

No. 89723-9

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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 the

PORT OF SEATTLE,
Respondent,

and

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

**BRIEF OF APPELLANTS CITY OF SEATAC AND
KIRSTINA GREGG, CITY OF SEATAC CITY CLERK**

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I. INTRODUCTION

The City of SeaTac, Washington (the “City”) and City Clerk Kristina Gregg, (collectively the “City Appellants”) ask this Court to reverse a trial court decision relating to a citizen initiative ordinance that raised the minimum wage and conferred other benefits on certain employees within the City (the “Ordinance”). The trial court upheld the Ordinance against various challenges by plaintiffs Filo Foods, LLC, BF Foods, LLC, Alaska Airlines, Inc., and the Washington Restaurant Association, (collectively “Filo Foods” or “Plaintiffs”). However, the trial court ruled that the Ordinance could not be enforced against employers at Seattle-Tacoma International Airport (the “Airport”).

The trial court based its decision on an erroneous interpretation of RCW 14.08.330. While this statute gives the Port of Seattle (the “Port”) “exclusive jurisdiction” over the Airport, the case law does not support the interpretation of this language as creating a zone in which no local law could ever be effective. Rather, the courts have consistently interpreted this statute as precluding interference with the Port’s operation of the Airport. Because a minimum wage requirement and other benefits for private employees working for private businesses located at the Airport do

not interfere with the Port's operations, the trial court erred in exempting these businesses from the City's minimum wage.

This erroneous ruling deprives the City of powers it has by virtue of the state constitution and general law, which powers are not possessed by the Port of Seattle. The Airport is wholly within the City's territorial limits, and the City has express authority to mandate a minimum wage, which is more favorable than the state minimum wage, for employees of businesses within its boundaries. The Port's authority, within the confines of the Airport, is limited to the operation of the Airport. The proper interpretation of RCW 14.08.330 will allow both the Port and the City to fulfill their respective constitutional and statutory duties without interference by the other.

II. ASSIGNMENT OF ERROR

The trial court erred in ruling that the Ordinance is inapplicable and void as to employers and employees conducting business within the boundaries of the Airport.

Issue Pertaining to Assignments of Error

Under RCW 14.08.330, the Port has "exclusive jurisdiction" to operate the Airport. Did the trial court err in ruling that this statute

prohibits the City from exercising its constitutional and statutory rights to enforce the Ordinance within the Airport?

III. STATEMENT OF THE CASE

The City of SeaTac is a non-charter, optional municipal code city operating under the Council/Manager form of government¹. As provided in RCW 35A.11.080, the City Council has elected to provide for the exercise of initiative and referendum.²

On June 5, 2013, the SeaTac Committee for Good Jobs (the “Committee”) filed with the City Clerk a proposed initiative ordinance entitled “Ordinance Setting Minimum Standards for Hospitality and Transportation Industry Employers” (the “Ordinance”)³. The Ordinance was accompanied by initiative petitions signed by a certain number of SeaTac voters.⁴ The City began the process to validate the signatures on the petition to determine if there were sufficient valid signatures.⁵ Pursuant to RCW 35.17.260, if the petition contains sufficient signatures, the City Council must either pass the ordinance without modification or have the ordinance placed on the next available election date.

¹ CP 5.

² SeaTac Municipal Code Chapter 1.10, CP 44-54.

³ CP 6, 13. A copy of the Ordinance, with proposed codification is found at CP 111-119.

⁴ CP 129-500.

⁵ CP 13-14.

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On July 8, 2013, Plaintiffs filed an action in King County Superior Court seeking to prevent the measure from being enacted by the City or placed on an election ballot and for a declaration that the Ordinance was invalid under a number of state and federal grounds.⁶ The trial court denied Filo Foods attempts to effectively enjoin the City from validating the signatures.

After the City determined that there were sufficient valid signatures, the matter was considered by the City Council. Ultimately, the City Council passed a resolution setting the Ordinance for election on November 5, 2013. After a series of rulings, the trial court determined that the petitions submitted did not contain a sufficient number of signatures due to the inclusion of 61 signatures from voters who had signed the petition more than once, in apparent violation of RCW 35A.01.040(7).⁷ Emergency review of this ruling was sought, and on September 6, 2013, the court of appeals reversed the trial court and allowed the Ordinance to be placed on the November ballot pursuant to the City's resolution.⁸

⁶ CP 1-635.

⁷ CP 674-684.

⁸ See Slip Opinion, *Filo Foods, LLC v City of SeaTac*, No. 70758-2-1, 4, (Wash. Ct. App., Feb. 10, 2014).

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The Ordinance was approved by a narrow margin at the November election.⁹ By its terms, the Ordinance was to be effective on January 1, 2014. Meanwhile, the Plaintiffs obtained leave to amend their complaint to add the Port as a defendant and to add certain claims regarding the validity of the Ordinance.¹⁰ On December 13, 2013, the trial court heard oral arguments on Filo Foods' motion for declaratory judgments based on state and federal grounds. This was essentially a trial. At this trial, the Port did not submit any declarations suggesting that the Ordinance would cause any disruption in the operation of the Airport. Moreover, in its trial brief, the Port stated that "The Port takes no position regarding the potential benefits or drawbacks of an increased minimum wage, paid sick leave, or any of the other substantive rights provided by [the Ordinance]."¹¹ The trial court upheld the Ordinance against most of the challenges, but ruled that the Ordinance could not be enforced against employers at the Airport.¹² This decision was based on the trial court's interpretation of RCW 14.08.330, which states that an airport is under the "exclusive

⁹ CP 1298.

¹⁰ CP 701-708.

¹¹ CP 1350, note 1 ("The Port takes no position regarding the potential benefits or drawbacks of an increased minimum wage, paid sick leave, or any of the other substantive rights provided to employees by SMC Ch. 7.45.").

¹² CP 1934-1966.

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jurisdiction and control of the municipality or municipalities controlling and operating it.”

IV. SUMMARY OF ARGUMENT

The trial court’s interpretation of RCW 14.08.330 was too broad. This statute was never intended to create an enclave within a city’s boundaries wherein no local law could ever be enforced. Rather, this Court has interpreted RCW 14.08.330 as prohibiting the local government from interfering with airport operations. The Port has “exclusive jurisdiction and control” only to the extent necessary to carry out those operations.

The City, in contrast, is specifically vested with the power to increase the minimum wage for employers and employees within its territorial limits. The trial court’s overreaching interpretation has the illogical effect of prohibiting the City from exercising that express authority, in deference to the Port which has no such authority. The trial court thus incorrectly deprived the City of jurisdiction within its boundaries.

Because RCW 14.08.330 prohibits the City only from taking actions that interfere with the Port’s operations, Plaintiffs bore the burden of proving that enforcement of the Ordinance would create such

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interference. Plaintiffs failed to carry this burden. The Port took no position as to whether or how the minimum wage could affect the operation of the Airport. Plaintiffs submitted evidence as to how the Ordinance would affect them, but they produced no evidence connecting this to an alleged interference with the Port's functions. As such, the trial court erred in ruling that the Ordinance could not be enforced against businesses located at the Airport.

V. ARGUMENT

A. Standard of review.

The trial court was advised that the parties did not think there were contested facts, and thus the court could make a ruling as a matter of law.¹³ The trial court proceeded to interpret RCW 14.08.330 and issue its ruling. Statutory interpretation is a question of law reviewed de novo. The goal is to ascertain and carry out the legislative intent. *Dep't of Ecology v. Campell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Initially the court must look to the plain language of the statute. However, if the plain reading of the statute is subject to more than one reasonable interpretation, the courts must resort to statutory construction, legislative history and relevant case law for assistance in discerning legislative intent.

¹³ RP 7-9.
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Christensen v. Ellsworth, 162 Wn.2d 365, 373, 173 P.3d 228 (2007). These principles apply in the case of a municipal ordinance. *Puyallup v. Pac. NW Bell*, 98 Wn.2d 443, 656 P.2d 1035 (1982).

B. History and purpose of the statute

As in all cases of statutory interpretation, one must begin with the words of the statute. But in order to properly understand the words, it is important to know the background of the law.

Beginning in 1938, with the passage of the Civil Aeronautics Act, the federal government started to assert control over civil aviation including approval of routes and rates, certification of aircraft and various personnel issues. Nevertheless, the states retained an important role in civilian air transportation, chiefly in building and operating the airports.

To that end, in 1944, the National Association of State Aviation Officials (NASAO) drafted a set of model laws to be adopted by the states. The stated purpose of these model laws was to ensure safety and uniformity of regulations and to develop a national system of civil aviation, in partnership with the federal government.¹⁴ One of the model laws proposed was the Revised Uniform Airports Act (Revised Act), approved by NASAO in 1944. The Washington Legislature adopted this

¹⁴ See last paragraph of Foreword, CP 1636. The purposes of the model laws are set forth in Section 2 of the State Aeronautic Department Bill, CP 1638-9. {WDT1142820.DOCX;3/13098.000002/ }

model act virtually verbatim in 1945 as Chapter 182, Laws of 1945, now codified as Chapter 14.08 RCW.

C. **Chapter 14.08 RCW, the Revised Airports Act.**

RCW 14.08.330 (the “Statute”) states:

Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of this chapter shall, subject to federal and state laws, rules, and regulations, *be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it.* The municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2). *No other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations.* However, by agreement with the municipality operating and controlling the airport or air navigation facility, a municipality in which an airport or air navigation facility is located may be responsible for the administration and enforcement of the uniform fire code, as adopted by that municipality under RCW 19.27.040, on that portion of any airport or air navigation facility located within its jurisdictional boundaries.¹⁵

¹⁵ The last provision related to the uniform fire code was not part of the original 1945 enactment but was added later by Chapter 246 Laws of 1985.
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(Emphasis added). The trial court's decision hinged on the language that gives "exclusive jurisdiction and control" to "the municipality or municipalities controlling and operating" an airport. *Id.*

As an initial matter, the term "police jurisdiction" referenced later in the Statute is not synonymous with the police power. Rather, "police jurisdiction" refers to a municipality's authority to exercise extraterritorial jurisdiction. For instance, RCW 14.08.120(2) provides that the municipality "may also adopt and enact rules...designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of...aerial navigation."¹⁶ Since the Airport lies wholly within the City of SeaTac, this provision has no relevance to this case.

D. The law applies only to control and operation of the Airport.

The trial court accepted the interpretation of the term "exclusive jurisdiction," offered by the Port and Filo Foods, as meaning that the City cannot enforce any city regulations at the Airport.¹⁷ However, this Court's precedent does not support such an expansive interpretation. Rather, this

¹⁶ This point was raised by the Port at trial. The Port agreed that "police jurisdiction" relates only to extraterritorial exercise of jurisdiction. RP 34-36.

¹⁷ This argument applies equally to King County regulations, although County regulations are not at issue in this case.
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Court has interpreted the Statute as applying only to City regulations that interfere with the Port's control and operation of the Airport.

Only one reported case has directly considered RCW 14.08.330. *See King County v. Port of Seattle*, 37 Wn.2d 338, 223 P.2d 834 (1950). That case dealt with King County's authority to "charge or exact any license fees or occupation taxes for the operations [of the Airport]." King County argued that since the Statute removed the Airport from the territory of the county, the Statute violated Article XI, § 3 of the state constitution. The Court held that the statute's reach was more limited:

We are of the opinion that [the Statute] does not, nor does it attempt to, remove this territory from King county. The effect of this section, when read in the light of the entire revised airports act, is *merely to preclude appellant from interfering with respect to the operation of the Seattle-Tacoma airport and forbids appellant's exacting any license fees* since the legislature has declared its policy to be that the responsibility of providing adequate and satisfactory transportation and other public services shall belong to the Port. No territory is stricken from King county. *The legislature by general law has taken away from appellant its power to exact license fees within the airport.* This was its prerogative.

Id. at 348 (emphasis added).

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Thus, although the Court based its decision on the portion of the Statute that prohibited any other municipality from charging or exacting any license fees, the Court also commented on the Statute's intent as a whole. The Court stated that the intent is merely to preclude interference with the operations of the Airport. The Court of Appeals has explained that this interpretation applies specifically to the phrase "exclusive jurisdiction and control." See *City of Normandy Park v. King County Fire Dist. 2*, 43 Wn. App 435, 441, 717 P.2d 769 (1986) (quoting *King County*, 37 Wn.2d at 348) (noting that this Court "held that the phrase 'exclusive jurisdiction and control' only precludes other entities 'from interfering with respect to the operation of the Seattle-Tacoma airport.'").

This interpretation is supported by the fact that the "exclusive jurisdiction and control" language is found only in RCW 14.08, which deals solely with authority of entities such as the Port to own and operate an airport. The Port's general powers are found in RCW 53.08. There the legislature has given the Port significant powers, but nowhere in this Chapter has the legislature stated that the Port has "exclusive jurisdiction and control" within the Port district or over any Port facilities. Only with respect to *operations* at a Port-owned airport is the Port's jurisdiction exclusive.

E. Cases cited by the trial court are distinguishable.

The trial court relied upon two Washington cases to support its decision that “exclusive jurisdiction” means no other municipal entity can enforce its laws at the Airport. The first is *Dep’t of Labor and Indus. v. Dirt & Aggregate, Inc.*, 120 Wn.2d 49, 837 P.2d 1018 (1992). The issue in that case was whether the state, acting through the Department of Labor and Industries, could enforce WISHA regulations against a contractor who was working at Mount Rainier National Park (the “Park”). In 1901, the state legislature passed a law that ceded exclusive jurisdiction to the United States over the Park, in accordance with Article I, Section 8, clause 17 of the federal constitution.¹⁸ The state’s cession created a federal enclave in the Park where, pursuant to the federal constitution, the state lost all jurisdiction to enact laws. Furthermore, if a state cedes jurisdiction, “the land acquires a territorial status and ceases to be a part of the state, either territorially or jurisdictionally.”¹⁹

The case at hand is not about creation of an airport enclave or about constitutional law. As established by the courts in *King County* and *Normandy Park*, the Statute does not remove the Airport from the

¹⁸ Congress shall have power “to exercise exclusive legislation in all cases whatever...over all places purchased by the consent of the legislature...”

¹⁹ *Ryan v. State*, 188 Wash. 115, 130, 61 P.2d 1276 (1936).
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territorial boundaries of the City. The history of the Statute shows no indication that the drafters of this model law intended to create an enclave in the manner of Article I, Section 8. Rather, the drafters were concerned merely that the municipality owning and operating the airport be able to do so outside the municipalities own corporate limits and free of interference from other governmental agencies.

The second case is *Simpson Timber Co. v. Olympic Air Pollution Control Auth.*, 87 Wn.2d 35, 549 P.2d 5 (1976). That case involved a conflict between the authorities of a state agency and a local agency to issue burn permits. The local agency had authority for burn permits relating to certain purposes. But the Court found that, pursuant to RCW 70.94.660, the State Department of Natural Resources (DNR) had exclusive control and authority over burns for abating or preventing forest fire hazards.

A timber company obtained a DNR permit for the purpose of abating fire hazards and preparing the site for reforestation. The timber company complied with all conditions of the permit. Nevertheless, the local agency issued the timber company a citation for violation of the agency's regulations.

On appeal, this Court interpreted the various statutes and concluded that the legislature had intended two agencies to have burn permit authority, but in different respects. Thus, *Simpson Timber* merely supports the position that a government entity can have exclusive jurisdiction over a facility for a limited purpose, while another entity can still exercise authority in the same location for other purposes. This is precisely the City's argument here.

F. Cases from other jurisdictions

1. Research has revealed no cases from other states that involve either of NASAO's model laws with respect to jurisdiction

The Statute as adopted by our state is a near word-for-word copy of a model law created by NASAO in 1944. In 1946, NASAO also adopted another model Municipal Airports Act which revised the 1944 model law.²⁰ Several states, including Washington, appear to have adopted the 1944 version²¹, and some have adopted the 1946 version.²² Research has revealed no published case that discusses the language in

²⁰ The 1946 Municipal Airports Act is set forth beginning at CP 1549. Section 8(a) of the 1946 version drops the word "exclusive" when stating that the airport is under the jurisdiction of the municipality controlling or operating it. See CP 1556

²¹ Minnesota, Minn.Stat. §360.045; North Carolina, N.C. Gen. Stat. §63-58; Nebraska, Neb. Rev. Stat. § 3-236; Delaware, Del. Code Ann., title 2, § 912.

²² Oklahoma, Okla. Stat. Title 3, §65.8; Tennessee, Tenn. Code Ann. § 42-5-113; Montana, Mont. Code Ann. § 67-10-301; Arkansas, Ark, Code Ann. § 14-361-111; Mississippi, Miss. Code Ann. § 61-5-13; Texas, Tex. Transp. Code Ann. § 22.014; Nevada, Nev. Rev. Stat. § 496.130.
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question here. Research has disclosed, however, that two states' courts have considered cases involving statutes regulating airports which contain similar language on jurisdiction, but which were not adopted from the model laws.

2. New York cases

In 1965 New York State established a Metropolitan Commuter Transportation Authority (MCTA) with authority to improve commuter transportation services, including rail, bus and air. Section 1266(8) provides in relevant part:

8. The authority may do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of transportation facilities, equipment or real property operated by or under contract, lease or other arrangement with the authority and its subsidiaries, and New York city transit authority and its subsidiaries. *Except as hereinafter specially provided, no municipality or political subdivision, including but not limited to a county, city, village, town or school or other district shall have jurisdiction over any facilities of the authority and its subsidiaries, and New York city transit authority and its subsidiaries, or any of their activities or operations.* The local laws, resolutions, ordinances, rules and regulations of a municipality or political subdivision, heretofore or hereafter adopted, conflicting with this title or any rule or

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regulation of the authority and its subsidiaries, and New York city transit authority, and its subsidiaries, except such facilities that are devoted to purposes other than transportation or transit purposes. Each municipality or political subdivision, including but not limited to a county, city, village, town or district in which any facilities of the authority or its subsidiaries or New York city transit authority or its subsidiaries are located shall provide for such facilities police, fire and health protection services of the same character and to the same extent as those provided for residents of such municipality or political subdivision.

This particular section has been the subject of several New York cases. All have held that the law does not insulate the MCTA from claims that it violated a city law preventing racial discrimination. The most recent case is *Tang v. New York City Transit Auth.*, 867 N.Y.S.2d 453, 55 A.D.3d 720 (2008). There a city employee brought an action to recover damages for retaliation in violation of a New York City code provision against employment discrimination. The trial court had dismissed the action based on the provisions in Section 1266(8). The New York Court of Appeals reversed, holding that this statute merely prohibited the city from interfering in the MCTA's operations:

Contrary to the defendants' contention, Public Authorities Law § 1266(8) does not exempt the New York City Transit Authority (hereinafter the Transit Authority) from all local laws affecting its activities and operations, but rather, only those "conflicting with this title or any rule or regulation" of the Transit Authority. Thus, "[i]t would then appear that the Legislature did not intend to prohibit the application of all Local Laws to the [Transit Authority], but only of such laws that interfered with the accomplishment of its transportation purposes" *Bogdan v. New York City Tr. Auth.*, 2005 U.S. Dist. LEXIS 9317, #15-16, 2005 WL 1161812, #5). Compliance with the provisions in the New York City Administrative Code against employment discrimination would not interfere with the function and purpose of the Transit Authority (*see Matter of Levy v. City Commn. on Human Rights*, 85 N.Y.2d 740, 745, 628 N.Y.S.2d 245, 651 N.E.2d 1264; *Terranova v. New York City Tr. auth.*, 49 A.D.3d 10, 14-15, 850 N.Y.S.2d 123; *Huerta v. New York City Tr. Auth.*, 290 A.D.2d 33, 735 N.Y.S.2d 5).

Id. at 454.

This interpretation is stated throughout the New York courts' § 1266(8) jurisprudence. See *Levy v. City Comm'n on Human Rights*, 85 N.Y.2d 740, 744-45, 651 N.E.2d 1264, 628 N.Y.S.2d 245 (1995). In *Levy*, for example, the New York Court of Appeals explained that the public authorities that benefit from this statute "are 'independent and

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autonomous' to the extent that they should be free from requirements imposed on other State agencies that would interfere with the accomplishment of the public corporation's purpose." *Id.* at 745 (citing *Matter of Plumbing, Heating, Piping & Air Conditioning Ass'n. v. New York State Thruway Auth.*, 5 N.Y.2d 420, 423, 158 N.E.2d 238, 185 N.Y.S.2d 534 (1959)). In *Everson v. New York City Transit Auth.*, 216 F. Supp. 2d 71 (E.D. N.Y. 2002), a federal district court relied on *Levy* to reject an argument by the New York City Transit Authority ("NYCTA") that § 1266(8) precluded a claim against it for race discrimination and retaliation in violation of the New York City Human Rights law. The federal district court discussed the earlier *Levy* case and determined that "there is no reason to conclude that . . . the New York Court of appeals would today decide that the NYCTA is exempt from the reach of the New York City Administrative Code." *Id.* at 81.

3. Florida cases.

The Florida courts have considered challenges to a Florida law²³ which provides:

Any [airport] owned and operated by such county and lying within the boundaries of a

²³ Fla. Stat. §125.015.
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municipality shall be under the exclusive jurisdiction of such county and shall be without the jurisdiction of said municipality.

In *City of Opa-Locka v. Dade County*, 384 So.2d 937 (1980), Dade county operated an airport which was partially located in the City of Opa-Locka. The city brought a declaratory judgment action against the county apparently to determine whether the city could levy taxes on property located within the airport. Based on the plain wording of the statute, the Florida court held that the city “could not lawfully levy any such municipal tax within that part of the defendant County’s airport which though lying within the City boundaries, is ‘without the jurisdiction’ of plaintiff city.”²⁴ Similar results were obtained in *City of Dania v. Hertz Corp.*, 518 So.2d 1387 (1998) and *City of Opa-Locka v. Dade County*, 247 So.2d 755 (1971).

The New York and Florida cases demonstrate that the specific wording of the statute can lead to different outcomes. The New York statute appears to strongly suggest that the law is limited to the “activities or operations” of the airport. The Florida statute is very explicit in stating that the airport is “without the jurisdiction” of the city.²⁵ The Washington

²⁴ *Id.* at 938-939.

²⁵ The *Normandy Park* court has specifically held that the Statute does not remove the Airport from the territorial boundaries of the City.
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Statute appears to be somewhat in the middle of the New York and Florida statutes. It is significant that the only case which has adopted an interpretation in accord with the trial court is based on a statute that contains very explicit language regarding the lack of jurisdiction of the surrounding city.

G. The law does not vest police power with the Port.

The Statute states that the Airport shall be under the “exclusive jurisdiction and control” of the Port. In this sense, “jurisdiction” is authority or power.²⁶ The Statute does not grant authority or power and the exclusive jurisdiction can only extend as far as the Port has authority or power to act. The Port and the City have been granted vastly different powers. The City is given authority directly by the State Constitution to “make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.”²⁷ This is the police power. In addition, as a code city, the City’s authority is not constrained but must be construed by the courts liberally in favor of the City. RCW 35A.01.010 provides:

²⁶ *Webster's New World Dictionary* 766 (2d ed. 1974). *Black's Law Dictionary* 867 (8th ed. 2004) defines jurisdiction in terms of the power and authority of a court to hear and decide a case.

²⁷ Const. art. XI, § 11. See also RCW 35A.11.020: “[A city council] may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city...”
{WDT1142820.DOCX;3/13098.000002/ }

All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific or in general terms, shall be liberally construed in favor of the municipality.

Furthermore, RCW 35A.11.020 provides:

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state and not specifically denied to code cities by law. ... In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of the state before or after the enactment of this title... .”

Indeed, the state legislature has expressed a strong policy position with respect to the ability of local governments to enlarge the minimum wage and family leave policies for employees in their jurisdictions. *See, e.g.*, RCW 49.46.120 (expressly allowing local ordinances that provide for more favorable minimum wages than those required in the state’s Minimum Wage Act); RCW 49.78.360 (containing similar provisions with respect to local family or medical leave laws).

By contrast, the Port is a special purpose district and its powers are to be narrowly construed. *Branson v. Port of Seattle*, 152 Wn.2d 862, 101 P.3d 67 (2004); *State v. Port of Seattle*, 104 Wash. 634, 177 P. 671 (1919), {WDT1142820.DOCX;3/13098.000002/ }

modified, 104 Wash. 634, 180 P. 137 (1919). The Port's general authority is set forth in RCW 53.08. More specifically and with respect to the Airport, the Port's authority is set forth in Chapter 14.08 RCW. The Port is granted authority to make rules "for the management, government and use of any properties under its control." The Port is also granted powers to lease property, to charge rents for the use of airport property, to acquire and construct facilities needed for air transport, to issue bonds and otherwise borrow money.²⁸ In short, the Port is authorized to own and operate an airport.

Enactment of the Ordinance is an exercise of the police power. The Port has not been granted the police power by either the Constitution or any statute.²⁹ The Port has been given no authority to impose minimum wages or regulate worker benefits on third parties. The Port's own attorney is unsure if the Port has the authority to impose worker benefit provisions in contracts with its tenants under the Port's clear authority to enter into leases and contracts.³⁰ Conversely, it is not disputed that as a

²⁸ See RCW 14.08.120 and RCW 14.08.080-.118

²⁹ The reference in RCW 14.08.120(2) to the power to appoint police officers "with full police powers", is not a grant of the police power in Article XI, Section 11. Rather, it authorizes the Port to appoint officers with power to arrest people for violations of Port rules.

³⁰ RP 98. "If the Port cannot do it, and I submit to you we've looked at this issue very closely, and I submit to you it's a very close issue as to whether the Port can or cannot {WDT1142820.DOCX;3/13098.000002/ }

matter of general principle, cities can enact police power regulations that establish a more liberal minimum wage than state or federal law and require other provisions that benefit workers.³¹

The Port has exclusive jurisdiction to exercise those powers that it is given to own and operate the Airport. There is no indication in the Statute that a city is prohibited from exercising powers not given to the Port and not interfering with the operations of the Airport. As articulated in the *Normandy Park* and *King County* cases, the obvious intent of the term “exclusive jurisdiction” is to allow the municipal entity full control of the airport operations, free from interference from other local governments. This interpretation is consistent with the history of the legislation. The drafters of the model laws wanted to allow municipalities to be able to own and operate airports outside their jurisdiction and thus be free from interference.³² There was no intent to create a zone where no local laws would be effective, regardless of the laws’ effect on airport operations.

establish or require, you know, social justice type elements in its contracts with its contractors...”

³¹ See, e.g., RCW 49.46.120 and RCW 49.78.360.

³² Herzel Plaine, *State Aviation Legislation*, 14 J. Air L. & Com. 333, 340 (1947), found at CP 1611.

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As mentioned above, the Port submitted no evidence as to the effect of the Ordinance on Airport operations. In fact, the Port's attorney specifically admitted that the Port took no position on the positive or negative effects of the Ordinance on the Port.³³ To be sure, Alaska Airlines, Filo Foods and the other plaintiffs submitted declarations that purported to show the negative impacts of the Ordinance on their businesses. However, there has been no connection established between the negative economic impacts, if any, of the Ordinance on tenants and contractors at the Airport, and the Port's operation of the Airport. The most the Port can argue is that the Ordinance somehow affects airport operations because certain workers' wages and benefits have been altered.³⁴ However, the Port elected not to submit one declaration from a qualified witness or one piece of evidence that would have demonstrated that the wages and benefits of baggage handlers and other workers of third parties who work at the Airport will affect the Port's ability to run the Airport.

³³ See *supra* note 11.

³⁴ RP 99-100.

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VI. CONCLUSION

For the foregoing reasons, the City Appellants ask that this court reverse the trial court's ruling with respect to RCW 14.08.330 and hold that the Ordinance applies in full force at Sea-Tac Airport.

RESPECTFULLY SUBMITTED this 3rd day of March, 2014.

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

By 
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DECLARATION OF SERVICE

I, Gloria Zak, make the following true statement:

On March 3, 2014, I provided a copy of the Brief of Appellants City of SeaTac and Kristina Gregg, City of SeaTac City Clerk to the following via email and regular mail:

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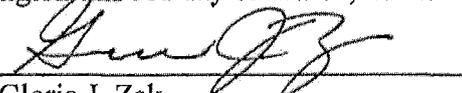
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I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

EXECUTED at Seattle Washington this 3rd day of March, 2014.


Gloria J. Zak

OFFICE RECEPTIONIST, CLERK

From: Gloria J. Zak <gzak@omwlaw.com>
Sent: Monday, March 03, 2014 2:23 PM
To: OFFICE RECEPTIONIST, CLERK; Averil Rothrock; Bess McKinney; Cecilia Cordova; Christopher Howard; Dmitri Iglitzin; Donna Alexander; Frank Shmelik; Harry Korrell; Herman Wacker; Laura Ewan; Mar Mirante Bartolo; Mark Johnsen; Roger Leishman; Seth Woolson; Shane Cramer; Taylor Ball; Tim Leyh; Virginia Nicholson
Cc: Wayne D. Tanaka
Subject: BF Foods, et al v. City of SeaTac, et al and Port of Seattle and SeaTac Committee for Good Jobs
Attachments: BRIEF OF APPELLANTS SEATAC, ET AL (1150292x7ACF2).pdf

Case No. 89723-9

Attached for filing is **Brief of Appellants City of SeaTac and Kristina Gregg, City of SeaTac City Clerk.**

A hard copy follows via regular mail to counsel only.

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