

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jun 05, 2014, 3:25 pm
BY RONALD R. CARPENTER
CLERK

NO. 89723-9

RECEIVED BY E-MAIL

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BF FOODS, LLC, FILO FOODS, LLC, ALASKA AIRLINES, INC., and
WASHINGTON RESTAURANT ASSOCIATION,
Respondents/Cross-Appellants,

v.

CITY OF SEATAC, KRISTINA GREGG, CITY OF SEATAC CLERK,
Appellants/Cross-Respondents,

and the

PORT OF SEATTLE,
Respondent,

and

SEATAC COMMITTEE FOR GOOD JOBS,
Appellant/Cross-Respondent.

**APPELLANT/CROSS-RESPONDENT SEATAC COMMITTEE
FOR GOOD JOBS' ANSWER TO *AMICUS CURIAE* BRIEF OF
MASTERPARK LLC**

Dmitri Iglitzin, WSBA # 17673
Jennifer Robbins, WSBA # 40861
SCHWERIN CAMPBELL BARNARD IGLITZIN &
LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119

 ORIGINAL

ARGUMENT

I. The Court Need Not Reach The Severability Issue If, As The Committee Urges, This Court Reverses The Trial Court's Order Voiding The Ordinance At Sea-Tac Airport.

Amicus curiae Masterpark, LLC (“Masterpark”) concedes that this Court need not reach the severability issue if it upholds the legality of the the Good Jobs Ordinance, SeaTac Municipal Code (“SMC) 7.45 (“the Ordinance”), as applied to employers doing business on the premises of Seattle-Tacoma International (“Sea-Tac”) Airport, as the SeaTac Committee for Good Jobs (“Committee”) believes the law requires the Court to do.¹

For the reasons set forth in the Committee’s opening and reply briefs, the trial court’s order invalidating the Ordinance as applied to Sea-Tac Airport should be reversed, which will render the severability issue moot. For that reason, this Court need not reach the issue of severability.

//

//

¹ All parties arguing that the Ordinance is not severable have done so on the basis that if the Ordinance is invalid at Sea-Tac Airport and valid outside Sea-Tac Airport, then the law fails to achieve its fundamental legislative purpose. *See* Amended Answering Brief and Opening Cross-Appeal Brief of Filo Foods, et al. at 56-57; *see, generally*, Masterpark Amicus Br. Masterpark appears to concede, moreover, that if this Court were to reverse the trial court based on RCW 14.08.330, yet affirm the trial court’s ruling that the National Labor Relations Act (“NLRA”) preempts the anti-retaliation provisions of the Ordinance, SMC 7.45.090(A) and (B), those anti-retaliation provisions are severable and the rest of the Ordinance remains in effect.

II. The Voters Clearly Intended That The Ordinance Be Upheld With Regard To Covered Workers To The Extent Permitted By Law Even If A Court Determined That The Ordinance Is Inoperative At The Airport.

Statutes are presumed to be severable. *State v. Harris*, 123 Wn. App. 906, 918, 99 P.3d 902 (2004), *abrogated on other grounds by State v. Hughes*, 154 Wn.2d 118, 110 P.3d 192 (2005). Two exceptions to the presumption of severability exist: (1) where “the constitutional and unconstitutional provisions are so connected...that it could not be believed that the legislature would have passed one without the other” and (2) where “the part eliminated is so intimately connected with the balance of the act as to make [the remainder] useless to accomplish the purposes of the legislature.” *League of Educ. Voters v. State*, 176 Wn.2d 808, 827, 295 P.3d 743 (2013) (quoting *State v. Abrams*, 163 Wn.2d 277, 285-86, 178 P.3d 1021 (2008)).

Where voters enact an Ordinance by ballot measure, the Court “must determine if the voters, not the legislature, intended severability.” *Id.* Where, as here, the ballot measure contains a declaration of the basis and necessity for enactment and a severability clause, “the court may view this as ‘conclusive as to the circumstances asserted’ unless it can be said that the declaration is obviously false on its face.” *Id.* (quoting *McGowan v. State*, 148 Wn.2d 278, 296, 60 P.3d 67 (2002)). The voters’ intent to

pass multiple provisions in an enactment is a “different inquiry” from their intent for provisions to be severable. *Id.* at 827-28. A severability clause is evidence that “voters intended that the remaining provisions of the act be given effect if one provision is found invalid.” *McGowan*, 148 Wn.2d at 296.

The complete text of the Good Jobs Initiative, SeaTac Proposition 1 (“Proposition 1”) contained both findings of necessity for enactment of the provisions and a severability clause. Section 1 of the measure read:

Findings. The following measures are necessary in order to ensure that, to the extent reasonably practicable, all people employed in the hospitality and transportation industries in SeaTac have good wages, job security and paid sick and safe time.

CP 751. Proposition 1 also contained two independent provisions mandating that the remainder of the Ordinance be upheld where a portion of the Ordinance is rendered inoperable or inapplicable to certain employers or employees. These provisions read as follows at CP 759:

7.45.110 Exceptions: The requirements of this Chapter shall not apply where and to the extent that state or federal law or regulations preclude their applicability. To the extent that state or federal law or regulations require the consent of another legal entity, such as a municipality, port district, or county, prior to becoming effective, the City Manager is directed to formally and publicly request that such consent be given.

Section 5. Severability. If any provision of this Ordinance is declared illegal, invalid or inoperative, in whole or in

part, or as applied to any particular Hospitality or Transportation Employer and/or in any particular circumstance, by the final decision of any court of competent jurisdiction, then all portions and applications of this Ordinance not declared illegal, invalid or inoperative, shall remain in full force or effect to the maximum extent permissible under law.

The legislative declaration both as to the purpose of the law (good jobs) and the severability of an invalid or inoperative provision are thus conclusive evidence of the basis and need for the legislation and the voters' intent that the balance of the measure remain in place if any part is struck down. *League of Educ. Voters*, 176 Wn.2d at 827; *McGowan*, 148 Wn.2d at 296.

Masterpark cannot and has not argued that the legislative statement of the basis and necessity for the law or the severability clause is "obviously false," because there is nothing in the Ordinance to indicate that the voters intended to enact the Ordinance's worker protections in an all-or-nothing manner.

III. The Fundamental Legislative Purpose Of The Ordinance Is To Establish A \$15.00 Hourly Minimum Wage And Other Worker Protections For Employees Working For Large Companies In The City's Hospitality And Transportation Industries.

Addressing the adverse effects on the public of low wages and the absence of certain basic employee protections at Sea-Tac Airport was an obvious goal of the Ordinance. CP 752-59. Many families of airport

workers live at or near poverty, even employees working full-time must rely on social services and safety net programs, and public health is adversely impacted by workers who, without access to paid sick leave, show up to work at the airport ill. Statement of Grounds for Direct Review at 9-12 (and sources cited therein).

Yet in enacting Proposition 1, a majority of the voters in the City of SeaTac agreed that the measure was necessary to ensure that several groups of workers employed in the hospitality and transportation industries in SeaTac have good wages, job security and paid sick and safe time – not just certain workers employed at Sea-Tac Airport. CP 751. Thus, the fact that the Good Jobs Ordinance aimed to establish minimum labor standards for workers employed *at* Sea-Tac Airport, among others, is not fatal to the continued validity of the Ordinance to non-airport employees in the event that this Court were to affirm the trial court's ruling on port jurisdiction pursuant to RCW 14.08.330. *See League of Educ. Voters*, 176 Wn.2d at 828 (holding that where one of the initiative's requirements serves the voters' intent even absent the other requirement, the unconstitutional provision is severable); *McGowan*, 148 Wn.2d at 296-97.

In the report quoted by Masterpark,² the authors conclude that the Good Jobs Ordinance will have positive impacts on airport workers and SeaTac residents, since wages and household incomes will substantially increase, local jobs will be created, many working SeaTac residents will be brought out of poverty, and local business will benefit from increased local spending. *See* CP 984-985, 993-996, 1003 (Nicole Valletero Keenan and Howard Greenwich, *Economic Impacts of a SeaTac Living Wage*, (Puget Sound Sage, Seattle, WA) September, 2013. Indeed, in fulfillment of that fundamental purpose, under the trial court's ruling, approximately 1,600 non-airport workers are currently receiving the benefits of a living wage, safe and sick leave, the right to retain the tips they earn, worker retention protections and additional straight-time hours of employment for existing employees before employers can hire from outside.³

However, while improving conditions at Sea-Tac Airport was a main goal of the Ordinance and was urged as a reason why voters should pass the measure, *see* CP 809, 952-55, there is nothing in the measure itself or in the Voter's Pamphlet⁴ from which the Court could reasonably conclude that voters would not have passed the measure even if they had

² Masterpark Amicus Br. at 3 and 4.

³ *See* Declaration of Howard Greenwich filed in support of the Committee's Statement of Grounds for Direct Review, ¶ 6.

⁴ To determine the voters' purpose in the context of an initiative, a court need not look beyond the text of the initiative itself unless the text is unclear. *Amalgamated Transit Union, Local 587 v. State of Washington*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000).

known that approximately 4,700 low-wage workers at Sea-Tac Airport would potentially be denied the protections and benefits spelled out in the law.⁵ The ballot title of Proposition 1 speaks not of airport workers, but rather of “certain hospitality and transportation employers” who will be subject to a \$15.00 hourly minimum wage and other worker protections. CP 808. The explanatory statement in the Voters’ Pamphlet likewise describes the Ordinance’s coverage broadly: “This measure...requir[es] certain hotels, restaurants, rental car businesses, shuttle transportation businesses, parking businesses, and various airport related businesses, including temporary agencies or subcontractors operating within the City...” to pay a certain hourly wage and establish other enumerated worker protections. *Id.*

The voters were thus informed in several ways that the fundamental purpose of the measure was to improve wages and working conditions of employees working in the hospitality and transportation industries both in and around the airport. Insofar as covered employees working outside the Airport are concerned, the legislative purpose of the Ordinance is fulfilled, even if, by operation of law, their cohorts working at Sea-Tac Airport are denied the law’s protections. In such

⁵ Declaration of Howard Greenwich filed in support of the Committee’s Statement of Grounds for Direct Review, ¶ 6.

circumstances, severability is not appropriate. *League of Educ. Voters*, 176 Wn.2d at 828; *McGowan*, 148 Wn.2d at 296-97.⁶

Masterpark attempts, at page 12 of its brief, with no record evidence, to impute to voters the intent to ensure a “level playing field” among all competing employers, such that if the Ordinance had been understood as not applying to all competing employers equally, it would not have been enacted. However, the Ordinance contains built-in coverage thresholds, which the voters approved, providing that large companies are covered and smaller businesses, though engaged in the same services as the large companies, are not. Indeed, numerous hospitality and transportation employers operating both at and outside of Sea-Tac Airport, including parking facilities similar to Masterpark, are *not* covered by the Ordinance because they do not meet specific statutory thresholds.⁷ Thus, there is simply no basis for this imputation.⁸

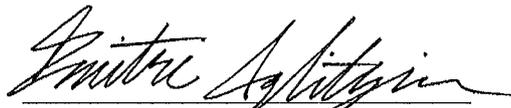
⁶ None of the cases cited by Masterpark in support of a contrary conclusion are at all persuasive. *See, e.g., Leonard v. City of Spokane*, 127 Wn.2d 194, 201-02, 897 P.2d 358 (1995) (Community Redevelopment Financing Act’s funding mechanism, which was held unconstitutional, was the “heart and soul of the Act” and the remainder of the Act would be “worthless without it”); *Lynden Transp., Inc. v. State*, 112 Wn.2d 115, 124, 768 P.2d 475, 480 (1989) (invalid cost exemption held to be “intimately and inseparably connected with an essential condition of the mandatory use of in-state fuel” and not severable); *Hall v. Niemer*, 97 Wn.2d 574, 583-84, 649 P.2d 98 (1982) (valid condition precedent within statute and city charter for filing damages claim held not severable from unconstitutional three month and 120-day provisions because intimately connected to providing quick notice of claims, facilitating budget planning, ensuring immediate identification of hazards and fostering negotiation and settlement).

⁷ *See* CP 1802 (Declaration of Howard Greenwich at ¶ 6) (identifying parking facilities not covered by the Ordinance because they do not meet the size threshold, including

CONCLUSION

This Court should reverse the trial court ruling voiding the Ordinance at Sea-Tac Airport and uphold the Ordinance in its entirety. Should it not do so, the Court should nonetheless uphold application of the Ordinance outside of Sea-Tac Airport because, insofar as non-airport workers are concerned, the Ordinance applies in its entirety and achieves the law's fundamental purpose.

Respectfully submitted this 5th day of June, 2014.



Dmitri Iglitzin, WSBA No. 17673
Jennifer Robbins, WSBA No. 40861
SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119
Ph. (206) 257-6003
Fax (206) 257-6038
Iglitzin@workerlaw.com
Robbins@workerlaw.com

*Attorneys for Appellant/Cross-Respondent
SeaTac Committee For Good Jobs*

Extra Car, MVP Airport Parking, Park N Fly, Park N Jet, Ajax Airport Parking and SeaTac Park).

⁸ Masterpark belabors the rather obvious point that the majority of covered employees under the Ordinance are airport workers and thus the majority of the covered jobs are with large corporations that are well-positioned to absorb any labor costs associated with the measure. Masterpark Amicus Br. at 3-4. This point is irrelevant, however, since an economic assessment of which employers were expected to end up paying for the increased labor costs (if any) caused by the law informs nothing about the fundamental purpose of the law.

DECLARATION OF SERVICE

I, Jennifer Woodward, declare under penalty of perjury under the laws of the State of Washington that on June 5, 2014, I caused the foregoing Appellant/Cross-Respondent SeaTac Committee For Good Jobs' Answer to Amicus Curiae Brief Of Masterpark LLC to be filed via email with the Clerk of the Supreme Court, and a true and correct copy of the same to be delivered via email, and placed in the US First Class mail, per agreement of counsel, to:

Harry J. F. Korrell
Rebecca Meissner
Taylor Ball
Roger A. Leishman
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
harrykorrell@dwt.com
RebeccaMeissner@dwt.com
TaylorBall@dwt.com
rogerleishman@dwt.com

Cecilia Cordova
Pacific Alliance Law
601 Union Street, Suite 4200
Seattle, WA 98101
cecilia@cordovalawfirm.com

Kristopher Tefft
1401 4th Ave E, Suite 200
Olympia, WA 98506-4484
Kris.tefft@wsiasn.org

Tim G. Leyh
Shane Cramer
Calfo Harrigan Leyh
& Eakes, LLP
999 3rd Ave, Suite 4400
Seattle, WA 98104-4022
Timl@calfoharrigan.com
Shanec@calfoharrigan.com

Wayne D. Tanaka
Ogden Murphy Wallace
P.L.L.C.
901 Fifth Avenue, Suite 3500
Seattle, WA 98164
wtanaka@omwlaw.com

Herman Wacker
Alaska Airlines
19300 International Boulevard
Seattle, WA 98188
Herman.Wacker@alaskaair.com

Frank J. Chmelik
Seth Woolson
Chmelik Sitkin & Davis P.S.
1500 Railroad Avenue
Bellingham, WA 98225
fchmelik@chmelik.com

Timothy O'Connell
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101-3197
tjoconnell@stoel.com

Patrick D. McVey
James E. Breitenbucher
Riddell Williams P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
PMcVey@riddellwilliams.com
JBreitenbucher@riddellwilliams.com

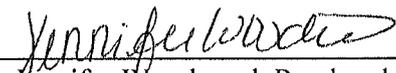
M. Roy Goldberg
Sheppard Mullin
Richter & Hampton LLP
1300 I Street NW
Suite 1100 East
Washington, DC 2005-3314
RGoldberg@sheppardmullin.com

Christopher Howard
Averil Rothrock
Virginia Nicholson
Schwabe Williamson & Wyatt
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
choward@schwabe.com

Mary Mirante Bartolo
Mark Johnsen
City of SeaTac Attorney's
Office
4800 South 188th Street
SeaTac, WA 98188-8605
mmbartolo@ci.seatac.wa.us
mjohnsen@ci.seatac.wa.us

Robert J. Guite
Sheppard Mullin
Richter & Hampton LLP
Four Embarcadero Center,
17th Floor
San Francisco, CA 94111-4109
RGuite@sheppardmullin.com

Douglas W. Hall
Ford Harrison
1300 19th St. NW, Suite 300
Washington, DC 20036
dhall@fordharrison.com


Jennifer Woodward, Paralegal

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, June 05, 2014 3:25 PM
To: 'Jennifer Woodward'
Cc: Dmitri Iglitzin; Jennifer Robbins
Subject: RE: Case No. 89723-9, BF Foods et al v. City of SeaTac - Appellant/Cross-Respondent Committee's Answers to Amicus Briefs

Rec'd 6-5-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Jennifer Woodward [mailto:woodward@workerlaw.com]
Sent: Thursday, June 05, 2014 3:23 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Dmitri Iglitzin; Jennifer Robbins
Subject: Case No. 89723-9, BF Foods et al v. City of SeaTac - Appellant/Cross-Respondent Committee's Answers to Amicus Briefs

Good Afternoon,

Attached for filing in Case No. 89723-9 (BF Foods et al v. City of SeaTac), on behalf of Appellant/Cross-Respondent SeaTac Committee For Good Jobs, are the following:

1. Committee's Answer To Amicus Curiae Brief Of Airlines For America
2. Committee's Answer To Amicus Curiae Brief Of Association Of Washington Business
3. Committee's Answer To Amicus Curiae Brief Of Masterpark LLC
4. Committee's Answer To Amicus Curiae Brief Of Washington Public Ports Association

Please let me know if you have any difficulty with the attachments.

Sincerely,
Jennifer Woodward

Jennifer Woodward | Paralegal | Schwerin Campbell Barnard Iglitzin & Lavitt LLP | 206.285.2828 x 6016 | www.workerlaw.com
This communication is intended for a specific recipient and may be protected by the attorney client and work-product privilege.
If you receive this message in error, please permanently delete it and notify the sender.