summary judgment, the court's function is to determine whether a genuine issue of material fact exists, not to resolve any existing factual issue. One who moves for summary judgment has the burden of proving that there is no genuine issue of material fact, irrespective of whether he or his opponent, at the trial, would have the burden of proof on the issue concerned. . . . In ruling on a motion for summary judgment, the court must consider the material evidence and all reasonable inferences therefrom most favorably to the nonmoving party and, when so considered, if reasonable men might reach different conclusions the motion should be denied.

*Hudesman v. Foley*, 73 Wash.2d 880, 886-887, 441 P.2d 532 (2004)(citations omitted).

Based on the evidence provided by the parties, and considering it in a light most favorable to the City, there remains an issue of material fact as to whether or not in deciding on the enforcement action the Hearing Examiner will be required to interpret the CBA.

The Appellant's motion for summary judgment is **DENIED**.

Entered this 10<sup>th</sup> day of June, 2017.



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**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion to Dismiss** to each person listed below, or on the attached mailing list, in the matter of **Sky Chefs Inc.** Hearing Examiner File: **D-17-003**, in the manner indicated.

<b>Party</b>	<b>Method of Service</b>
SOCR c/o Stephen Manning and Cindi Williams City of Seattle Attorney's Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104 Stephen.Manning@seattle.gov Cindi.Williams@seattle.gov  Debra Hernandez Debra.Hernandez@seattle.gov  Ianne Santos Ianne.Santos@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Sky Chefs Inc. c/o Don Munro Jones Day dmunro@jonesday.com  Aaron Markel amarkel@jonesday.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: June 12, 2017

TC  
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Tiffany Ku  
Legal Assistant