UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BNSF RAILWAY COMPANY and UNION PACIFIC RAILROAD COMPANY, Plaintiffs v. CITY OF SEATTLE, SEATTLE OFFICE FOR CIVIL RIGHTS, and JULIE NELSON, in her official capacity as Director, Seattle Office For Civil Rights, Defendants.	No. **COMPLAINT**

I. INTRODUCTION

1. Plaintiffs BNSF Railway Company ("BNSF") and Union Pacific Railroad Company ("Union Pacific") (collectively "Plaintiffs") seek a declaration, pursuant to 28 U.S.C. §§ 2201 and 2202, that the City of Seattle's new "Paid Sick and Safe Leave" Ordinance (the "Ordinance") is preempted, in whole or in part, by the Railroad Unemployment Insurance Act ("RUIA"), 45 U.S.C. § 351 et seq., the Railway Labor Act ("RLA"), 45 U.S.C. § 151 et seq., the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140 et seq., and/or state law. Plaintiffs also seek injunctive relief prohibiting Defendants from enforcing the Ordinance with respect to Plaintiffs' employees.

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II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this civil action under 28 U.S.C. § 1331, because it arises under the Constitution and laws of the United States, and under 28 U.S.C. § 1337, because it arises under an Act of Congress regulating commerce.

3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to this action occurred in this judicial district and/or because the Defendants reside or are found in this judicial district.

III. PARTIES

4. Plaintiff BNSF is a carrier by rail as defined in the Surface Transportation Act, 49 U.S.C. § 10102, and a carrier as defined in Section 1, First of the RLA, 45 U.S.C. § 151, First. BNSF is headquartered in Fort Worth, Texas, and operates a rail transportation system in interstate commerce, including in the state of Washington. BNSF employs a number of individuals who work in and around Seattle.

5. Plaintiff Union Pacific is a carrier by rail as defined in the Surface Transportation Act, 49 U.S.C. § 10102, and a carrier as defined in Section 1, First of the RLA, 45 U.S.C. § 151, First. BNSF is headquartered in Omaha, Nebraska, and operates a rail transportation system in interstate commerce, including in the state of Washington. Union Pacific employs a number of individuals who work in and around Seattle.

6. Defendant City of Seattle ("the City") is a municipality of the state of Washington.

7. Defendant Seattle Office of Civil Rights ("SOCR") is a municipal agency of the City and is the agency charged in the Ordinance with responsibility for administering and enforcing the portions of the Ordinance at issue in this action.

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8. Defendant Julie Nelson is the Director of SOCR and the officer of SOCR charged in the Ordinance with responsibility for administering and enforcing the portions of the Ordinance at issue in this action.

IV. FACTUAL ALLEGATIONS

9. Railroad employees, including all of the BNSF and Union Pacific employees who work in Seattle, are eligible for sickness benefits coverage under the RUIA. Under that statute, qualified employees are entitled to up to 26 weeks of compensation if temporarily unable to work due to illness, injury, or pregnancy. RUIA sickness benefits are administered by an independent federal agency, the Railroad Retirement Board.

10. A majority of the employees of BNSF and Union Pacific who work in Seattle are represented by various labor unions. Pursuant to the RLA, the railroads bargain with these unions over all rates of pay, rules, and working conditions, including various aspects of employee paid and unpaid leave. Such collective bargaining has resulted in a variety of agreements on, among other subjects, paid and unpaid leave.

11. Collective bargaining agreements concerning paid and unpaid leave vary by union. For example, locomotive engineers receive up to 11 paid personal days per year that can be used for any purpose (as well as paid vacations and substantial amounts of unpaid leave).

12. Most non-operating employees (also known as "support crafts") – including shopcraft employees, maintenance of way employees, and signal repair employees – are covered by "supplemental sickness benefit plans," which augment the sickness benefits payable under the RUIA. In general, a supplemental sickness benefit plan allows rail employees to receive a predetermined amount (equal to roughly 66% of full pay) for periods of time missed due to qualifying illness or injury, for up to a full year.

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13. Unionized clerical employees of BNSF and Union Pacific are not covered by a supplemental sickness plan. Instead, they receive a set number of paid sick leave days (as well as vacations, holidays, and personal leave).

14. During the last several rounds of collective bargaining, all of the railroad unions have proposed establishing or expanding paid sick leave benefits, in addition to the contractual and statutory benefits that railroad employees already receive. The unions have not, however, succeeded in obtaining such additional benefits at the bargaining table.

15. In 2011, while the most recent round of railroad collective bargaining was still ongoing, various interest groups – including some with ties to labor unions – lobbied the Seattle City Council for a new ordinance regarding paid sick leave. Some of these interest groups have publicly stated that their effort in Seattle is part of a nationwide effort to pass local and state laws requiring paid sick leave for both union and non-union workers.

16. On or about September 12, 2011, the Seattle City Council passed Ordinance No. 123698, which requires private sector employers to provide paid sick leave and paid safe leave to their employees who perform more than 240 hours of work in Seattle within a calendar year.

17. The Ordinance requires that employees accrue paid time off based on "hours worked." It permits employees to begin using such paid time off on the 180th calendar day after the commencement of employment, and allows employees to carry over unused time from year to year, subject to a maximum cap. The Ordinance exempts certain employers with "a combined or universal paid leave policy," but only if such policy meets certain thresholds established by the Ordinance. Employees must be permitted to use leave for a set of enumerated purposes, including but not limited to the employee's mental or physical illness, a family member's illness, or for various reasons relating to domestic violence, sexual assault, or stalking.

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18. In addition to regular pay during any period of covered leave, the Ordinance requires employers to provide "the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken."

19. The Ordinance provides that it will apply to employees covered by collective bargaining agreements unless the Ordinance requirements are "expressly waived in the collective bargaining agreement in clear and unambiguous terms."

20. The Ordinance directs SOCR to promulgate regulations for implementation and enforcement of the Ordinance's provisions.

21. The Ordinance goes into force on September 1, 2012.

22. BNSF and Union Pacific have asked SOCR to confirm that the terms of the Ordinance will not be enforced against them. SOCR has declined to do so.

V. COUNT ONE

23. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 22.

24. The Supremacy Clause of the United States Constitution provides that federal law is the "supreme Law of the Land" and therefore it preempts state and local laws that interfere with or are contrary to federal law.

25. The RUIA expressly provides that it shall be the "exclusive" source of sickness benefits or compensation for railroad employees. 45 U.S.C. § 363(b). The RUIA therefore preempts other laws that require sickness benefits or compensation for railroad employees.

26. Because the RUIA expressly preempts other laws that mandate sickness benefits or compensation for railroad employees, the Ordinance is preempted to the extent that it requires railroads to provide paid leave to employees for purposes of the employee's own illness or injury.

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VI. COUNT TWO

27. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 26.

28. The RLA governs labor relations in the railroad and airline industries. The purposes of the RLA include, inter alia, to "avoid any interruption to commerce or to the operation of any carrier engaged therein," and "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions." 45 U.S.C. § 151a.

29. The RLA prohibits changes in rates of pay, rules and working conditions, as embodied in agreements, except through the collective bargaining procedures of the Act. 45 U.S.C. § 152 Seventh.

30. In enacting the RLA, Congress intended to leave settlement of all disputes over proposed changes in rates of pay, rules, and working conditions to collective bargaining. Accordingly, state and local laws that purport to mandate changes to rates of pay, rules, and working conditions are preempted unless such laws impose only "minimum labor standards" that do not conflict with the goals of federal labor law.

31. The Ordinance conflicts with federal labor policy as embodied in the RLA to the extent that requires BNSF and Union Pacific to change rates of pay, rules, and working conditions in a fashion that has not been negotiated through the processes mandated by the RLA. It is therefore preempted by the RLA.

32. By dictating a result that alters the outcome of the railroads' recent collective bargaining negotiations, the Ordinance deprives the plaintiff railroads of an equitable bargaining process. It is therefore preempted by the RLA.

33. The Ordinance is not a minimum labor standard because it imposes terms that unions have sought unsuccessfully in collective bargaining with the plaintiffs, sets standards that

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exceed state and federal law, is not of general application, and otherwise discourages and interferes with collective bargaining under the RLA. Because it does not qualify as a minimum labor standard, the Ordinance is preempted by the RLA.

VII. COUNT THREE

34. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 33.

35. Section 1144(a) of ERISA provides that it shall preempt any state or local law that "may . . . relate to any employee benefit plan . . . ."

36. The rail carriers' supplemental sickness benefit plans are subject to ERISA, and qualify as "employee benefit plan[s]" within the meaning of § 1144(a) of ERISA. The Ordinance conflicts with or would alter the terms of the supplemental sickness benefit plans.

37. The rail carriers' health care insurance plans are subject to ERISA, and qualify as "employee benefit plan[s]" within the meaning of § 1144(a) of ERISA. The Ordinance conflicts with or would alter the terms of the carriers' health care insurance plans to the extent that §§ 14.16.010.O and 14.16.010.P require the provision of employee health care benefits to employees while utilizing paid leave under the Ordinance.

38. The provisions of the Ordinance that conflict with or otherwise "relate to" the railroads' supplemental sickness benefit plans and/or the railroads' health care insurance plans are preempted under § 1144(a) of ERISA.

VIII. COUNT FOUR

39. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 38.

40. Under the Washington state constitution, local ordinances or municipal regulations that prohibit what state law permits, or that otherwise conflict with state law, are preempted.

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41. In the Leave for Victims of Domestic Violence, Sexual Assault and Stalking Act (Wash. Rev. Code 49.76), Washington state law sets minimum standards for employee leave in circumstances relating to domestic violence, sexual assault, and stalking. It provides, in particular, that employers must offer leave to employees for the same purposes of the "safe leave" identified in the Ordinance. It further provides that such leave may be offered on an unpaid basis, although employees must be permitted to utilize other available paid leave for the designated purposes.

42. Because the Ordinance requires employers to offer safe leave on a paid basis, it conflicts with the provisions of state law that allow employers to choose to provide such leave on an unpaid basis.

43. Because the Ordinance conflicts with the state's Leave for Victims of Domestic Violence, Sexual Assault and Stalking Act, it is preempted to the extent that it requires that safe leave be paid leave.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask for judgment against Defendants, and respectfully pray that the Court:

A. Issue a judgment declaring that:

1. Seattle City Ordinance No. 123698 (Municipal Code Chpt. 14.16) is preempted by the Railroad Unemployment Insurance Act to the extent it would require the plaintiff rail carriers to provide sickness benefits to their union or non-union employees; and

2. Seattle City Ordinance No. 123698 (Municipal Code Chpt. 14.16) is preempted by the Railway Labor Act to the extent that it would require the plaintiff rail carriers

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to provide benefits to their unionized employees that were not bargained for between the parties through the procedures established by the Railway Labor Act; and

3. Seattle City Ordinance No. 123698 (Municipal Code Chpt. 14.16) is preempted by the Employee Retirement Income Security Act to the extent that it relates to employee benefit plans maintained by the plaintiff rail carriers; and

4. Seattle City Ordinance No. 123698 (Municipal Code Chpt. 14.16) is preempted by the Washington state Leave for Victims of Domestic Violence, Sexual Assault and Stalking Act to the extent that it would require that safe leave be provided on a paid basis without the need for the employee to make use of other paid leave offered by the employer.

B. Enjoin the defendants from enforcing or otherwise applying the preempted portions of the Ordinance against the plaintiff rail carriers; and

C. Issue such other relief as the Court may deem just and appropriate.

DATED this 9th day of May, 2012.

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