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No. 89723-9

(On appeal from King County Superior Court Case # 13-2-25352-6 KNT)

FILO FOODS, LLC, BF Foods, LLC, ALASKA AIRLINES, INC., and  
WASHINGTON RESTAURANT ASSOCIATION,

Respondents/Cross-Appellants,

v.

CITY OF SEATAC,

Appellant/Cross-Respondent,

and

PORT OF SEATTLE,

Respondent,

and

SEATAC COMMITTEE FOR GOOD JOBS,

Appellant/Cross-Respondent.

**FILO FOODS, LLC, BF FOODS, LLC, ALASKA AIRLINES, INC,  
AND WASHINGTON RESTAURANT ASSOCIATION'S ANSWER  
TO BRIEF OF *AMICUS CURIAE* AIRLINES FOR AMERICA**

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 ORIGINAL

## I. INTRODUCTION

As amicus curiae Airlines for America argues, federal transportation law preempts the Ordinance, including preemption under the Railway Labor Act (“RLA”), 45 U.S.C. § 151 *et seq.* This Court already overruled Intervenor Committee’s objection that the brief of Amicus Curiae Airlines for America introduced new issues not raised by the parties. Nevertheless, out of an abundance of caution, Plaintiffs respectfully submit this answer to confirm the issue of RLA preemption is indeed properly before this Court.

## II. APPELLANTS CHOSE TO IGNORE THE PREEMPTIVE EFFECT OF THE RAILWAY LABOR ACT

As Plaintiffs argued in their opening brief, *Machinists and Garmon* preemption applies to employment governed by the Railway Labor Act (“RLA”). Plaintiffs’ Answering Brief at 32; *see also Bhd. of R.R. Trainmen v. Jacksonville Terminal*, 394 U.S. 369, 381 (1969); *Dunn v. Air Line Pilots Ass’n*, 836 F.Supp. 1574, 178-80 (S.D. Fla. 1993); *aff’d* 193 F.3d 1185 (11th Cir. 1999).

Noting that federal courts have interpreted the RLA under the same federal preemption analysis as the NLRA, the superior court did not analyze the statutes separately. *See* CP 1950 n.10. Similarly, because the preemption arguments under the RLA and NLRA are congruous, Plaintiffs

did not set them out in separate sections of their brief—but both were addressed. *See, e.g.*, Plaintiffs’ Answering Brief at 32. Moreover, Plaintiffs had previously identified the relevance of the RLA in their answer to the Committee’s petition for direct review. Plaintiffs’ Answer to Committee’s Statement of Grounds for Direct Review at 7. Throughout Plaintiffs’ answering brief on the merits, they argued that the Ordinance is preempted by federal *labor* law, including the Railway Labor Act, which is specifically referenced and cited. *See* Plaintiffs’ Answering Brief at 4, 32; 35 n.19.

Nevertheless, Appellants chose not to address preemption under the RLA in either of their briefs on the merits. Instead, the Committee erroneously contended in other filings that Plaintiffs “appear to have dropped” or abandoned their RLA claim on cross-appeal. *See* No. 90113-9, Comm. Answer to Plaintiffs’ Mot. for Accelerated Review and Consolidation at 7 n.4; *See also* Comm. Opp. to Airlines for America’s Motion to file Amicus Curiae Brief at 2-4.

In light of the Committee’s erroneous statements, on April 24, 2014—prior to the due dates both for Appellants’ reply brief and for its objection to Airlines for America’s motion to file an amicus curiae brief—Plaintiffs specifically reiterated to counsel that they had *not* abandoned their claims of preemption under the RLA. Appx. A hereto (4/24/14

Letter from H. Korrell to D. Iglitzin). Nevertheless, the Committee again chose to ignore the preemptive effect of the RLA in its reply.

As amicus Airlines for America cogently argues, even though the preemption analysis is similar under either statute, the Ordinance's improper impact on employers like airlines that are subject to the RLA is even *greater* than under the NLRA, because the National Mediation Board will only certify unions on a system-wide basis. *See* Brief of *Amicus Curiae* Airlines for America at 16; *see also* Plaintiffs' Answering Brief at 35 n.19. A union interested in representing employees at the Airport, but lacking support to obtain nationwide certification, would normally have to seek *voluntary* recognition by the employer at a single airport, as permitted under the RLA. *See, e.g., Summit Airlines, Inc. v. Teamsters Local Union No. 295*, 628 F.2d 787, 795 (2d Cir. 1980). The Ordinance creates an improper incentive for an RLA employer to recognize the union at the Airport, because the legislation offers only one way to avoid the Ordinance's substantial new burdens on employers: enter into a collective bargaining agreement that waives those requirements. *See* Brief of *Amicus Curiae* Airlines for America at 16-20. This Court should adopt the reasoning regarding the RLA argued by Plaintiffs, and amplified by amicus Airlines for America.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of June, 2014.

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and Washington Restaurant  
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## CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On this date I caused to be served in the manner noted below a copy of the foregoing document on the following:

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Dated this 5th day of June, 2014.

  
Crystal Moore

# Appendix A



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April 24, 2014

*Via Email and U.S. Mail*

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Re: *Filo Foods et al v. The City of SeaTac*  
*Supreme Court No. 89723-9*

Dear Dmitri:

In the SeaTac Committee for Good Job's Answer to Plaintiffs' Motion for Accelerated Review and Consolidation, the Committee takes the erroneous position that Plaintiffs have dropped their argument that the Ordinance is preempted by the Railway Labor Act. See Fn. 4. That is incorrect. Plaintiffs identified the issue in their answer to the Committee's petition for direct review. Further, in numerous places throughout Plaintiffs' brief on the merits, they argue that the Ordinance is preempted by federal *labor* law, including the Railway Labor Act which is specifically referenced and cited. Because the preemption arguments under the RLA and NLRA are congruous, they were not set out in separate sections of Plaintiffs' brief.

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'Harry J. F. Korrell', with a stylized flourish at the end.

Harry J. F. Korrell

cc: Wayne Tanaka  
Mary Bartolo  
Timothy Leyh  
Frank Chmelik  
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**Subject:** Filo Foods et al v. The City of SeaTac; No. 89723-9

Dear Clerk:

Attached for filing please find Filo Foods, LLC, BF Foods, LLC, Alaska Airlines, Inc., and Washington Restaurant Association's Answer to Brief of Amicus Curiae Airlines for America.

Thank you.

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