

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.

**THE CITY OF SEATAC; KRISTINA GREGG, CITY OF SEATAC
CITY CLERK, in her official capacity,**

Appellant/Cross-Respondent,

THE PORT OF SEATTLE,

Respondent,

and SEATAC COMMITTEE FOR GOOD JOBS,

Appellant/Cross-Respondent.


**PORT OF SEATTLE'S STATEMENT OF ADDITIONAL
AUTHORITY**

Timothy G. Leyh, WSBA #14853
Shane P. Cramer, WSBA #35009
CALFO HARRIGAN LEYH & EAKES LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104
(206) 623-1700
Attorneys for Respondent Port of Seattle

Pursuant to Rule of Appellate Procedure 10.8, the Port of Seattle brings to the Court's attention the following. Now pending before the Port Commission of the Port of Seattle is a resolution to enact rules and regulations "relating to safety and security at Sea-Tac International Airport and the necessary hiring standards, training opportunities, and minimum compensation required to maintain a well-trained workforce at the Airport." *See* (Draft) Resolution No. ___ (attached as Exhibit A). This submission is relevant to arguments made by the Port at pp. 32-33 of its brief and pp. 13-19 of its answer to the Attorney General's amicus brief, by the Committee at pp. 38-43 of its opening brief and pp. 12 and 17-18 of its reply brief, the City at pp. 21-24 of its opening brief and pp. 17-19 of its reply brief, and the Attorney General at pp. 10-11 of its amicus brief.

Respectfully submitted this 24th day of June, 2014.

CALFO HARRIGAN LEYH & EAKES LLP

By 
Timothy G. Leyh, WSBA #14853
Shane P. Cramer, WSBA #35099
Attorneys for Respondent Port of Seattle

CERTIFICATE OF SERVICE

I, Jill Martin, declare under penalty of perjury under the laws of the State of Washington:

I am employed by the law firm of Calfo Harrigan Leyh & Eakes, LLP, a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On June 24, 2014, I caused a true and correct copy of the foregoing document to be served on counsel listed below in the manner indicated:

Harry J. F. Korrell
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
HarryKorrell@dwt.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Wayne D. Tanaka
Ogden Murphy Wallace P.L.L.C.
901 Fifth Avenue, Suite 3500
Seattle, WA 98164
wtanaka@omwlaw.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Mary Mirante Bartolo
Mark Johnsen
City of SeaTac Attorney's Office
4800 South 188th Street
SeaTac, WA 98188-8605
mmbartolo@ci.seatac.wa.us
mjohnsen@ci.seatac.wa.us

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Laura Ewan
Dmitri Iglitzin
Schwerin Campbell Barnard Iglitzin &
Lavitt
18 W. Mercer Street, Suite 400
Seattle, WA 98119
iglitzin@workerlaw.com
ewan@workerlaw.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

robbins@workerlaw.com

Craig Watson
General Counsel for the Port of Seattle
2711 Alaskan Way (Pier 69)
Seattle, WA 98121
Watson.C@portseattle.org

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Cecilia Cordova
Pacific Alliance Law, PLLC
601 Union St. Suite 4200
Seattle, WA 98101
cecilia@cordovalawfirm.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Herman L. Wacker
Alaska Airlines
PO Box 68900
Seattle, WA 98168-0900
Herman.Wacker@alaskaair.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Frank J. Chmelik
Seth Woolson
Chmelik Sitkin & Davis, P.S.
1500 Railroad Avenue
Bellingham, WA 98225
fchmelik@chmelik.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

M. Roy Goldberg
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
1300 I Street, N.W., Suite 1100 East,
Washington, D.C. 20005
rgoldberg@sheppardmullin.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Douglas W. Hall
FORD HARRISON
1300 19th Street, N.W., Suite 300
Washington, D.C. 20036
DHall@fordharrison.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Robert J. Guite, WSBA No. 25753
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111
rguite@sheppardmullin.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Patrick D. McVey
James E. Breitenbucher
RIDDELL WILLIAMS P.S.
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154
pmcvey@Riddellwilliams.com
jbreitenbucher@Riddellwilliams.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Diego Rondon Ichikawa
Rebecca Smith
National Employment Law Project
317 17th Avenue South
Seattle, Washington 98144
drondon@nelp.org
rsmith@nelp.org

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Timothy J. O'Connell,
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101-3197
tjoconnell@stoel.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Kristopher I. Tefft
1401 Fourth Avenue East, Suite 200
Olympia, WA 98506-4484
Kris.Tefft@wsiasn.org

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Noah Guzzo Purcell
Solicitor General
PO Box 40100
Olympia, WA 98504-0100
(360) 753-2536
noahp@atg.wa.gov

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Dated this 24th day of June, 2014.

/s/ Jill Martin

EXHIBIT A

PORT OF SEATTLE

RESOLUTION NO. _____

A RESOLUTION of the Port Commission of the Port of Seattle relating to safety and security at Sea-Tac International Airport and the necessary hiring standards, training opportunities, and minimum compensation required to maintain a well-trained workforce at the Airport.

WHEREAS, the voters of King County authorized and approved the formation of a Port District coextensive with King County to be known as the Port of Seattle in a special election on September 5, 1911; and

WHEREAS, the Port of Seattle was established upon election as a Port District and has been since then and is now a duly authorized and acting Port District of the State of Washington; and

WHEREAS, in accordance with RCW 14.08.330, the Port of Seattle owns, operates, and exercises exclusive jurisdiction and control over Sea-Tac International Airport (the "Airport"); and

WHEREAS, RCW 14.08.120(2) authorizes a port district, including the Port of Seattle, to exercise managerial, regulatory, and governmental authority over its airports and to "adopt ... all needed rules, regulations, and ordinances for the management, government, and use" of its airports; and

WHEREAS, RCW 53.08.220(1) authorizes a port district, including the Port of Seattle, to regulate the use of its airports by its "tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors, and members of the general public;" and

WHEREAS, a secure Airport and a safe environment for passengers, employees, airlines, and other businesses at the Airport are fundamental Port of Seattle priorities that are incorporated as an official strategy of the Aviation Division to "Operate a world-class international airport by ensuring safe and secure operations;" and

WHEREAS, more than 15,000 workers are employed at the Airport by the Port of Seattle and by tenants, licensees, contractors, vendors, consultants, airlines, or other businesses of the Airport; and

WHEREAS, many of these workers have regular access to the Air Operations Area or work in other capacities that impact Airport safety and security and therefore must be well-trained and possess the necessary education and/or work experience to ensure a safe and secure Airport both for employees and for the traveling public; and

WHEREAS, The staff report titled "Quality Jobs: Safety and Security for Aeronautical Workers," dated June 18, 2014, and the testimony heard by the Port Commission reflected in that

report together establish a need for improved levels of general training, education and/or work experience, employee qualifications for advancement, and corresponding compensation incentives in order to attract and retain a high-quality workforce for the purposes of ensuring a safe and secure Airport; and

WHEREAS, addressing these needs will aid in reducing workforce attrition, increase Airport safety and security, and promote the public health, safety, and welfare of the workforce and the general public at the Airport; and

WHEREAS, the Port Commission is the legally constituted governing body of the Port of Seattle; and

WHEREAS, the Port Commission desires to set forth certain additional standards of employment to ensure the safety and security of the Airport;

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Seattle as follows:

Section 1. Findings.

The Port Commission finds and declares that the recitals above are true and correct and incorporated as provisions of this Resolution.

Section 2. Definitions.

For the purposes of this Resolution:

A. "Air Operations Area" or "AOA" means the area that is inside the Airport perimeter fence, including all areas with restricted access located outside the Airport terminal buildings, including without limitation, runways, taxiways, ramps, hardstands, safety areas, perimeter roads, and cargo areas.

B. "Airport" means the Sea-Tac International Airport.

C. "Airport Employer" means any individual, partnership, association, corporation, business trust, municipal corporation, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee that is also a tenant, subtenant, licensee, contractor, airline, or other business that operates at the Airport. The term "Airport Employer" does not include the Port of Seattle.

D. "Bonuses" means non-discretionary payments in addition to hourly, salary, Commission, or Piece-Rate payments paid under an agreement between the employer and employee, including, without limitation, profit-sharing arrangements that are not intended to qualify as retirement plans for favorable tax treatment under the Internal Revenue Code.

E. "Commissions" means a sum of money paid to an employee upon completion of a task, usually selling a certain amount of goods or services.

F. "Covered Employee" means any person employed by an Airport Employer that (i) is required by the Port of Seattle to be issued an Airport badge with AOA access and (ii) either (a) is required as a component of his or her essential job responsibility to regularly work in and around the AOA or (b) has a responsibility to support passenger and facility safety and security, including without limitation, AOA perimeter control, passenger check-in activities, skycap and baggage check-in and handling services, wheelchair attendant services, baggage and cargo handling, ground support equipment maintenance, fixed based operator activities, international passenger assistance, checkpoint screening, and aircraft ground handling services (which include, without limitation, aircraft catering, cleaning, fueling, load-balancing, marshalling, dispatching, maintenance, and aircraft security).

G. "Director" means the Managing Director of the Aviation Division of the Port of Seattle.

H. "Hourly Minimum Compensation" means the Minimum Compensation due to an employee for each hour worked during a pay period.

I. "Hourly Minimum Wage" means the Minimum Wage due to an employee for each hour worked during a pay period.

J. "Medical Benefits Plan" means an essential health benefits package, as defined in 42 U.S.C. § 18022, or an equivalent plan.

K. "Minimum Compensation" means the Minimum Wage in addition to the following items if reported to the Internal Revenue Service: (i) Tips received by the employee, (ii) contributions made by the employer to an employee's Medical Benefits Plan, (iii) contributions made by the employer to an employee's retirement plan that is intended to qualify for favorable tax treatment under the Internal Revenue Code, and (iv) any payments made by the employer for an employee's educational expenses that are includable in the employee's income under the Internal Revenue Code, whether paid directly to the employee or to a provider of educational services.

L. "Minimum Wage" means all Wages, Commissions, Piece-Rate and Bonuses received by the employee and reported to the Internal Revenue Service.

M. "Paid Time Off" means accrued hours of paid leave provided by an employer for use by an employee to receive the same Minimum Compensation (exclusive of lost Tips or Commissions) as the employee would have earned during the time the paid leave is taken for an absence from work for the reasons and in the manner specified in the Rules and Regulations promulgated by the Director.

N. "Piece-Rate" means a price paid per unit of work.

O. "Rate of Inflation" means the Consumer Price Index annual percent change for urban wage earners and clerical workers, termed CPI-W, or a successor index, for the twelve months prior to each September 1 as calculated by the United States Department of Labor.

P. "Rules and Regulations" means those rules and regulations promulgated and administered by the Director under the authority provided in subsection 6(F) of this Resolution.

Q. "Tips" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the Tip.

R. "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by the Rules and Regulations promulgated by the Director.

Section 3. Standards of Employment.

In accordance with subsection 6(F) of this Resolution, the Director will develop and promulgate Rules and Regulations to carry out the standards of employment in this Section 3. These Rules and Regulations must require that every Airport Employer comply with the following policies:

A. Hiring Policy. For new hires, Airport Employers must comply with the following hiring standard: Covered Employees must possess a high school diploma, a high school equivalency credential recognized by the state of Washington in accordance with Chapter 131-48 WAC, or an equivalent level of education, training, or work experience as reasonably determined by the Covered Employee's Airport Employer

B. Training Policy. Airport Employers must ensure that their Covered Employees receive the following training or credentials, where applicable by job responsibilities:

- "Security Identification Area" orientation
- Employment verification specialist training (badging compliance)
- Escort training
- Safety training consistent with Section 611 ("Airside Personnel: Responsibilities, Training and Qualifications") of the International Air Transportation Association Airport Handling Manual, which includes:
 - AOA safety training
 - AOA driver training
 - Aircraft handling training
 - Ground support equipment training
 - Human factors training
- Bloodborne pathogen and biohazards training

C. English Proficiency Policy. Airport Employers are encouraged to identify their positions of employment that require English proficiency and the Covered Employees in those positions who do not possess English proficiency. In accordance with Federal Aviation Administration "Advisory Circular No. 150/5210-20: Ground Vehicle Operations on Airports," any Covered Employee expected to operate on the AOA must demonstrate a functional knowledge of the English Language. Airport Employers are encouraged to provide paid leave to all identified Covered Employees for on-the-job English proficiency training through Airport

University or an equivalent program authorized by the Port of Seattle. Airport Employers are encouraged to offer similar on-the-job English proficiency training to other Covered Employees for purposes of advancement.

Section 4. Covered Employee Compensation.

In accordance with subsection 6(F) of this Resolution, the Director will develop and promulgate Rules and Regulations to carry out the wage and compensation standards in this Section 3. These Rules and Regulations must require that every Airport Employer comply with the following policies:

A. Hourly Minimum Wage Policy. Effective January 1 of each year, Airport Employers are required to pay each of their Covered Employees that year's corresponding Hourly Minimum Wage for each hour worked within the physical boundaries of the Airport according to the following schedule:

<i>Year</i>	<i>Hourly Minimum Wage</i>
2015	\$11.22
2017	\$13.00

Effective January 1, 2018, the Hourly Minimum Wage paid by Airport Employers to any Covered Employee will increase annually on a percentage basis to reflect the rate of inflation, calculated to the nearest cent on January 1 of each year. Airport Employers may meet the applicable Hourly Minimum Wage requirement by a payment of the Minimum Wage, provided that the Airport Employer is in compliance with all applicable law.

B. Hourly Minimum Compensation Policy. Subject to the initial hiring period below, effective January 1 of each year, Airport Employers are required to pay each of their Covered Employees that year's corresponding Hourly Minimum Compensation for each hour worked within the physical boundaries of the Airport according to the following schedule:

<i>Year</i>	<i>Hourly Minimum Compensation</i>
2015	\$13.72
2017	\$15.50

Effective January 1, 2018, the Hourly Minimum Compensation paid by Airport Employers to any Covered Employee will increase annually on a percentage basis to reflect the rate of inflation, calculated to the nearest cent on January 1 of each year. Airport Employers may meet the applicable Hourly Minimum Compensation requirement by a payment of the Minimum Compensation, provided that the Airport Employer is in compliance with all applicable law.

C. Initial Hiring Period. At its discretion, an Airport Employer may delay the effective date of the Hourly Minimum Compensation requirement for up to the first 90 calendar days of a Covered Employee's employment.

Section 5. Paid Time Off.

In accordance with subsection 6(F) of this Resolution, the Director will develop and promulgate Rules and Regulations to carry out the Paid Time Off standards of this Section 5. These Rules and Regulations must require that every Airport Employer comply with the following policies:

A. Eligibility. All Covered Employees have the right to Paid Time Off as provided in this Section 5. In order to accrue Paid Time Off, a Covered Employee must work a minimum of ten hours per work week within the physical boundaries of the Airport.

B. Accrual. Eligible Covered Employees accrue one hour of Paid Time Off for every 40 hours worked beginning at the commencement of employment with an Airport Employer. A Covered Employee must be allowed to carry over to the following year a minimum of 40 hours (more at the Airport Employer's discretion) of unused Paid Time Off.

C. Allowances. Covered Employees are entitled to use accrued Paid Time Off beginning on the 180th calendar day after the commencement of their employment.

D. Retransfers and Rehires. The accrued Paid Time Off of a Covered Employee separated from employment or transferred to a position outside the physical boundaries of the Airport must be reinstated upon the rehire or retransfer by the same Airport Employer of the Covered Employee to a position within the physical boundaries of the Airport within 180 days of the initial separation or transfer.

Section 6. Compliance, Reporting, and Enforcement.

A. Annual Certification. Beginning in 2015, each Airport Employer must annually certify by February 1 to the Director that it is in compliance with Section 3 (Standards of Employment), Section 4 (Covered Employee Compensation), and Section 5 (Paid Time Off) of this Resolution.

B. Notice to Covered Employees. Airport Employers are required to provide a copy of the annual certification to their Covered Employees.

C. Records of Compensation. Airport Employers must retain payroll records pertaining to Covered Employees for a period of three years documenting the Minimum Wage paid, the Minimum Compensation paid, and the Paid Time Off accrued and used for each Covered Employee.

D. Retaliation Prohibited. Airport Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any right protected under this Resolution. Airport Employers are prohibited from taking adverse action or discriminating against a Covered Employee for exercising in good faith the rights protected under this

Resolution, including: (a) the right to inform his or her employer, union or similar organization regarding the provisions of this Resolution; (b) the right to obtain legal counsel about an Airport Employer's alleged violation of this Resolution; (c) the right to oppose any policy, practice, or act that is allegedly prohibited by this Resolution; and (d) the right to inform other employees of their potential rights under this Resolution.

E. Penalties. Any Airport Employer found to be in violation of the Hourly Minimum Wage, the Hourly Minimum Compensation, or the Paid Time Off requirements of this Resolution, in addition to all other remedies available to the Port for violation of its rules and regulations, is liable for and must pay to the Port of Seattle a penalty in the amount of three times the difference between the Minimum Wage, Minimum Compensation, or Paid Time Off amounts paid by the Airport Employer and the amounts due under this Resolution. This subsection 6(E) is not intended to limit any other right of action that a Covered Employee may have against an Airport Employer for improperly withholding or diverting any portion of the Covered Employee's wages.

F. Rules and Regulations. The Director is authorized and directed to promulgate and administer Rules and Regulations to carry out and enforce the provisions of this Resolution and to provide a draft of any Rules and Regulations (or amendments) to the Port Commission, Airport Employers, Covered Employees, and the general public at least [30 days] before their effective date. The Rules and Regulations must provide for Airport Employer reporting, periodic audits of Airport Employer reports, and the procedures to receive and adjudicate complaints, process appeals, and generally enforce the provisions of this Resolution and any assessed penalties. The Rules and Regulations must be consistent with state and federal law and regulations. The Rules and Regulations must take effect on the later date of either (i) January 1, 2015, or (ii) 14 calendar days after the Washington Supreme Court issues a final judicial determination in *BF Foods LLC v. City of SeaTac*, No. 13-2-25352, 2013 WL 6851515 (Wash.Super. Dec. 27, 2013).

Section 7. Severability.

The provisions of this Resolution are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Resolution, or the application of it to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Resolution, or the validity of its application to other persons or circumstances.

Section 8. Other Legal Requirements.

This Resolution provides minimum hiring, training, compensation, and leave time requirements and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, standard, collective bargaining agreement, or private contract of employment that provides for greater hiring, training, compensation, or leave time requirements.

Section 9. Effective Date.

This Resolution will take effect and be in force immediately upon its adoption.

ADOPTED by the Port Commission of the Port of Seattle at a duly noticed public meeting thereof, held this ____ day of _____, 2014, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

(Seal)

DRAFT