NO. 89723-9

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 CLERK,
Appellants/Cross-Respondents,

THE PORT OF SEATTLE,
Respondent,

and

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

BRIEF OF AMICUS CURIAE THE ATTORNEY GENERAL OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

NOAH GUZZO PURCELL, WSBA #43492
Solicitor General
PO Box 40100
Olympia, WA 98504-0100
(360) 753-2536
OID # 91087

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. INTRODUCTION

In holding the City of SeaTac's minimum wage ordinance inapplicable at SeaTac airport, the superior court committed two crucial errors. Plaintiffs and the Port of Seattle ask this Court to repeat those errors. The Court should decline.

First, in interpreting state law, the superior court, like Plaintiffs and the Port, focused solely on RCW 14.08.330 and its grant of exclusive jurisdiction. In doing so, it ignored an equally binding state law, RCW 49.46.120. That statute, never cited by the superior court, Plaintiffs, or the Port, promises that "[a]ny standards relating to wages, hours, or other working conditions established by any . . . local law or ordinance, . . . which are more favorable to employees than the minimum standards applicable under [state law], . . . shall be in full force and effect." This statute cannot be ignored, and when read together with RCW 14.08.330, requires reversal of the superior court's holding that the City of SeaTac's minimum wage ordinance has no effect at SeaTac airport.

Second, the superior court never decided, and Plaintiffs and the Port claim there is no need to decide, whether the Port has authority to regulate wages paid by other employers operating at the airport. But if the Port has no jurisdiction over such wages, it cannot possibly have "exclusive jurisdiction" over them. The Court thus must resolve whether

the Port has authority to set a minimum wage. If it does not, then its lack of jurisdiction over such wages inevitably means that it also lacks exclusive jurisdiction over such wages. For this reason as well, the Court should reverse the superior court's holding that SeaTac's minimum wage ordinance does not apply at the airport.

II. ARGUMENT

A. RCW 14.08.330 Must Be Read Together With RCW 49.46.120

The superior court held, and the Port and Plaintiffs argue, that this case can be resolved based entirely on the plain language of RCW 14.08.330. But their approach simply ignores an equally valid and binding statute, RCW 49.46.120, contrary to longstanding principles of statutory interpretation. *See, e.g.*, *Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 711, 153 P.3d 846 (2007) ("We must, of course, read the statute in conjunction with other relevant provisions.").

RCW 49.46.120 provides that "[a]ny standards relating to wages, hours, or other working conditions established by any . . . local law or ordinance, . . . which are more favorable to employees than the minimum standards applicable under [state law], . . . shall be in full force and effect." SeaTac's minimum wage ordinance is a "standard[] relating to wages . . . established by . . . local law or ordinance," and thus "shall be in

full force and effect." Remarkably, the superior court never cited this statute, and neither does the brief to this Court of Plaintiffs or the Port.

It is inappropriate to interpret RCW 14.08.330 without also taking into account other state laws. The statute's text itself makes this clear, saying that: "Every airport . . . controlled and operated by any municipality, . . . 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." RCW 14.08.330 (emphasis added). In interpreting this statute, this Court has made clear that it "subordinates Port regulatory power to applicable state law." *Port of Seattle v. Washington Utilities & Transp. Comm'n*, 92 Wn.2d 789, 804, 597 P.2d 383 (1979). RCW 49.46.120 is an example of an applicable state law that RCW 14.08.330 does not purport to override.

In addition to the statute's plain language, this Court's case law makes clear that RCW 14.08.330's grant of "exclusive jurisdiction" must be read in light of other statutes. For example, in *Washington State Coal. for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 949 P.2d 1291 (1997), this Court interpreted a grant of "exclusive jurisdiction" to juvenile courts to resolve certain cases. The Court held that this grant of power had to be read together with the Uniform Declaratory Judgment Act and reconciled with an arguably conflicting grant of authority in that

statute. Reading the statutes together, the Court said: "Although RCW 13.04.030 states that the juvenile division of superior court has exclusive jurisdiction in juvenile matters, this court has not restricted the power to interpret the juvenile statutes to the juvenile courts." *Id.* at 916. In other words, "exclusive jurisdiction" was not actually exclusive based on other statutes.

Similarly here, RCW 14.08.330's grant of exclusive jurisdiction must be read together with RCW 49.46.120. There is no basis simply to ignore the latter statute, as the superior court did. This does not mean, of course, that RCW 49.46.120 completely overrides 14.08.330—that approach would be equally inappropriate. But it does mean that in cases of statutory conflict like this, the Court has to look to the legislative intent in passing RCW 14.08.330 to discern the precise scope of the Port's "exclusive jurisdiction." Relying on a statute's plain language is insufficient when there is competing language in another statute.

Here, this Court has already explained the Legislature's intent in enacting RCW 14.08.330. Shortly after the law passed, this Court held: "The effect of this section, when read in the light of the entire Revised Airports Act, is merely to preclude [other local governments] from interfering with respect to the operation of the Seattle-Tacoma airport." *King Cnty. v. Port of Seattle*, 37 Wn.2d 338, 348, 223 P.2d 834

(1950). Subsequently, the Court made clear that: "This section subordinates Port regulatory power to applicable state law." *Port of Seattle*, 92 Wn.2d at 804.

These holdings as to the law's effect provide a roadmap to resolve this case. *Port of Seattle* makes clear that the Port remains subject to state laws like RCW 49.46.120. Meanwhile, *King County* explains the circumstances in which the Port could show that RCW 14.08.330 trumps RCW 49.46.120 in a particular application: if the Port could prove that the City of SeaTac's minimum wage ordinance would meaningfully interfere with the operation of the airport. To give an obvious example, if the City of SeaTac sought to prevent new construction at the airport by requiring workers on such construction to receive an exorbitant minimum wage, or to regulate the hours of operation there by imposing an exorbitant minimum wage between 8 p.m. and 6 a.m., the Port could easily show interference with airport operations. Here, however, there is no such obvious interference, and the Port has provided no evidence of interference. Absent such evidence, and in light of this Court's holding in *King County*, there is no basis to hold that RCW 14.08.330 overrides RCW 49.46.120 here.

In arguing to the contrary, Plaintiffs and the Port rely largely on cases in which the State granted "exclusive jurisdiction" over certain areas

to the federal government. *See, e.g.*, *Dep't of Labor & Indus. of State of Wash. v. Dirt & Aggregate, Inc.*, 120 Wn.2d 49, 837 P.2d 1018 (1992). But in those cases, the question was not, as here, how to reconcile two conflicting state statutes, but rather how to resolve a conflict between state and federal authority. In such cases, "[e]ven if Washington intended to apply [state law] to federal enclaves, under the supremacy clause, federal law pre-empts conflicting state legislation." *Id.* at 56. Here, by contrast, there is no presumption that one local government's power trumps another's, and the question is simply how best to read two state statutes that conflict in a particular application.

Plaintiffs and the Port may respond that there is nothing unique about RCW 49.46.120's role here because in any conflict between the Port and another local government, there will always be some state law that arguably grants conflicting authority to the other local government. There are two problems with that argument. First, in most conflicts between the Port and another municipality, it would at least be clear that the Port had authority to regulate the same subject. Here, as the next section explains, it is not. It makes perfect sense to read "exclusive jurisdiction" in light of what topics the Port has jurisdiction over in the first place. Second, RCW 49.46.120 differs from many grants of power to local governments, as it refers not solely to those governments, but also to the individuals who

work within their boundaries. Thus, the conflict here is not merely between competing jurisdictions, but also between the Port and individuals who work on its property. For both of these reasons, and because municipalities operating airports are already protected from attempts to "interfer[e] with" airport operations, *King Cnty.*, 37 Wn.2d at 348, using this approach to reconcile RCW 14.08.330 and RCW 49.46.120 will not open the floodgates to attempts by other local governments to regulate activities at airports.

In short, the plain language of RCW 14.08.330 is insufficient to resolve this case because in this instance it conflicts with the language of RCW 49.46.120. It is the Court's role to determine how this conflict should be resolved here, based on legislative intent. The Legislature's intent in enacting RCW 14.08.330 was "to preclude [other local governments] from interfering with respect to the operation of the Seattle-Tacoma airport." *King Cnty.*, 37 Wn. 2d at 348. The Port has shown no such interference here.

B. Without Jurisdiction, There Can Be No Exclusive Jurisdiction

"Jurisdiction . . . is a word of many, too many, meanings." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 90, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) (internal citations and quotation marks removed). But one thing should be clear. A government (or court) cannot have

"exclusive jurisdiction" over a topic as to which it has no jurisdiction at all. *See, e.g., Tootle v. Sec'y of Navy*, 446 F.3d 167, 176-77 (D.C. Cir. 2006) ("There cannot be exclusive jurisdiction under the Tucker Act if there is no jurisdiction under the Tucker Act."). Thus, in resolving this case, the Court should decide whether the Port has jurisdiction over the wages paid by other employers at the airport. The State believes the Port lacks such jurisdiction, leaving it without exclusive jurisdiction and thus subject to the City of SeaTac's ordinance.

1. The Court Should Resolve the Scope of the Port's Authority

The superior court never resolved whether the Port had authority over wages paid by other employers at SeaTac. And in this Court, the Port and Plaintiffs again argue that this question can be left unanswered. Not so. If the Port has no jurisdiction over such wages, it cannot as a matter of logic have exclusive jurisdiction over them. And as a matter of legislative intent, if the Legislature gave the Port no authority over this topic, it is hard to imagine that the Legislature intended to oust the authority of other local governments recognized in RCW 49.46.120.

In arguing that the Court need not resolve this question, the Port points out that RCW 14.08.330 still leaves the Port subject to state and federal law, so there is no "vacuum." But RCW 49.46.120 makes clear

that when it comes to minimum wages, state and federal law are not the only relevant sources of authority—"local law[s] or ordinance[s] . . . which are more favorable to employees than the minimum standards applicable under [state law]" also "shall be in full force and effect." Thus, the Court must resolve whether such a law applies at SeaTac airport.

Plaintiffs and the Port also argue that RCW 14.08.330 divests the City of SeaTac of all jurisdiction at the airport, regardless of what "exclusive jurisdiction" means. That is, they claim that in addition to the grant of "exclusive jurisdiction" in the first sentence of that section, the third sentence's removal of "police jurisdiction" from other local governments eliminates whatever jurisdiction those governments had to begin with in the territory of the airport. But on the Port's reading, either the first or the third sentence becomes largely superfluous. If the Port already has sole and exclusive jurisdiction at the airport under the first sentence, why would the Legislature have needed in the third sentence to eliminate the jurisdiction of other local governments? *See, e.g.*, *Rivard v. State*, 168 Wn.2d 775, 783, 231 P.3d 186 (2010) ("we interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous"). That is largely why the Court of Appeals already rejected the Port's reading in *City of Normandy Park v. King County Fire District No. 2*, 43 Wn. App. 435, 717 P.2d 769 (1986), holding that "exclusive

'police jurisdiction' merely means that the airport is 'responsible' for police operations at the airport, and no other municipality may interfere with those operations." *Id.* at 442.

In short, if the Port lacks jurisdiction over the wages paid by other employers at SeaTac airport, then it necessarily lacks exclusive jurisdiction over such wages. The Court should therefore resolve this question in deciding this case.

2. The Port Lacks Governmental Authority Over Wages Paid By Other Employers at the Airport

The Port of Seattle has no jurisdiction over the wages paid by other employers operating at SeaTac airport, and thus cannot have exclusive jurisdiction over such wages. No statute gives the Port jurisdiction over the wages of other employers at SeaTac, and given that the Port is a limited purpose municipal corporation whose powers must be narrowly construed, it has no implied jurisdiction over such wages.

In interpreting the Port's powers, it is important to remember that: "The Port, as a municipal corporation, is limited in its powers to those necessarily or fairly implied in or incident to the powers expressly granted, and also those essential to the declared objects and purposes of the corporation. If there is a doubt as to whether the power is granted, it must be denied." *Port of Seattle*, 92 Wn.2d at 794-95, 597 P.2d at 386

(citations omitted); *see also, e.g.*, *Robinson v. Avis Rent A Car Sys., Inc.*, 106 Wn. App. 104, 112-13, 22 P.3d 818 (2001) (finding that Port lacked authority to approve rental car companies' practice of "unbundling" certain charges to customers).

Applying these principles here, the best reading of the law is that the Port lacks jurisdiction over the wages paid by other employers at SeaTac. The Port cites several sections of RCW 14.08.120 that it claims give it authority over wages and working conditions offered by other employers at the Port, but none explicitly provide it with that power. For example, the Port cites section 2, which provides the municipality running an airport the power "[t]o adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control." But this section focuses on regulating property, not employment conditions. At the very least, there is some doubt as to whether the Port has jurisdiction to regulate wages paid by other employers, so the best reading of the statutes is that the Port lacks that power.[1]

[1] In its proprietary capacity, the Port likely can set by contract the wages its contractors must pay in at least some circumstances. *See, e.g.*, *Hite v. Pub. Util. Dist. No. 2*, 112 Wn.2d 456, 463, 772 P.2d 481, 485 (1989) ("This court upheld a city contract that specified the wages workers were to earn in *Stover v. Winston Bros. Co.*, 185 Wn. 416, 55 P.2d 821 (1936). Since the city entered the contract in its proprietary capacity, it 'had a right to insert in the contract any condition or conditions (not in themselves unlawful) which might be deemed beneficial or advantageous to it or to its citizens.'"). But this proprietary power is irrelevant to interpreting the Port's governmental power provided by

3. Because the Port Lacks Jurisdiction Over Wages Paid By Other Employers at the Airport, It Necessarily Lacks Exclusive Jurisdiction

If the Court agrees that the Port lacks jurisdiction to regulate wages paid by other employers at SeaTac airport, then it necessarily follows that the Port lacks exclusive jurisdiction over such wages. *See, e.g.*, *Tootle*, 446 F.3d at 176-77 ("There cannot be exclusive jurisdiction . . . if there is no jurisdiction . . . ."). Thus, in deciding how best to interpret RCW 14.08.330, the Court should resolve this question.

The Port may argue that having "exclusive jurisdiction" actually does not require having jurisdiction in the first place, presumably on the premise that "exclusive jurisdiction" means exclusive control over certain territory, regardless of powers. The problem with that argument is that while "exclusive jurisdiction" may sometimes be used in a territorial sense, this Court has already made clear that the Legislature intended a different meaning in RCW 14.08.330. In *King County*, the County argued that RCW 14.08.330 was unconstitutional because it "completely removes

---

RCW 14.08.330. *See, e.g., id.* ("We agree with the District that its power to contract would be relatively insignificant if contractual provisions were confined to those expressly authorized by statute."). Indeed, the extent to which a municipal corporation is bound by laws enacted by other governments often turns on whether it is acting in a governmental or proprietary capacity. For example, in *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 144 P.3d 276 (2006), the Court held that state law prohibiting cities from imposing restrictions on gun sales beyond those imposed by state law did not bar a city, acting in its proprietary capacity, from limiting gun sales in a city-owned convention center. As the court put it, "when a municipality acts in a capacity that is comparable to that of a private party, the preemption clause does not apply." *Id.* at 357.

the territory comprising the Seattle-Tacoma airport from the jurisdiction of King county because the Port is thereby given 'exclusive jurisdiction and control' of the area." *King Cnty.*, 37 Wn.2d at 348. This Court rejected that reading of the statute, saying 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." *Id.* In light of this holding, it makes no sense to argue that the Port's "exclusive jurisdiction" can be interpreted separately from its jurisdiction more generally.

III. CONCLUSION

The superior court erred in its interpretation of RCW 14.08.330. That statute must be read in light of other statutes, and its grant of "exclusive jurisdiction" must be tethered to the Port's jurisdiction in the first instance. For both reasons, this Court should hold the City of SeaTac's minimum wage ordinance applicable at SeaTac airport.

RESPECTFULLY SUBMITTED this 14th day of May 2014.

ROBERT W. FERGUSON
Attorney General

NOAH GUZZO PURCELL, WSBA #43492
Solicitor General
Attorney for Amicus Curiae Attorney General
of Washington