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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 CITY CLERK,

Appellants/Respondents.

and

PORT OF SEATTLE,
Respondent,

and

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

**ANSWER OF CITY OF SEATAC AND KRISTINA
GREGG, CITY CLERK TO AMICUS WASHINGTON
PUBLIC PORTS ASSOCIATION**

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{WDT1175572.DOCX;1/13098.000002/ }

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I. INTRODUCTION

The City of SeaTac, Washington (the “City”) and the City Clerk, Kristina Gregg (collectively the “City Appellants”) submit this brief in answer to Amicus Curiae Washington Public Ports Association (“Public Ports”)

This appeal involves an ordinance adopted by the voters of SeaTac which imposes certain labor standards for certain workers of certain employees in the City of SeaTac (“the Ordinance”).¹ The Ordinance was promoted by the Intervenor, SeaTac Committee for Good Jobs (“the Committee”). BF Foods, LLC, Filo Foods, LLC, Alaska Airlines, Inc. and Washington Restaurant Association (“Plaintiffs”) and the Port of Seattle (“Port”) have challenged the validity of the Ordinance, especially as the Ordinance applies to businesses at Seattle-Tacoma Airport (“the Airport”).

The Public Ports brief is restricted to a discussion of the Municipal Airports Act, RCW 14.08. Most of the brief is taken up with how important airports are to the economy of the region and that public owners of the airports should be free from interference in operating the airport. These sentiments are not in dispute nor relevant to resolution of the issues raised by the parties in this case. The City Appellants will address the few

¹ CP 98-119.
{WDT1175572.DOCX;1/13098.000002/ }

topics raised in the brief that have some relevance to the interpretation of RCW 14.08.330 and to refute certain baseless allegations.

II. ARGUMENT

A. The Public Ports' brief sets up straw men.

The Public Ports' brief adds nothing new to the analysis of RCW 14.08.330. The brief reiterates the arguments that have been made by Plaintiffs and the Port. However, the Public Ports' brief does set up several straw men and proceed to knock them down.

First, Public Ports mischaracterizes the City Appellants' and Committee's arguments. Public Ports says these arguments "would equate exclusive jurisdiction with the City being allowed to pass any regulations as long as the Port could not prove such regulation prevented aircraft from landing and taking off."² This is blatant exaggeration of the City Appellants' and Committee's arguments. The City Appellants, following this court's opinion in *King County v. Port of Seattle*,³ assert that RCW 14.08.330 is intended to preclude interference in the operations of the Airport.⁴ Nothing in the case, or in the briefs submitted by the City

² Public Ports' brief, page 6

³ 37 Wn.2d 338, 223 P.2d 834 (1950)

⁴ See Brief of Appellants City of SeaTac and Kristina Gregg, pages 10-13
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Appellants would suggest that Airport operations are only limited to takeoff and landing of aircraft.

Next, Public Ports suggests that imposing a requirement that the Port show the regulation to interfere with airport operations is an “impossible burden”.⁵ The Public Ports offer no explanation for this rather remarkable conclusion and thus it must be supposed there is none.

Finally, the Public Ports accuse the City Appellants of wanting to rewrite the statute.⁶ This is incorrect. Rather, it is the Public Ports that ignores the history behind the Revised Airports Act, the Washington case law and the relative powers accorded to the Port and the City.

B. Public Ports fail to reconcile RCW 14.08.330 with RCW 46.49.120.

Public Ports would like this Court to focus solely on the language contained in RCW 14.08.330, which pertains to a municipality’s “exclusive jurisdiction and control” of operating an airport. However, such exclusive jurisdiction and control is not absolute. Rather, such exclusive jurisdiction and control is “subject to federal and state laws, rules and regulations”. Public Ports fail to address this key component of RCW 14.08.330.

⁵ Public Ports’ brief, page 6

⁶ Public Ports’ brief, page 11
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One state law to which a municipality's jurisdiction and control is subject is the State Minimum Wage Act (SMWA), RCW Chapter 49.46. In fact, no party or amici has asserted that employees at the airport are not subject to the SMWA. RCW 49.46.120 expressly provides that standards relating to "wages, hours, or other working conditions" established by local law which are more favorable to the employee are not preempted and remain valid and applicable. If Public Port's argument is that the Ordinance does not apply to the employees at the Airport, then by this same argument the SMWA would also not apply to employees at the Airport. Clearly the Legislature never intended to exempt all employees at a municipal airport from the provisions of the SMWA. In essence, the ability of a jurisdiction to enact a local law regarding minimum wages and working conditions, such as the subject Ordinance, is specifically derived from the Legislature's grant of authority to do so. Therefore, the City Appellant's enactment of wage and working condition laws is specifically authorized by state law when these laws are more favorable to employees. Moreover, these same wage and working condition laws are what the exclusive jurisdiction and control is subject to with regard to a municipal airport.⁷

⁷ The City Appellants argued this issue to the superior court, CP 1306-1309. State laws {WDT1175572.DOCX;1/13098.000002/ }

C. Public Ports' discussion of policy is misplaced.

The Public Ports' brief's discussion of public policy is seriously misplaced.

First, the City Appellants have agreed that the Port, or whoever owns and operates a public airport, should be free from interference from other local governmental agencies in operating the airport.⁸ The interpretation of the statute proposed by the City Appellants and the Committee would do nothing to adversely affect this policy.

Public Ports raises the specter of "local whims" and the need to insulate the Port from these pesky interferences.⁹ This attitude is deeply insulting to the locally elected officials who, like the Port, are charged with promoting the public welfare and in this case to the voters themselves. Assuming that a city or its voters would only enact regulations based on "whims" has no place in our system of law and government.

The Public Ports finally discusses how the electoral process at the Port gives local citizens certain recourse.¹⁰ The Public Ports' discussion does not address, however, the fact that the Port does not have the legal

governing family leave, RCW 49.76.060, contain similar provisions.

⁸ See footnote 4, *supra*.

⁹ Public Ports' brief, page 15

¹⁰ Public Ports' brief, page 15

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authority to enact a regulation such as the Ordinance even if it wanted to, and no matter how many Port elections were held. The only local government that has the power to enact the Ordinance at the Airport is the City of SeaTac. The voters there did exactly that. Now the Public Ports' position is that there is no recourse for these voters. There is something disingenuous about extolling the power of the voters to effect change by electing Port Commissioners who are powerless to do what is requested and yet asking this court to deny the will of the voters directly expressed.

III. CONCLUSION

The City Appellants request this Court to find the provisions of the Ordinance applicable to businesses located at the Airport and otherwise uphold the validity of the Ordinance.

RESPECTFULLY SUBMITTED this 4th day of June, 2014.

OGDEN MURPHY WALLACE, P.L.L.C.

By /s/ Wayne D. Tanaka

Wayne D. Tanaka, WSBA #6303

For Respondents/Cross-Appellants

DECLARATION OF SERVICE

I, Gloria Zak, make the following true statement:

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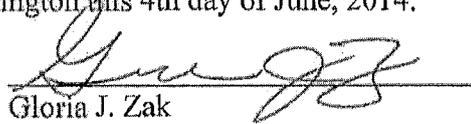
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I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

EXECUTED at Seattle Washington this 4th day of June, 2014.


Gloria J. Zak

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Sent: Wednesday, June 04, 2014 9:36 AM
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Cc: Wayne D. Tanaka
Subject: BF FOODS ET AL V. SEATAC, ET AL - Case No. 89723-9

Attached is the following:

Answer of City of SeaTac and Kristina Gregg to Amicus Washington Public Ports Association; and
Answer of City of SeaTac and Kristina Gregg to Amicus Masterpark

Hard copies follow via regular mail to counsel only.

Gloria Zak, LA to Wayne D. Tanaka

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