UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA HOSPITAL ASSOCIATION, Plaintiff, v. CITY OF INGLEWOOD, et al., Defendants.	2:23-cv-6187-DSF-PVCx Order GRANTING IN PART and DENYING IN PART Plaintiff's Motion for Summary Judgment (Dkt. 29)[1]

Plaintiff California Hospital Association (CHA) filed this case to enjoin enforcement of certain provisions of a City of Inglewood (City) ordinance (Ordinance) that imposes a $25 per hour minimum wage requirement on healthcare workers employed within the City. CHA claims that some sections of the Ordinance are preempted by the National Labor Relations Act (NLRA) because they disrupt the "economic weapons" available to employers and unions under the NLRA.

I. Background

The Ordinance was passed by voter initiative and the sponsor of the initiative, Service Employees International Union – United

[1] The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15.

Healthcare Workers West (Union), has intervened to defend the Ordinance. As the case appeared to involve purely legal questions, the Court ordered that the matter proceed by summary judgment motion filed by CHA with an allowance for a surreply by the Union and City.

In brief, in addition to setting an inflation-adjusted $25 minimum wage for "healthcare workers" (as defined by the Ordinance), the Ordinance prevents an employer from responding to the new minimum wage in certain ways:

> An employer may not fund the minimum wage increases required by this Article in any of the following ways:
>
> (1) Reducing healthcare workers' premium pay rates or shift differentials;
>
> (2) Reducing vacation, healthcare, or other non-wage benefits of any healthcare worker;
>
> (3) Reducing healthcare workers' hours of work;
>
> (4) Laying off healthcare workers; or
>
> (5) Increasing charges to any healthcare worker for parking, work-related materials or equipment.

Ord. § 8-152(c).

The Ordinance states that subsection (c) is violated if the minimum wage requirements "are a motivating factor in the employer's decision to take any of the actions described in Subsection (c)." Ord. § 8-152(d). It further provides penalties for retaliation against workers for "opposing any practice proscribed by this Article, for participating in proceedings related to this Article, for seeking to enforce rights under this Article by any lawful means, or for otherwise asserting rights under this Article." Ord. § 8-153. In addition to enforcement by the City, the Ordinance also provides a private right of action. Ord. § 8-155.

II. Legal Standard

The NLRA does not have an express preemption provision. However, the Supreme Court has found preemption of state and local laws by the NLRA in certain circumstances. The type of preemption at issue here is so-called Machinists preemption, which "forbids both the National Labor Relations Board and States to regulate conduct that Congress intended be unregulated because left to be controlled by the free play of economic forces." Chamber of Com. of U.S. v. Brown, 554 U.S. 60, 65 (2008) (quoting Machinists v. Wisconsin Employment Relations Comm'n, 427 U.S. 132, 140 (1976)) (simplified). However, "pre-emption should not be lightly inferred in [the employment] area, since the establishment of labor standards falls within the traditional police power of the State." Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 21 (1987). Given that, state (and local) law can establish "minimum employment standards" without conflicting with the NLRA. Id. at 20-21. These standards provide a "backdrop" for the collective bargaining process. Id. at 21. "[T]he mere fact that a state statute pertains to matters over which the parties are free to bargain cannot support a claim of pre-emption, for there is nothing in the NLRA which expressly forecloses all state regulatory power with respect to those issues that may be the subject of collective bargaining." Id. at 21-22 (simplified). In short, "state action that intrudes on the *mechanics* of collective bargaining is preempted, but state action that sets the stage for such bargaining is not." Am. Hotel & Lodging Ass'n v. City of Los Angeles, 834 F.3d 958, 964 (9th Cir. 2016) (emphasis added).

III. Analysis

CHA does not challenge the $25 per hour minimum wage requirement and concedes that it is a minimum employment standard that is not preempted by the NLRA. CHA instead takes issue with the restrictions on employers' responses to the Ordinance found in § 8-152(c) and the Ordinance's retaliation and enforcement mechanisms.

Some of CHA's arguments can be quickly dismissed. CHA claims that the Ordinance prevents employers from hiring replacement workers in case of a strike or from conducting a lockout. Nothing on

the face of the Ordinance suggests these limitations on employer rights, and the Union disclaims such an interpretation. Even if one could piece together an interpretation where hiring replacements or locking out workers would violate the Ordinance, those narrow cases can be severed from the much more obvious and likely applications of the Ordinance and are no reason to strike down the Ordinance in its entirety.[2]

More realistically, CHA argues that the Ordinance is preempted because what it calls the "handcuff provisions" – *i.e.*, § 8-152(c) – "ban hospitals from adjusting to cost increases in ordinary ways." Mem. at 17. However, it cites no authority that supports the broad proposition that an employer cannot be barred from acting in "ordinary ways" by state or local statutes of general applicability. Undoubtably, many employment statutes and regulations prevent acts that were "ordinary" prior to the enactment of the law. That more than one limitation may apply to an employer's actions does not convert those limitations from acceptable minimum employment standards into something else.

Nonetheless, there is authority that too many limitations on the scope of bargaining can result in a law being preempted under Machinists. See Barnes v. Stone Container Corp., 942 F.2d 689 (9th Cir. 1991); Chamber of Com. of U.S. v. Bragdon, 64 F.3d 497 (9th Cir. 1995).

In Barnes, a unionized employee was prevented from using a Montana wrongful discharge statute to contest his firing where the applicable collective bargaining agreement had expired and negotiations were ongoing. The Barnes court reasoned that applying the Montana statute would effectively extend the "just cause" provision of the expired CBA and interfere with ongoing contract negotiations. See id. at 693. Barnes, however, is of little assistance in this case.

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[2] In addition to a severability provision, the Ordinance has a "conflicts" provision that states that "[n]othing in this Article shall be interpreted or applied so as to create any power or duty in conflict with any Federal or State law." Ord. §§ 8-159, 8-160.

There is no indication that the Ordinance provides CBA benefits to union workers after the expiration of the CBA. CHA's premise is, if anything, the opposite – that the Ordinance provides benefits that the union would not achieve through bargaining. But this is theoretically true of almost any minimum employment standard – the benefit would have to be bargained for if not already provided by law.

Bragdon is much more relevant. Bragdon involved a detailed scheme for imposing "prevailing wages" on certain private construction projects in Contra Costa County, California. The Bragdon court found that the law was preempted because (1) it imposed wages not directly set by statute or regulation but were, instead, the result of bargaining by other employers and unions, and (2) it dictated the compensation amounts and the allocation of that compensation in such detail that it seriously undermined the ability to bargain. See id. at 502. In other words, the law effectively provided a substitute for normal bargaining, not the legal background for bargaining.

While the Ordinance does not explicitly foreclose bargaining or directly impose *substantive* results as was the case in Bragdon, CHA is on much stronger ground with its complaint that the vagueness of the Ordinance provides tools and leverage that allow a union to interfere with the mechanics of the collective bargaining process.

First, the Ordinance's use of "motivating factor" is unclear and overbroad if applied too liberally. As CHA points out, the minimum wage an employer has to pay its employees will invariably affect the total amount of compensation it is able or willing to pay. This will then invariably affect the number of employees it can retain and the number of hours those employees will be scheduled to work. Taken too broadly, almost any decision about compensation or staffing will, in some sense, be "motivated" by the minimum wage level.

This vagueness is exacerbated by the presence of a private right of action to enforce these provisions, which CHA argues has already been weaponized to increase union leverage in ongoing bargaining. And while CHA does not appear to mention it, there could be cause for

concern that the private right of action could allow a union to intrude into an employer's private thinking during negotiations given that the Ordinance puts the employer's motivations for making compensation and staffing decisions directly at issue.

The private right of action to enforce the vague standard of § 8-152(c) is the most obvious point of potential interference in the bargaining process set out by the NLRA. Even allowing for a much more limited and specific substantive scope of § 8-152(c), private litigation between employees and employers over wage and staffing decisions and what the "motivating factors" of those decisions were threatens to upend the normal bargaining process. An employee or an employee's representative – *i.e.*, a union – should not be allowed to litigate some of the most critical aspects of a CBA outside of the bargaining process. This alternative path undercuts the bargaining framework set out in the NLRA and is preempted under the Machinists doctrine.

How closely connected to the Ordinance's requirements an employer's action must be to be "motivated" by the Ordinance is unclear, and this both compounds the private right of action problem and presents its own substantive problems. The more broadly the concept of "motivation" is interpreted, the less freedom in bargaining is present, and the more the concerns expressed in Bragdon become relevant.

As written, the vague concept of "motivation" would largely foreclose a constructive bargaining process. Any suggestions by an employer that would reduce hours, pay, or other benefits of healthcare workers would arguably be motivated by the minimum wage provision and subject to litigation, or the threat of litigation. The Ordinance is explicitly *not* written to forbid only direct responses to a change in the minimum wage. An Ordinance written to prohibit only responding narrowly to an increase in costs due to a minimum wage increase by reducing hours, premium pay, etc. of the affected minimum wage employees might not be preempted by Machinists, as it would be much more obviously intended to prevent avoidance of the Ordinance. But

this is not how the Ordinance is written. Instead, it potentially forecloses almost all obvious responses by an employer to rising compensation costs and effectively establishes a regime where almost no reductions in the employment package for any healthcare employees can be negotiated through the bargaining process at all. This is far too restrictive under the Machinists preemption standard given that total compensation package of employees is typically the critical issue in bargaining.

And it is not sufficient to say that the Ordinance perhaps would not be interpreted this way were it to be ultimately litigated in the context of bargaining. As noted above, the threat of litigation itself is highly likely to chill the bargaining process. Further, Machinists preemption is intended to prevent state and local statutes from casting a pall over the bargaining process itself, which the Ordinance almost certainly would do.

IV. Conclusion

CHA's motion for summary judgment is GRANTED IN PART with respect to § 8-152(c) and DENIED IN PART to the degree CHA sought to preempt the entire Ordinance. Given the severability clause in the Ordinance, it appears that the Ordinance can remain in force with the exception of § 8-152(c).[3] If CHA disputes this tentative finding, it may file a brief to that effect no later than March 20, 2024, and the Union and the City may file a response no later than April 1, 2024.

Otherwise, the parties are to confer on a proposed judgment, which is to be submitted for the Court's approval no later than April 15, 2024

[3] The Court tentatively finds that the private right of action and anti-retaliation provisions are unlikely to be problematic if § 8-152(c) is no longer present given the much clearer and narrower substantive scope of the Ordinance.

IT IS SO ORDERED.

Date: March 11, 2024

Dale S. Fischer
United States District Judge