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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

BF FOODS, LLC, FILO FOODS, LLC, et al.,

Plaintiffs,

v.

THE CITY OF SEATAC, et al.,

Defendants,

SEATAC COMMITTEE FOR GOOD JOBS,

Defendant-Intervenor.

No. 13-2-25352-6 KNT

MEMORANDUM DECISION AND
ORDER ON PLAINTIFFS' MOTIONS
FOR DECLARATORY JUDGMENT

THIS MATTER is before the Court on Plaintiffs' Motions for Declaratory Judgment, which request the Court to invalidate SeaTac Municipal Code Chapter 7.45 on both Washington State law grounds and on Federal law grounds. The Court has considered the following briefing which was submitted by the various parties and amicus:

1. Plaintiffs' Motion for Declaratory Judgment on State Law Claims;
2. Declaration of Rebecca Meissner in Support of Motions for Declaratory Judgment on State and Federal Claims;
3. Declaration of Bruce Beckett;
4. Declaration of Jeff Butler;
5. Declaration of Dean Duvall;

- 1 6. Declaration of LeeAnn Subelbia;
- 2 7. Plaintiffs' Motion for Declaratory Judgment on Federal Law Claims;
- 3 8. Declaration of Rebecca Meissner in Support of Plaintiffs' Motion for Declaratory
- 4 Judgment on State and Federal Claims;
- 5 9. Declaration of Jeff Butler in Support of Plaintiffs' Motion for Declaratory
- 6 Judgment on State and Federal Claims;
- 7 10. Declaration of LeeAnn Subelbia in Support of Plaintiffs' Motion for Declaratory
- 8 Judgment on State and Federal Claims;
- 9 11. Declaration of Bruce Beckett in Support of Plaintiffs' Motion for Declaratory
- 10 Judgment on State and Federal Claims;
- 11 12. Declaration of Dean DuVall in Support of Plaintiffs' Motion for Declaratory
- 12 Judgment on State and Federal Claims;
- 13 13. Declaration of Rebecca Meissner with exhibits A-D;
- 14 14. Defendant-Intervenor's Response to Plaintiffs' Motion for Declaratory Judgment
- 15 on State Law Claims;
- 16 15. Defendant-Intervenor's Response to Plaintiffs' Motion for Declaratory Judgment
- 17 on Federal Law Claims;
- 18 16. Declaration of Dmitri Iglitzin in Support of Defendant-Intervenor's Response to
- 19 Plaintiffs' Motion for Declaratory Judgment on State Law Claims and Plaintiffs'
- 20 Motion for Declaratory Judgment on Federal Law Claims;
- 21 17. Declaration of Howard Greenwich;
- 22 18. The City of SeaTac's Response to Plaintiffs' Motions;
- 23 19. Declaration of Mary e. Mirante Bartolo in in support of City of SeaTac's Response;
- 24 20. Defendant Port of Seattle's Response to, and Partial Joinder in, Plaintiff's Motion
- 25 for Declaratory Relief on State Law Claims;
- 26 21. Declaration of Shane P. Cramer;
- 27 22. Washington Public Ports Association Motion for Leave to Participate as Amicus
- 28 Curiae;

- 1 23. Declaration of Eric D. Johnson in Support of Washington Public Ports Association
2 Motion for Leave to Participate as Amicus Curiae;
- 3 24. Plaintiffs' Reply in Support of Motion for Declaratory Judgment on State Law
4 Claims;
- 5 25. Plaintiffs' Reply in Support of Motion for Declaratory Judgment on Federal Law
6 Claims;
- 7 26. Supplemental Declaration of Rebecca Meissner in Support of Motions for
8 Declaratory Judgment on State and Federal Law Claims;
- 9 27. Port of Seattle's Combined Reply to Intervenor's Responses re Plaintiffs' State Law
10 Claims;
- 11 28. Defendant-Intervenor's Response to WPPA Amicus Brief;
- 12 29. City of SeaTac's Reply to Brief from Port of Seattle;
- 13 30. WPPA Reply; and
- 14 31. Defendant-Intervenor's Motion to Strike or in the alternative, Reply to Port of
15 Seattle's Combined Reply.

16 The Court also heard argument of counsel for Filo Foods, Alaska Airlines, the Port of
17 Seattle, the City of SeaTac, and the SeaTac Committee for Good Jobs ("SCGJ") on December 13,
18 2013. Following oral argument, the Court took additional time to further consider the numerous
19 issues raised by the parties and amicus. The Court's decision follows.

20 I. BACKGROUND

21 SMC 7.45 (hereinafter "the Ordinance") was enacted into law following approval of Prop-
22 osition 1 by a majority the voters of the City of SeaTac in the November, 2013 general election.
23 The campaign was hard fought, with millions of dollars spent on behalf of both the supporters and
24 the opponents of the measure. The supporters contended that the Ordinance was necessary to
25 ensure that employees for companies involved in the transportation and hospitality industries,
26 which form an important backbone for commerce in the City of SeaTac, can earn a living wage
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1 and receive reasonable sick leave and earned vacation benefits. The opponents contended that the
2 Ordinance would have severe negative economic impacts, would cause employers to lay off
3 workers and reduce services to the public at the airport and elsewhere in the City, and would neg-
4 atively impact business earnings.

5 After the Ordinance was passed, its opponents brought to this Court a group of motions to
6 invalidate the Ordinance, based upon a number of legal theories, including State law grounds and
7 Federal preemption grounds. It is now the duty of this Court to decide these motions.
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9 While the Court recognizes and respects the concerns of both sides of this debate, it is not
10 the role of this Court to decide whether or not the Ordinance is good legislation. Whether the
11 Ordinance would have positive effects, or negative effects, or some of each, can have no bearing
12 upon any of the issues this Court is called upon to decide. As our Supreme Court noted in *Amal-*
13 *gamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000): “[I]t is not
14 the prerogative nor the function of the judiciary to substitute what they may deem to be their
15 better judgment for that of the electorate in enacting initiatives ... unless the errors in judgment
16 clearly contravene state or federal constitutional provisions.” *Id.*, quoting *Fritz v. Gorton*, 83
17 Wn.2d 275, 287, 517 P.2d 911 (1974).
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20 Just as importantly, it is not “the province of the courts to declare laws passed in violation
21 of the constitution valid, based upon considerations of public policy.” 142 Wn.2d at 206, quoting
22 *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 24–25, 200 P.2d 467 (1948). There-
23 fore, in analyzing and deciding the various legal issues raised by the parties in this matter, this
24 Court is compelled to, and does, make its decisions based upon the United States Constitution, the
25 Washington Constitution, the applicable State and Federal statutes, and the published decisions
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1 from higher courts in Washington State and the United States, without regard to any personal
2 opinions concerning the Ordinance.

3 After carefully considering all the arguments made, both verbally and in writing, and after
4 independently reviewing the relevant law, the Court has concluded that the law requires that
5 certain parts of the Ordinance be upheld and certain parts be struck down. The specifics follow:
6

7 II. STATE LAW CLAIMS

8 A. **Proposition 1 is not unconstitutional and it does not violate Const. Art II, 9 §19,¹ RCW 35A.12.130, or SMC 1.10.080.**

10 Laws that result from the initiative process are presumed to be constitutional. *Amalgamat-*
11 *ed Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000). “A party chal-
12 lenging the statute's constitutionality bears the heavy burden of establishing its unconstitutionality
13 beyond a reasonable doubt.” *Id.*

14 Plaintiffs claim that Proposition 1 violates the constitutional and statutory requirements
15 that initiatives must encompass only one subject, which must be clearly expressed in the title. The
16 purpose of this “single subject” rule is to prevent “logrolling” *i.e.*, attaching to a popular initiative
17 provisions that are less attractive to voters, so that a voter might feel compelled to vote for some-
18 thing the voter disapproves of in order to secure a desirable, unrelated provision. The purpose of
19 the “subject in title” requirement is “to notify members of the legislature and the public of the
20 subject matter of the measure.” *Amalgamated Transit Union, supra*, at 207.
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27 ¹ The City raised in its Response the plaintiffs' failure to serve the Attorney General pursuant to RCW
28 7.24.110. This issue is now moot, as the Attorney General was served on December 5, and the Court re-
ceived a copy of a letter in which the Attorney General indicated that he did not plan to appear or partici-
pate in these proceedings at the trial court level.

1 A ballot title is a statement that describes the subject of a measure, a concise description of
2 the measure, and the question of whether or not the measure should be enacted into law. RCW
3 29A.72.050. A ballot title may be general or restrictive, broad or narrow.

4 A restrictive ballot title “expressly limits the scope of the act to that expressed in the title.”
5 *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d at 210. Restrictive titles tend to deal
6 with issues that are subsets of a larger, overarching subject. *Citizens for Responsible Wildlife*
7 *Management v. State*, 149 Wn.2d 622, 633-34, 71 P.3d 644 (2003). Our Supreme Court generally
8 has more readily found violations of the single subject rule where the ballot title is “restrictive”.
9 Restrictive titles are not given the same liberal construction as general titles and “provisions
10 which are not fairly within such restricted title will not be given force.” *Citizens for Responsible*
11 *Wildlife Management*, 149 Wn.2d at 633, citing *State ex rel. Wash. Toll Bridge Auth.*, 32 Wn.2d
12 13, 26, 200 P.2d 467 (1948).

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15 Where a ballot title is general, “any subject reasonably germane to such title may be em-
16 braced within the body of the bill.” *Citizens for Responsible Wildlife Management*, 149 Wn.2d at
17 633, citing *De Cano v. State*, 7 Wn.2d 613, 627, 110 P.2d 627 (1941). A ballot title may be
18 general where the language of the title “suggests a general, overarching subject for the initiative.”
19 *Washington Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 369, 70 P.3d 920, 925 (2003).
20 “General ballot titles are constitutional as long as, when read in entirety, the title broadly encom-
21 passes the topic of the enactment.” *Id.* “General titles are given a liberal construction and ‘no
22 elaborate statement of the subject of the act is necessary.’” *Citizens for Responsible Wildlife Man-*
23 *agement*, 149 Wn.2d at 633, citing *State ex rel. Wash. Toll Bridge Auth.*, 32 Wn.2d 13, 26, 200
24 P.2d 467.
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1 The Supreme Court has held that titles such as I-695's "Shall voter approval be required
2 for any tax increase, license tab fees be \$30 per year for motor vehicles, and existing vehicle taxes
3 be repealed?" and I-713's "Shall it be a gross misdemeanor to capture an animal with certain
4 body-gripping traps, or to poison an animal with sodium fluoroacetate or sodium cyanide?" are
5 general, whereas a measure entitled "Shall criminals who are convicted of 'most serious offenses'
6 on three occasions be sentenced to life in prison without parole?" is restrictive, because it is "aim-
7 ed at a subset issue (three-time 'most serious offense' offenders) of an overarching subject (crim-
8 inal offenders generally)." 149 Wn.2d at 634.

9
10 Proposition 1 contained the following ballot title:

11 Proposition No. 1 concerns labor standards for certain employers.

12
13 This Ordinance requires certain hospitality and transportation em-
14 ployers to pay specified employees a \$15.00 hourly minimum wage,
15 adjusted annually for inflation, and pay sick and safe time of 1 hour
16 per 40 hours worked. Tips shall be retained by workers who per-
17 formed the services. Employers must offer additional hours to
18 existing part-time employees before hiring from the outside. SeaTac
19 must establish auditing procedures to monitor and ensure compli-
20 ance. Other labor standards are established.

21 Should this Ordinance be enacted into law?

22 While the plaintiffs here argue that Proposition 1's ballot title is restrictive, it is at least as
23 general as other ballot measures that the Supreme Court has recently found to qualify as "gen-
24 eral". For example, in *Washington Ass'n for Substance Abuse and Violence Prevention v. State*,
25 174 Wn.2d 642, 278 P.3d 632 (2012), a majority of the Court found Initiative Measure No. 1183
26 to be a general ballot title.² I-1183's title read as follows:

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28 ² The Supreme Court's decision was not unanimous. Two justices joined Justice Wiggins' dissent, but the majority found that there was sufficient rational unity between the public safety earmark and liquor

1 Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits
(hard liquor).

2 This measure would close state liquor stores and sell their assets;
3 license private parties to sell and distribute spirits; set license fees
4 based on sales; regulate licensees; and change regulation of wine
5 distribution.

6 Should this measure be enacted into law?

7 I-1183 privatized liquor sales, established a new mechanism for regulating wholesale distribution
8 of wine, imposed various license fees on retailers, imposed taxes on sale of alcohol, and ear-
9 marked \$10 million for public safety purposes that had no obvious or necessary relationship to
10 liquor or liquor privatization. Yet the Court held this initiative and its title met the single subject
11 and subject-in-title requirements.

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13 Once a ballot title is determined to be general, a court must look to the body of the ballot
14 measure to determine whether rational unity exists among the matters addressed by the law. *City*
15 *of Burien v. Kiga*, 144 Wn.2d 819, 826, 31 P.3d 659 (2001). "An initiative can embrace several
16 incidental subjects or subdivisions and not violate article II, section 19, so long as they are related.
17 In order to survive, however, rational unity must exist among all matters included within the
18 measure and the general topic expressed in the title." *Id.*, citing *Washington Federation of State*
19 *Employees v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995).

20
21 Here, all of Proposition 1's provisions relate to labor standards and to pay and benefits for
22 historically low-paid workers in certain industries. While much of the publicity and campaigning
23 surrounding the initiative addressed its minimum wage provisions, the Ordinance's title clearly
24 encompasses much more than minimum wages. And while many or even all of Proposition 1's
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28 privatization, as the purpose of restrictions on sales of alcohol were designed historically to protect public safety.

1 provisions conceivably could have been addressed separately, this alone would not render Prop-
2 osition 1 constitutionally deficient under the analysis set forth by the Supreme Court in *Washing-*
3 *ton Ass'n for Substance Abuse and Violence Prevention v. State, supra*. The overarching subject
4 of the Ordinance is, as stated in its title, labor standards for certain employees. Plaintiffs have
5 failed to meet their burden of proving beyond a reasonable doubt that Proposition 1 is unconstitu-
6 tional.³

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9 **B. SMC 7.45 is void insofar as it purports to apply to workers at SeaTac**
10 **Airport, because RCW 14.08.330 prohibits the City of SeaTac from**
11 **asserting jurisdiction or police power over the airport.**

12 The City of SeaTac argues that it has constitutional authority to exercise its police power
13 within its city limits. However, Article 11, §11 the Washington Constitution, which grants muni-
14 cipal governments the right to make and enforce laws, expressly **prohibits** local governments
15 from enacting laws that contravene state statutes.⁴ “A city is preempted from enacting ordinances
16 if the legislature has expressly or by implication stated its intention to preempt the field. When
17 the legislature has expressly stated its intent to preempt the field, a city may not enact any ordin-
18 ances affecting the given field.” *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 561, 29 P.3d 709
19 (2001) citing *Brown v. City of Yakima*, 116 Wn.2d 556, 560, 807 P.2d 353 (1991). *See also*,

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23 ³ The City also argued that Plaintiffs are estopped from raising challenges to Proposition 1’s ballot title
24 because that issue was previously litigated before the Honorable Jim Cayce before the election, and
25 because Plaintiffs failed to raise before Judge Cayce many of the arguments that they have now brought
26 before this Court. This Court finds that Plaintiffs are not collaterally estopped from litigating these
27 issues post-election, for the reasons set forth in the Plaintiffs’ Reply in Support of Motion for
28 Declaratory Judgment on State Law Claims at pp. 6-7.

⁴ “Any county, city, town or township may make and enforce within its limits all such local police, sani-
tary and other regulations **as are not in conflict with general laws.**” Wash. Const. Art. 11, §11
(emphasis added).

1 *Lawson v. City of Pasco*, 168 Wn.2d 675, 230 P.3d 1038 (2010) and *Chan v. City of Seattle*, 164
2 Wn. App. 549, 265 P.3d 169 (2011).

3 The Washington State Legislature has clearly and unequivocally stated its intent that mun-
4 icipalities other than the Port of Seattle may not exercise any jurisdiction or control over SeaTac
5 Airport operations, or the laws and rules governing those operations. RCW 14.08.330 prohibits
6 the City of SeaTac from exercising jurisdiction or police power over any airport property. This
7 statute reads in pertinent part as follows (emphasis added):
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9 Every airport and other air navigation facility controlled and operat-
10 ed by any municipality . . . shall, subject to federal and state laws,
11 rules, and regulations, be under the **exclusive jurisdiction and**
12 **control** of the municipality . . . controlling and operating it. . . . **No**
13 **other municipality in which the airport or air navigation facility**
14 **is located shall have any police jurisdiction of the same or any**
15 **authority to charge or exact any license fees or occupation taxes**
16 **for the operations.** However, by agreement with the municipality
17 operating and controlling the airport or air navigation facility, a
18 municipality in which an airport or air navigation facility is located
19 may be responsible for the administration and enforcement of the
20 uniform fire code, as adopted by that municipality under RCW
21 19.27.040, on that portion of any airport or air navigation facility
22 located within its jurisdictional boundaries.

23 The municipality which controls and operates SeaTac Airport is the Port of Seattle. Pur-
24 suant to RCW 14.08.330, airport facilities and operations are “under the exclusive jurisdiction and
25 control” of the Port of Seattle, subject to “federal and state laws, rules, and regulations” but **not**
26 subject to the laws, rules and regulations of SeaTac or other municipalities. It is only the Port of
27 Seattle that has legislative authorization “[t]o adopt . . . all needed rules, regulations, and ordinan-
28 ces for the management, government, and use of any properties under its control . . .” RCW
14.08.120(2). The grant of exclusive jurisdiction to the Port of Seattle covers all operations and

1 activities occurring at the airport, its buildings, roads and facilities. See Chapters 53.08 and 14.08
2 RCW.⁵

3 A court's goal in construing a statute is to determine the legislature's intent. *Bostain v.*
4 *Food Exp., Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846, 850 (2007).

5 If the statute's meaning is plain, then [the court] must give effect to
6 that plain meaning as an expression of legislative intent. Plain
7 meaning is determined from the ordinary meaning of the language
8 used in the context of the entire statute in which the particular
9 provision is found, related statutory provisions, and the statutory
10 scheme as a whole.

11 *Id.* (internal citations omitted).

12 “Exclusive jurisdiction” has been construed in other contexts to mean that the government
13 within whose territory the land in question lies loses the power to make or enforce laws within
14 that area. See, *Dept. of Labor and Industries v. Dirt & Aggregate, Inc.*, 120 Wn.2d 49, 52-53, 837
15 P.2d 1018 (1992). The term has also been interpreted to mean that one agency of government
16 lacks authority to regulate or control certain subjects in cases where the legislature has vested
17 authority to do so in another agency. For example, in *Simpson Timber Co. v. Olympic Air Pollu-*
18 *tion Control Authority*, 87 Wn.2d 35, 549 P.2d 5 (1976), the Supreme Court held that the legisla-
19 ture intended that the Department of Natural Resources have exclusive control and authority over
20 burns for abatement or prevention of forest fire hazards, and that therefore, a local air pollution
21 control authority lacked jurisdiction to impose or enforce its own regulations against a timber
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25 ⁵ For example, RCW 14.08.120 authorizes the Port to adopt rules, regulations and ordinances for the
26 management, government and use of any property under the Port’s control. The statute also authorizes
27 the Port to lease space, land and improvements, and to construct improvements, to grant concessions on
28 owned land, buildings or areas under the Port’s control for industrial or commercial purposes, **and to set terms and conditions under which such properties or concessions may be used.** (emphasis added).

1 company which had conducted a burn of forest land within that local air pollution control author-
2 ity's territory.

3 While there are few appellate decisions construing RCW 14.08.330, the Supreme Court
4 has made it clear that the statute's effect is "to preclude [another municipal government] from in-
5 terfering with respect to the operation of the Seattle-Tacoma airport . . . since the legislature has
6 declared its policy to be that the responsibility of providing . . . transportation **and other public**
7 **services** shall belong to the Port." *King County v. Port of Seattle*, 37 Wn.2d 338, 348, 223 P.2d
8 834 (1950) (emphasis added). In holding that King County had no authority to require that taxi-
9 cabs operating at the airport be licensed by the County, the Court rejected the argument that the
10 "exclusive jurisdiction" granted to the Port in RCW 14.08.120 effectively removed the **territory**
11 encompassed by the airport from King County. Rather, while the airport territory was still **part of**
12 **King County, the County was forbidden from exercising its authority to enforce its laws** and
13 licensing requirements **within that airport territory**.⁶

14 The SCGJ argues that *City of Normandy Park v. King County Fire Dist. No. 2*, 43 Wn.
15 App. 435, 717 P.2d 769 (1986), supports its contention that SeaTac Airport is within the City of
16 SeaTac, and that therefore, the City has authority to enact worker protection laws affecting
17 workers at SeaTac Airport. However, *City of Normandy Park v. King County Fire Dist. No. 2* is
18 not relevant to any issue before this Court. Both *King County v. Port of Seattle* and *City of*
19 *Normandy Park* make it clear that **territorial** issues are distinct from **municipal legislative**
20 **authority** over airport territory.

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26 ⁶ The SCGJ and the City of SeaTac both raise the issue of Inter-Local Agreements ("ILAs") between the
27 City of SeaTac and the Port of Seattle, and suggest that the City could extend its police jurisdiction into
28 the airport in this fashion with the agreement of the Port. The Court need not determine the legal
significance of such ILAs for purposes of deciding the motions for declaratory judgment, because the
Port has very clearly indicated its strenuous objection to the Ordinance's applicability to Seatac Airport.

1 None of the other cases cited by SCGJ hold that a Washington city or county can enforce
2 its health or social welfare legislation on property controlled by a Port. *Port of Seattle v. Wash-*
3 *ington Utilities and Transp. Commission*, 92 Wn.2d 789, 597 P.2d 383 (1979) held only that be-
4 cause the transfer of airline passengers to and from the airport via a shuttle service was necessary
5 for operation of the airport, the Port could enter into concession agreements to provide such
6 shuttle service. The Court held, however, that Titles 14.08 and 53.08 RCW did not authorize the
7 Port to operate its **own** airport shuttle service. For these reasons, and observing that the grant of
8 “exclusive jurisdiction” to the Port remained “subject to federal and State laws, rules, and regula-
9 tions” pursuant to RCW 14.08.330, the Court held that the **State** Utilities and Transportation
10 Commission’s regulations applied to airport shuttle services which contracted with the Port to
11 provide transportation to and from the airport.⁷

14 For these reasons, SMC 7.45 is ineffective and unenforceable with respect to employers
15 and employees conducting business within the boundaries of SeaTac International Airport.

16 The Ordinance itself provides in Section 7.45.110 that it “shall not apply where and to the
17 extent that state or federal law or regulations preclude their applicability.” Additionally, the
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21 ⁷ *Teamsters Union Local 117 v. Port of Seattle*, 1996 WL 523973, an unpublished decision also
22 referenced by the SCGJ, held only that the Port of Seattle could lawfully lease property that had been
23 acquired by the Port as part of a noise abatement program, to the City of SeaTac for the City to operate
24 the property as a public park, and that under these circumstances, the City could lawfully police that
25 park. The Court noted that the park was not part of airport operations, and held that this arrangement
26 was lawful “because the Port leased the property to SeaTac for use as a park, ... the park property is not
27 an ‘airport and other air navigation facility controlled and operated by [a] municipality’ as contemplated
28 by RCW 14.08.330.” The Court of Appeals cited *King County v. Port of Seattle*, 37 Wn.2d 338, 346-
47, 223 P.2d 834 (1950) for the proposition that “[t]he Supreme Court has construed RCW 14.08.330 to
prohibit other jurisdictions from imposing controls on airport regulated services”, but concluded:
“Since equating a park with an airport or an air navigation facility would result in an unlikely or
strained result, we decline to apply RCW 14.08.330 to this situation.”

1 Ordinance contains a severability clause (Section 5). Therefore, the invalidity of this portion of
2 the Ordinance does not invalidate the remainder.

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4 **C. The enforcement provisions of SMC 7.45 are not invalid on the ground
5 that they allegedly eliminate traditional standing requirements.**

6 It is true, as plaintiffs argue, that SMC 7.45.100(A) **could** be read in a way that suggests it
7 conveys Superior Court jurisdiction to persons or entities that might not otherwise have standing
8 to bring a claim. This section of the ordinance provides in pertinent part: “**Any person** claiming
9 violation of this chapter may bring an action against the employer in King County Superior Court
10 to enforce the provisions of this Chapter . . .” (emphasis added). SMC 7.45.010(H) defines
11 “Person” as: “an individual, corporation, partnership, limited partnership, limited liability partner-
12 ship, limited liability company, business trust, estate, trust, association, joint venture, or any other
13 legal or commercial entity, whether domestic or foreign, other than a government agency.”
14 Plaintiffs’ argument is that the liberal enforcement provisions in SMC 7.45.100, when coupled
15 with the broad definition of “Person” in 7.45.010, conceivably would allow any individual or
16 entity, including third-party organizations, to bring an action in Superior Court against an em-
17 ployer who allegedly violates the Ordinance.
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20 Plaintiffs assert, and the Court agrees, that the Superior Court’s jurisdiction is conferred
21 only by the Constitution and State statutes; it cannot be conferred by a municipal ordinance.
22 Washington has long recognized the principle that ordinarily, only persons who actually suffer an
23 injury or legal harm have standing to bring an action for relief in Superior Court. In both civil
24 and criminal actions, Washington applies the standing test used by the United States Supreme
25 Court. *T.S. v. Boy Scouts of America.*, 157 Wn.2d 416, 424 n. 6, 138 P.3d 1053 (2006) (citing
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1 *Mearns v. Scharbach*, 103 Wn. App. 498, 512, 12 P.3d 1048 (2000)); *State v. Burch*, 65 Wn. App.
2 828, 837, 830 P.2d 357 (1992).

3 In the ordinary course, a litigant must assert his or her own legal
4 rights and interests, and cannot rest a claim to relief on the legal
5 rights or interests of third parties.... We have recognized the right of
6 litigants to bring actions on behalf of third parties, provided three
7 important criteria are satisfied: The litigant must have suffered an
8 “injury in fact,” thus giving him or her a “sufficiently concrete inter-
9 est” in the dispute, ... the litigant must have a close relation to the
10 third party, ... and there must exist some hindrance to the third
11 party's ability to protect his or her own interests. *Powers v. Ohio*,
12 499 U.S. 400, 410–11, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991)
13 (internal citations omitted).

14 *In re Detention of Reyes*, ___ Wn. App. ___, 309 P.3d 745, 757 (2013).

15 This does not mean, however, that “the whole Ordinance is therefore invalid” as Plaintiffs
16 argue in their Reply in support of Mot. for Dec Jmt on State Law Claims, p. 9. An ordinance is
17 presumed to be valid and constitutional, and should be construed by a court in a way that would
18 render it lawful and constitutional. “[W]here a statute is open to two constructions, one of which
19 will render it constitutional and the other unconstitutional or open to grave doubt in this respect,
20 the former construction and not the latter is to be adopted.” *Soundview Pulp Co. v. Taylor*, 21
22 Wn.2d 261, 268, 150 P.2d 839 (1944), citing *State ex rel. Campbell v. Case*, 182 Wash. 334, 47
23 P.2d 24 (1935).

24 Federal courts also follow this principle. “As Justice Holmes said long ago: ‘A statute
25 must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitu-
26 tional but also grave doubts upon that score.’” *Almendarez-Torres v. U.S.*, 523 U.S. 224, 237-
27 238, 118 S.Ct. 1219, 1228 (1998) (citations omitted).

28 Given these rules of statutory construction, it is reasonable to construe SMC 7.45.100(A)’s
reference to “any person” as meaning “any person claiming an injury from violation of this chap-

1 ter”. This harmonizes what appears to be Proposition 1’s intent with traditional rules of standing
2 to bring a claim in Superior Court.⁸ The enforcement provision is not void.

3 III. FEDERAL PREEMPTION CLAIMS⁹

4 Plaintiffs claim that the Ordinance is preempted by the National Labor Relations Act
5 (“NLRA”) and the Railway Labor Act (“RLA”). Plaintiffs also claim that the Ordinance violates
6 the dormant commerce clause of the United States Constitution. The Court will address each of
7 these claims in turn.
8

9 A. Federal Preemption Generally

10 The U.S. Constitution, Art. VI, clause 2, commonly referred to by courts as the “sup-
11 remacy clause” provides:
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13 This Constitution, and the Laws of the United States which shall be
14 made in Pursuance thereof; and all Treaties made, or which shall be
15 made, under the Authority of the United States, shall be the supreme
16 Law of the Land; and the Judges in every State shall be bound
17 thereby, any Thing in the Constitution or Laws of any State to the
18 Contrary notwithstanding.

19 “Thus, under Article VI of the Constitution, federal law is the ‘supreme Law of the Land,’ and ‘it
20 preempts state laws that ‘interfere with, or are contrary to, federal law.’” *Boomer v. AT&T Corp.*,
21 309 F.3d 404, 417 (7th Cir. 2002) quoting *Hillsborough County v. Automated Medical Laborator-*
22 *ies, Inc.*, 471 U.S. 707, 712, 105 S.Ct. 2371 (1985)).

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24 ⁸ It seems likely from the context that the definition of “Person” in SMC 7.45.010(H) was intended to
25 encompass employers as well as employees and workers.

26 ⁹ Because this Court finds that SMC 7.45 is preempted by state law with respect to employers and em-
27 ployees conducting business within the boundaries of SeaTac International Airport, the Court will not
28 address the arguments raised by the plaintiffs that the ordinance violates the federal Airline Deregulation Act.

1 **B. Federal Labor Laws**

2 **1. The NLRA¹⁰ and Federal Preemption:**

3 The NLRA was passed by Congress to encourage orderly resolutions to disputes between
4 employers and employees over working conditions through the collective bargaining process.

5 One of the ultimate goals of the [National Labor Relations] Act was
6 the resolution of the problem of “depress[ed] wage rates and the pur-
7 chasing power of wage earners in industry,” 29 U.S.C. § 151, and
8 “the widening gap between wages and profits,” 79 Cong.Rec. 2371
9 (1935) (remarks of Sen. Wagner), thought to be the cause of econ-
omic decline and depression. Congress hoped to accomplish this by
establishing procedures for more equitable private bargaining.

10 The evil Congress was addressing thus was entirely unrelated to
11 local or federal regulation establishing minimum terms of employ-
12 ment. Neither inequality of bargaining power nor the resultant
13 depressed wage rates were thought to result from the choice between
14 having terms of employment set by public law or having them set by
15 private agreement. No incompatibility exists, therefore, between
16 federal rules designed to restore the equality of bargaining power,
17 and state or federal legislation that imposes minimal substantive
18 requirements on contract terms negotiated between parties to labor
19 agreements, at least so long as the purpose of the state legislation is
20 not incompatible with these general goals of the NLRA.

21 *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 754-755, 105 S.Ct. 2380, 2396 - 2397
22 (1985) (footnote omitted).

23 The object of [the NLRA] was ... to insure that employers and their
24 employees could work together to establish mutually satisfactory
25 conditions [of employment]. The basic theme of the Act was that

26 ¹⁰ The Railway Labor Act (“RLA”) was enacted to promote peaceful and efficient resolution of labor
27 disputes in the railroad and airline industries. It “provid[es] a comprehensive framework for resolving
28 labor disputes” in the industries it covers. Plaintiffs’ Mot for Decl Jmt on Federal Law Claims, p. 2,
citing *Union Pac. R.R. Co. v. Bhd. Of Locomotive Eng’rs & Trainmen*, 558 U.S. 67, 72 (2990) and
Hawaiian Airlines v. Norris, 512 U.S. 246, 252 (1994). As plaintiffs acknowledge in their briefing,
Federal Courts have interpreted the RLA under the same federal preemption analysis used in NLRA
cases. For this reason, and for the additional reason that the Court has already held that the Ordinance
cannot be applied to workers at SeaTac International Airport because of state preemption under RCW
14.08.330, this Court will not conduct an independent analysis of the Ordinance’s legality under the
RLA.

1 through collective bargaining the passions, arguments, and struggles
2 of prior years would be channeled into constructive, open dis-
3 cussions leading, it was hoped, to mutual agreement.” *Ford Motor*
4 *Co. v. N.L.R.B.*, 441 U.S. 488, 498, 99 S.Ct. 1842, 60 L.Ed.2d 420
5 (1979) (quoting *H.K. Porter Co. v. N.L.R.B.*, 397 U.S. 99, 103, 90
6 S.Ct. 821, 25 L.Ed.2d 146 (1970));); *see id.* at 502 n. 14, 99 S.Ct.
7 1842 (explaining benefits of collective bargaining); *Auciello Iron*
8 *Works*, 517 U.S. at 785, 116 S.Ct. 1754. The duty to bargain is part
9 and parcel of that policy's preference for resolving labor disputes
10 peacefully, through good faith collective bargaining, rather than by
11 means of industrial strife which has a destructive effect on the
12 economy. *See United Steelworkers of America v. Warrior & Gulf*
13 *Navigation Co.*, 363 U.S. 574, 578, 80 S.Ct. 1347, 4 L.Ed.2d 1409
14 (1960) (describing federal labor policy as “to promote industrial
15 stabilization through the collective bargaining agreement”); *Textile*
16 *Workers v. Lincoln Mills*, 353 U.S. 448, 453–55, 77 S.Ct. 912, 1
17 L.Ed.2d 972 (1957) (In passing the NLRA, Congress's purpose was
18 to encourage collective bargaining and thereby promote “industrial
19 peace.”); *N.L.R.B. v. Lion Oil Co.*, 352 U.S. 282, 289, 77 S.Ct. 330,
20 1 L.Ed.2d 331 (1957) (The Court has “recognized a dual purpose in
21 the Taft–Hartley Act—to substitute collective bargaining for econ-
22 omic warfare and to protect the right of employees to engage in con-
23 certed activities for their own benefit.” (internal quotation marks
24 omitted)).

25 *N.L.R.B. v. Beverly Enterprises-Massachusetts, Inc.*, 174 F.3d 13, 24 (1st Cir. 1999).

26 While the NLRA does not contain an express preemption clause, the United States Sup-
27 reme Court long ago set forth two NLRA preemption principles. In *San Diego Bldg. Trades*
28 *Council v. Garmon*, 359 U.S. 236, 244, 79 S.Ct. 773 (1959), the Court held that the NLRA prohi-
bits states from regulating fields that Congress intended to occupy fully by investing the National
Labor Relations Board (“NLRB”) with primary jurisdiction over Sections 7 and 8 of the NLRA.
The *Garmon* doctrine holds that “States may not regulate activity that the NLRA protects,
prohibits, or arguably protects or prohibits.” *Wis. Dep't of Indus., Labor & Human Relations v.*
Gould Inc., 475 U.S. 282, 286, 106 S.Ct. 1057 (1986).

“The Supreme Court held in *Garmon* that when an activity is arguably subject to §7 or §8
of the National Labor Relations Act, the states as well as the federal courts must defer to the ex-

1 clusive competence of the NLRB if the danger of state interference with national labor policy is to
2 be averted.” *Chaulk Services, Inc. v. Massachusetts Com'n Against Discrimination*, 70 F.3d 1361,
3 1364 (1st Cir. 1995). If a state or local government “seeks to regulate conduct that is either argu-
4 ably protected or arguably prohibited by the NLRA, [and if] the conduct arguably falls within the
5 scope of the [NLRA], then the interest in a uniform federal labor policy identified in *Garmon*
6 requires both the states and the federal courts to defer to the exclusive jurisdiction of the NLRB.”
7 *Bud Antle, Inc. v. Barbosa*, 45 F.3d 1261, 1268 (9th Cir. 1994).

9 The second type of NLRA preemption, the so-called *Machinists* doctrine, “protects
10 against state interference with policies implicated by the structure of the [NLRA] itself, by pre-
11 empting state law and state causes of action concerning conduct that Congress intended to be
12 unregulated.” *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 749, 105 S.Ct. 2380,
13 85 L.Ed.2d 728 (1985).

15 In the *Machinists* case, after a collective bargaining agreement had expired, and while the
16 union and employer were in the process of negotiations over a new agreement, the union adopted
17 a resolution prohibiting its members from working any overtime hours as part of its strategy in the
18 ongoing negotiations with the employer. The employer complained to the NLRB, which dismiss-
19 ed the complaint on the grounds that this action by the union was neither protected nor prohibited
20 by the NLRA. The employer then filed a complaint before a **state** agency, alleging that the
21 union’s resolution violated **state law**. The state agency agreed, and purported to regulate this con-
22 duct on the grounds that the NLRB had held that the conduct was neither protected nor prohibited
23 under the NLRA. 427 U.S. at 135-36. The Supreme Court held that the state agency had no auth-
24 ority to interfere in curtailing or prohibiting these types of “self-help measures”, because to do so
25 “would frustrate effective implementation of the Act's processes.” *Id.* at 147–48. The Supreme
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1 Court explained that Congress had intended that certain conduct “be unregulated because [it was
2 to be] left ‘to be controlled by the free play of economic forces,’ ” even where such conduct was
3 neither arguably protected nor arguably prohibited under the Act. *Id.* at 140, 96 S.Ct. 2548 (quot-
4 ing *NLRB v. Nash–Finch Co.*, 404 U.S. 138, 144, 92 S.Ct. 373 (1971)).

5 “*Machinists* preemption is based on the premise that [in adopting the NLRA,] Congress
6 struck a balance of protection, prohibition, and laissez-faire in respect to union organization,
7 collective bargaining, and labor disputes.” *Chamber of Commerce of U.S. v. Brown*. 554 U.S.
8 60, 65, 128 S.Ct. 2408, 2412 (2008). In *Brown*, the Supreme Court held that a California law
9 that prohibited employers who received state grants of more than \$10,000 annually in state
10 program funds from using such funds “to assist, promote or deter union organizing”¹¹, and
11 which established a “formidable scheme” of enforcement, was preempted by the NLRA under
12 the *Machinists* doctrine, because it “regulate[d] within a zone protected and reserved for market
13 freedom.” *Brown*, 554 U.S. at 66, quoting *Building & Constr. Trades Council v. Assoc’d*
14 *Builders & Contractors of Mass./R. I., Inc.*, 507 U.S. 218, 227, 113 S.Ct. 1190 (1993). The
15 Court noted that the NLRA contained both implicit and explicit directions from Congress that
16 non-coercive speech for or against unionization be left unregulated. *Brown*, 554 U.S. at 67-69.

17 In *Assoc’d Builders and Contractors of Southern California, Inc. v. Nunn*, 356 F.3d 979,
18 987 (9th Cir. 2004), the Court described *Machinists* preemption as prohibiting states from impos-
19 ing restrictions on labor and management’s “weapon[s] of self-help” that were left unregulated in
20 the NLRA because Congress intended for tactical bargaining decisions and conduct “to be con-
21 trolled by the free play of economic forces.” *Nunn, supra*, 356 F.3d at 987, quoting *Lodge 76*,

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28 ¹¹ Cal. Govt.Code Ann. §§16645.2(a) and 16645.7(a).

1 *Int'l Assoc. of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*,
2 427 U.S. 132, 140, 146, 96 S.Ct. 2548 (1976).

3 But the NLRA does not preempt all state and local laws that relate to labor and employ-
4 ment standards. It does not preempt “state regulations that establish minimum wages, benefits, or
5 other ‘[m]inimum state labor standards [that] affect union and non-union employees equally, and
6 neither encourage nor discourage the collective-bargaining processes that are the subject of the
7 NLRA.’” *Assoc. Builders and Contractors v. Nunn, supra* at 988-89, quoting *Metropolitan Life
8 Insurance Co. v. Commonwealth of Mass.*, 471 U.S. 724, 755, 105 S.Ct. 2380 (1985).

9
10 **2. The Ordinance and “minimum labor standards”.**

11 The Plaintiffs argue that the Ordinance is preempted by the NLRA because it is not a min-
12 imum labor standard that forms “a backdrop for negotiations”. Plaintiff’s Motion for Declaratory
13 Judgment on Federal Law Claims p. 5.

14 As Plaintiffs indicate, the Ordinance contains a number of provisions that create more fav-
15 orable work conditions for employees covered by the Ordinance than those employees previously
16 enjoyed. The Ordinance creates a \$15 per hour minimum wage, representing a 63% increase over
17 Washington’s current minimum wage of \$9.19, which, as the plaintiffs point out, is already the
18 highest state minimum wage in the United States. *Id.* The Ordinance also provides for automatic
19 annual cost of living increases in the minimum wage; for paid sick leave; and for distribution of
20 tips to the workers who earn them. It requires employers to offer additional work hours to part-
21 time employees before hiring additional part-time workers, and it requires employers who acquire
22 a business to provide at least 90 days of employment to the acquired business’s existing employ-
23 ees. It additionally provides a private enforcement mechanism, with successful litigants being
24 able to recover damages, reinstatement, injunctive relief, and attorney fees and expenses.
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1 While the scope of the Ordinance appears to be broader than state laws that have been up-
2 held by Federal Courts in other cases, the plaintiffs have not cited any controlling authority that
3 this alone invalidates the Ordinance.

4 **3. Mandatory benefits that would otherwise be a subject of collective**
5 **bargaining are not necessarily preempted.**

6 A state or local labor law is not preempted because it provides workers with benefits for
7 which they otherwise would have had to bargain. In *Metropolitan Life Insurance Co. v. Massa-*
8 *chusetts*, 471 U.S. 724, 105 S.Ct. 2380 (1985), the Court Supreme Court held that a Massachu-
9 setts law that required employers to provide certain mental health insurance benefits to workers
10 for whom an employer provided health and surgical benefits was not preempted by the NLRA.

12 No incompatibility exists ... between federal rules designed to re-
13 store the equality of bargaining power, and state ... legislation that
14 imposes minimal substantive requirements on contract terms nego-
15 tiated between parties to labor agreements, at least so long as the
16 purpose of the state legislation is not incompatible with those
17 general goals of the NLRA.

18 *Metropolitan Life* at 754-55.

19 In *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 107 S.Ct. 2211 (1987), the Supreme
20 Court addressed an employer's challenge to a Maine statute which required employers who laid
21 off more than 100 employees, or relocated more than 100 miles away, to provide severance pay to
22 employees who had worked at a plant for at least 3 years¹². The employer/ plaintiff argued that
23 the law was preempted because it indirectly undercut the collective bargaining process. The
24 Court disagreed, because although the law gave employees:

25 something for which they otherwise might have to bargain[,] ...
26 [t]hat is true ... with regard to any state law that substantively

27 _____
28 ¹² The employer was not required to provide severance pay to employees who accepted employment at
the new plant location, nor if a contract with the employee addressed the issue of severance pay.

1 regulates employment conditions. Both employers and employees
2 come to the bargaining table with rights under state laws that form
3 a “backdrop” for their negotiations. ... [T]he mere fact that a state
4 statute pertains to matters over which the parties are free to bargain
5 cannot support a claim of pre-emption, for there is nothing in the
6 NLRA ... which expressly forecloses all state regulatory powers
7 with respect to those issues ... that may be the subject of collective
8 bargaining.

9 482 U.S. at 21-22. The Court concluded that this statute was “not preempted by the NLRA, since
10 its establishment of a minimum labor standard does not impermissibly intrude upon the collective-
11 bargaining process.” *Id.* at 23.

12 In *520 South Michigan Ave. Associates, Ltd. v. Shannon*, 549 F.3d 1119, 1128 (7th Cir.
13 2008), the Court summarized Supreme Court precedent regarding NLRA preemption as follows:

14 The Supreme Court's decisions in *Metropolitan Life* and *Fort Hali-*
15 *fax* stand for several propositions. First, the NLRA is concerned
16 primarily with establishing an equitable process for bargaining, and
17 not the substantive terms of bargaining. *Fort Halifax*, 482 U.S. at
18 20, 107 S.Ct. 2211; *Metropolitan Life*, 471 U.S. at 753-54, 105 S.Ct.
19 2380. Second, a state law is not preempted by the NLRA merely
20 because it regulates a mandatory subject of bargaining. *Fort Hali-*
21 *fax*, 482 U.S. at 21, 107 S.Ct. 2211; *Metropolitan Life*, 471 U.S. at
22 757, 105 S.Ct. 2380. And third, the NLRA does not preempt a state
23 law which “establishes a minimum labor standard that does not
24 intrude upon the collective-bargaining process.” *Fort Halifax*, 482
25 U.S. at 7, 107 S.Ct. 2211; *see also Metropolitan Life*, 471 U.S. at
26 754-55, 105 S.Ct. 2380.

27 One type of law that is subject to NLRA preemption is a law which is not one of general
28 application. For example, in *520 South Michigan Ave. Associates, supra*, the Court held that the
“Attendant Amendment – which was enacted during a time that a major Chicago hotel was in-
volved in a dispute with a union representing its room attendants – **was** preempted by the NLRA,
because the law **was not** one of general application. Although it purported to be a state-wide law,
the “Attendant Amendment” applied only to one occupation (room attendants) in only one in-

1 industry (hotels), and only in counties with a population of more than 3 million. “That fact distin-
2 guishes this case from the series of cases cited by Appellees ...; the Attendant Amendment is not
3 just limited to a particular trade, profession, or job classification; **it is also a state statute limited**
4 **to only one of Illinois' 102 counties.**” 549 F.3d at 1131 (emphasis added). The Court also noted
5 that the law’s “narrow scope of application also serves as a disincentive to collective bargaining”.

6
7 *Id.* at 1132:

8 As the Supreme Court explained in *Metropolitan Life*, a minimum
9 labor standard should “neither encourage nor discourage the collec-
10 tive-bargaining process that are the subject of the NLRA.” 471 U.S.
11 at 755, 105 S.Ct. 2380. Yet by passing a statute with such a narrow
12 focus (one occupation, in one industry, in one county), there seems
13 to be a disincentive to collective bargaining and instead encourage-
14 ment for employers or unions to focus on lobbying at the state
15 capital instead of negotiating at the bargaining table.

16 *520 South Michigan Ave.*, 549 F.3d at 1132 -1133. But see *Associated Builders and Contractors*
17 *of Southern California, Inc. v. Nunn*, 356 F.3d 979 (9th Cir. 2004) where the Court distinguished
18 *Chamber of Commerce v. Bragdon*, 64 F.3d 497 (9th Cir. 1995), (relied on by Plaintiffs), and
19 noted:

20 *Bragdon* must be interpreted in the context of Supreme Court
21 authority and our other, more recent, rulings on NLRA preemption.
22 While *Bragdon* emphasized that the Contra Costa County ordinance
23 “targets particular workers in a particular industry,” *id.* at 504, we
24 have since explained on several occasions that **the NLRA does not**
25 **authorize us to pre-empt minimum labor standards simply**
26 **because they are applicable only to particular workers in a**
27 **particular industry.** *Dillingham II*, 190 F.3d at 1034 (upholding
28 minimum standards that applied only to apprentices in the skilled
trades); *National Broadcasting*, 70 F.3d at 71–73 (holding that a
California regulation that applied only to broadcast employees was
not preempted); *Viceroy Gold Corp. v. Aubry*, 75 F.3d 482 (9th
Cir.1996) (holding that a regulation that applied only to miners was
not preempted). **It is now clear in this Circuit that state substan-**
tive labor standards, including minimum wages, are not invalid
simply because they apply to particular trades, professions, or
job classifications rather than to the entire labor market.

1 *Nunn*, 356 F.3d 990 (emphasis added).

2 Here, the Ordinance applies to employees in more than one industry, and applies through-
3 out the City of SeaTac. Its scope admittedly is limited to employers with larger work forces.¹³
4 However, it provides workers the same rights regardless of whether they are members of a union,
5 and it does not overtly encourage or discourage collective bargaining. While the various subjects
6 embraced by the Ordinance are broad, virtually all of them concern wages and benefits of
7 hospitality and transportation workers, and virtually all of them have separately been held to be
8 lawful exercises of state and local powers, and not preempted by federal labor law.¹⁴
9
10

11 **4. Valid minimum labor standards may be subject to waiver by unions.**

12 State and local laws providing certain minimum labor standards that are subject to waiver
13 by a union as part of the collective bargaining process have been upheld by Federal Courts. For
14 example, *Fort Halifax, supra*, upheld a state law that established mandatory mental health insur-
15 ance coverage but which permitted a union and an employer to agree to opt out of the protection
16 of the law.
17

18 In *St. Thomas-St. John Hotel & Tourism Ass'n, Inc. v. Government of U.S. Virgin Islands*,
19 218 F.3d 232 (3rd Cir. 2000), the Court upheld a wrongful discharge law that provided for an opt-
20 out by the express terms of a union contract. The Court explained that this provision was lawful
21 because it “does not force an employee to choose between collective bargaining and the protec-
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23 _____
24 ¹³ By its terms, the Ordinance applies to hotels with at least 100 guest rooms which employ 30 or more
25 workers; retail and food service providers that employ 10 or more non-managerial, nonsupervisory
26 employees; rental car services with more than 100 cars; shuttle fleets of more than 10 vans, and parking
27 lots with more than 100 parking spaces. Other transportation workers who provide specified services
(curbside passenger check-in; baggage checking; wheelchair escort; etc.) are also covered under the terms
of the Ordinance, but only if they work for an employer with 25 or more non-managerial, nonsupervisory
employees. SMC 7.45.010.

28 ¹⁴ There is one important exception. See part 7 of this memorandum opinion.

1 tions of state law; rather, it protects all Virgin Islands employees, but gives employees the option
2 of relinquishing the territorial statutory protections through the terms of a collective-bargaining
3 agreement.” 218 F.3d at 245. See also, *See Viceroy Gold Corp. v. Aubry*, 75 F.3d 482, 490 (9th
4 Cir. 1996) (holding that a statute limiting mine workers to an 8-hour day unless otherwise provid-
5 ed in a collective bargaining agreement is not preempted), and *National Broadcasting Co., Inc. v.*
6 *Bradshaw*, 70 F.3d 69 (9th Cir. 1995) (holding that state regulations requiring employers to pay
7 double time for all hours worked over 12 hours in a day unless the employees were covered by a
8 collective bargaining agreement providing specified minimum overtime benefits, are not preempt-
9 ed).
10

11 **5. Successor employer’s obligation to retain predecessor’s employees for**
12 **90 days is not preempted by the NLRA.**

13 Plaintiffs argue that the Ordinance is invalid under federal law because its requirement
14 that a successor business retain its predecessor’s workers for a 90 day period unlawfully interferes
15 with employers’ rights to select their own workforce. However, an identical law recently was up-
16 held in *Rhode Island Hospitality Association v. City of Providence*, 667 F.3d 17 (1st Cir. 2011).
17 The Court in *Rhode Island Hospitality* approved a local law that required successor employers in
18 the hotel/hospitality industry to retain their predecessor’s employees for three months, and which
19 provided for private enforcement in state court, with recovery of treble damages, costs, and
20 attorney fees to successful claimants.¹⁵
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28 ¹⁵ *Rhode Island Hospitality Association* also rejected the argument that the law was preempted because it regulated areas that the NLRB has held to be mandatory subjects for collective bargaining. 667 F.3d at 37.

1 Ordinance].” This section also makes it unlawful to retaliate against an employee for informing a
2 union about an alleged violation of the Ordinance. These provisions of the Ordinance directly in-
3 fringe on the NLRB’s exclusive jurisdiction under §8 of the NLRA, which already makes it an
4 unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the
5 exercise of the rights guaranteed in” §7.¹⁶

6
7 In *Wisconsin Department of Industry, Labor & Human Relations v. Gould, Inc.*, 475 U.S.
8 282, 288, 106 S.Ct. 1057 (1986), the Supreme Court “reaffirmed the *Garmon* preemption princi-
9 ple as ‘prevent[ing] states not only from setting forth *standards of conduct* inconsistent with the
10 substantive requirements of the NLRA, but also from providing their own regulatory or judicial
11 remedies for conduct prohibited or arguably prohibited by the Act.’”¹⁷ *Kaufman v. Allied Pilots*
12 *Ass'n*, 274 F.3d 197, 201 -202 (5th Cir. 2001). In *Healthcare Ass'n of New York State, Inc. v.*
13 *Pataki*, 471 F.3d 87, 105 (2nd Cir. 2006), the Court held that to the extent a New York law
14 restricted businesses from using funds they earned from state contracts to encourage or discourage
15 unionization, it was preempted by the NLRA.¹⁸

16
17 Because these cited provisions of the Ordinance’s Section 7.45.090 establish a “supple-
18 mental sanction for violations of the NLRA”, they are preempted by the NLRA and are void.
19

20
21
22 ¹⁶ § 7 of the NLRA guarantees employees the right to organize, to bargain collectively, and to “engage in
other concerted activities for the purpose of collective bargaining or other mutual aid and protection . . .”

23
24 ¹⁷ In *Gould*, the Court invalidated a state law that punished businesses that had been “found by judicially
enforced orders of the National Labor Relations Board to have violated the NLRA in three separate cases
within a 5 year period.” 475 U.S. at 283-84.

25
26 ¹⁸ “To the extent that [the state law] imposes restrictions on the associations' and their members' use of
proceeds earned from state contracts and statutory reimbursement obligations in which the contractor's
labor costs cannot affect the amount of expense to the State, it attempts to impose limitations on the use
27 of the associations' money rather than the State's; it therefore deters employers from the exercise of their
rights under section 8(c) and satisfies the threshold conditions for *Garmon* preemption.” 471 F.3d 87,
28 105.

1 With respect to the plaintiffs' argument that the last sentence in SMC 7.45.090 ("No
2 Covered Worker's compensation or benefits may be reduced in response to this Chapter or the
3 pendency thereof"), this Court is unable to make a definitive ruling on whether this clause is
4 preempted by the NLRA. The sole case cited by the plaintiffs in support of this argument is
5 *Brown v. Pro Football, Inc.*, 518 U.S. 231, 238, 116 S.Ct. 2116, 2121 (1996). *Brown* dealt with
6 the issue of whether, after bargaining with players had reached an impasse, the league's unilat-
7 eral imposition of fixed salaries for certain players violated the antitrust laws. The case did not
8 discuss NLRA preemption at all. Rather, in holding that the league's conduct fell within the
9 scope of the nonstatutory labor exemption from the antitrust laws, the Supreme Court noted that
10 both the NLRB and the courts "have held that, after impasse, labor law permits employers uni-
11 laterally to implement changes in pre-existing conditions, but only insofar as the new terms
12 meet carefully circumscribed conditions." *Id.* No other authority has been cited by plaintiffs
13 for this claim. In the absence of any context or clear precedent, this Court is unable to hold that
14 this language in SMC 7.45.090(A) is preempted by federal labor law. The law is presumed to
15 be valid, and plaintiffs have failed to prove its invalidity on this point.

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19 The Plaintiffs' final federal labor law preemption argument -- that the sum total of the
20 subjects contained in the Ordinance result in preemption even if none of the individual subjects do
21 -- is not supported by any of the authorities that Plaintiffs have provided to this Court.

22 **C. The Dormant Commerce Clause.**

23
24 Plaintiffs' last argument is that the Ordinance violates the dormant commerce clause of the
25 U.S. Constitution because it discriminates against interstate commerce. The Commerce Clause
26 grants Congress the authority "[t]o regulate commerce with foreign nations, and among the sev-
27 eral states, and with the Indian tribes." U.S. Const., Art. I, § 8, cl. 3. The so-called "dormant
28

1 commerce clause” doctrine states that, “since Congress has the power to regulate interstate com-
2 merce, states are precluded from doing so by enacting laws or regulations that excessively burden
3 interstate commerce.” *Rouso v. State*, 170 Wn.2d 70, 75, 239 P.3d 1084, 1087 (2010), citing
4 *Maine v. Taylor*, 477 U.S. 131, 137, 106 S.Ct. 2440 (1986). The U.S Supreme Court has held
5 state laws unconstitutional under the dormant commerce clause in situations where the law pen-
6 alizes out-of-state businesses or customers (*Camps Newfound/Owatonna, Inc. v. Town of Harri-*
7 *son*, 520 U.S. 564, 117 S.Ct. 1590 (1997)); or when the law in question seeks to control directly
8 commerce occurring wholly outside the boundaries of a State (*Healy v. Beer Inst.*, 491 U.S.
9 324, 109 S. Ct. 2491 (1989)).

11 In determining whether a State has overstepped its role in regulat-
12 ing interstate commerce, this Court has distinguished between state
13 statutes that burden interstate transactions only incidentally, and
14 those that affirmatively discriminate against such transactions.
15 While statutes in the first group violate the Commerce Clause only
16 if the burdens they impose on interstate trade are “clearly excessive
17 in relation to the putative local benefits,” *Pike v. Bruce Church,*
Inc., 397 U.S. 137, 142, 90 S.Ct. 844, 847, 25 L.Ed.2d 174 (1970),
18 statutes in the second group are subject to more demanding
19 scrutiny.

20 *Maine v. Taylor*, 477 U.S. 131, 138, 106 S.Ct. 2440, 2447 (1986).

21 Plaintiffs’ primary argument under the dormant commerce clause is that employers cov-
22 ered by the Ordinance primarily are those doing business at SeaTac Airport and at large hotels
23 in the City of SeaTac, and that therefore, “the burden of the Ordinance falls by design in a pre-
24 dictably disproportionate way on out-of-staters...” Plaintiffs’ Mot for Dec. Jmt on Federal Law
25 Claims p. 23.

26 The Ordinance clearly does not “discriminate on its face against interstate commerce”
27 because “discrimination” in this context “simply means differential treatment of in-state and
28 out-of-state economic interests that benefits the former and burdens the latter.” *United Haulers*

1 *Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330, 331, 127
2 S.Ct. 1786, 1788 (2007), citing *Oregon Waste Systems, Inc. v. Department of Environmental*
3 *Quality of Ore.*, 511 U.S. 93, 99, 114 S.Ct. 1345 (1994). Plaintiffs' challenge under the dor-
4 mant commerce clause therefore can be successful only if plaintiffs can demonstrate that "the
5 burdens [imposed by the Ordinance] on interstate trade are 'clearly excessive in relation to the
6 putative local benefits'". *Maine v. Taylor, supra*. Plaintiffs have not met this challenge.

7
8 This Court has already ruled that the Ordinance is inapplicable to employers and
9 workers doing business at SeaTac Airport, because the airport is under the exclusive jurisdiction
10 of the Port of Seattle pursuant to RCW 14.09.330. Even were this not so, the Court is unable to
11 presume that increased costs of doing business that result from implementation of the Ordinance
12 would be disproportionately passed on to out-of-state customers, as opposed to Washington
13 residents who utilize SeaTac Airport for their travels. With respect to the alleged burden on
14 interstate commerce that may result from the Ordinance's applicability outside the airport,
15 plaintiffs have failed to demonstrate that any alleged burdens on interstate commerce are
16 "clearly excessive in relation to the putative local benefits" of the Ordinance.
17
18

19 **IV. ORDER**

20 For the reasons set forth above, it is hereby

21 ORDERED as follows:

- 22 1. This court has jurisdiction over the parties and subject matter.
- 23 2. The Plaintiffs' Motion for Declaratory Judgment on State Law claims is
24 GRANTED IN PART AND DENIED IN PART.

1 a) Insofar as the Ordinance purports to regulate employers and employees doing
2 business on property under the exclusive jurisdiction of the Port of Seattle, the Ordinance is void
3 pursuant to RCW 14.08.330.

4 b) Except as further limited below, the Ordinance is valid with respect to
5 employers and covered employees doing business within the portions of the City of SeaTac that
6 are not under the exclusive jurisdiction of the Port of Seattle.
7

8 c) The enforcement provisions of the Ordinance can be exercised only by persons
9 who allege that they have suffered injury or damages as a result of a violation of the Ordinance.

10 3. The Plaintiffs' Motion for Declaratory Judgment on Federal Law Claims is
11 GRANTED IN PART AND DENIED IN PART.
12

13 a) The portions of the Section 7.45.090 of the Ordinance which purport to make it
14 unlawful for covered employers "interfere with, restrain, or deny the exercise of, or the attempt to
15 exercise, any right protected under this Chapter", "to take adverse action" against any employee
16 for exercising his or her right to "inform other [employees] of their rights under [the Ordinance],"
17 or to retaliate against an employee for informing a union about an alleged violation of the
18 Ordinance, are preempted by federal labor law, and are void.
19

20 b) The remaining provisions of the Ordinance are not preempted by federal law
21 and are valid to the extent that they apply to employers and employees doing business within the
22 portions of the City of SeaTac that are not under the exclusive jurisdiction of the Port of Seattle,
23 and therefore do not occur at the airport.
24

25 c) The Ordinance does not violate the dormant commerce clause.
26

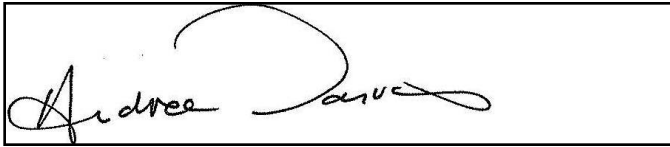
27 Dated: December 27, 2013.

28 s/ _____ e-filed
Judge Andrea Darvas

King County Superior Court
Judicial Electronic Signature Page

Case Number: 13-2-25352-6
Case Title: FILO FOODS ET AL VS SEATAC CITY OF ET AL
Document Title: ORDER MEMO DECISION & ORD ON MOT DEC JMT

Signed by Judge: Andrea Darvas
Date: 12/27/2013 4:10:17 PM

A rectangular box containing a handwritten signature in cursive script that reads "Andrea Darvas".

Judge Andrea Darvas

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