

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 399, AFL-CIO, et al.,)	
)	
Plaintiffs,)	No. 16-cv-02395
)	
v.)	Judge Matthew F. Kennelly
)	
VILLAGE OF LINCOLNSHIRE, et al.,)	
)	
Defendants.)	
)	

ANSWER

Defendants Village of Lincolnshire, Illinois, Peter Kinsey, Elizabeth Brandt, and Barbara Mastandrea, by their attorneys, Jacob H. Huebert and Jeffrey M. Schwab of the Liberty Justice Center, answer Plaintiffs’ Complaint as follows:

This lawsuit challenges Ordinance Number 15-3389-116 (“Ordinance”) enacted by the Board of Trustees of the Village of Lincolnshire, Illinois (“Lincolnshire”), on December 14, 2015, on the ground that the Ordinance is preempted and prohibited by the National Labor Relations Act of 1935 (“NLRA”) as amended by the Labor Management Relations Act of 1947 (“LMRA”).

ANSWER: Defendants admit that the Plaintiffs are challenging the Village of Lincolnshire’s Ordinance Number 15-3389-116 and admit that the Village of Lincolnshire enacted the Ordinance on December 14, 2015. Defendants deny that the Ordinance is preempted or prohibited by the NLRA and LMRA and deny that Plaintiffs are entitled to any relief.

JURISDICTION AND VENUE

1. All claims in this lawsuit are brought under 42 U.S.C. § 1983 and under the Supremacy Clause of the United States Constitution.

ANSWER: Defendants admit that Plaintiffs purport to bring this suit pursuant to 42 U.S.C. § 1983 and the Supremacy Clause but deny that Plaintiffs have stated valid claims or are entitled to any relief.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, and 1343(a)(3).

ANSWER: Defendants admit that the Court has jurisdiction over federal questions arising under 42 U.S.C. § 1983 and the Supremacy Clause of the U.S. Constitution under 28 U.S.C. §§ 1331, 1337, and 1343(a)(3). Defendants deny the remaining allegations of paragraph 2.

3. Venue is proper in this district under 28 U.S.C. § 1391(b). All acts or omissions that are the subject of this Complaint occurred in Lincolnshire.

ANSWER: Defendants admit that, to the extent the Court has jurisdiction, venue is proper in this district. Defendants admit that any actions by Defendants referenced in the Complaint occurred in Lincolnshire. Defendants lack sufficient information to form a belief about the truth of the remaining allegations of Paragraph 3.

4. The Court has authority to issue a declaratory judgment as to the validity of the Ordinance pursuant to 28 U.S.C. § 2201 and to grant such further relief as may be necessary or proper pursuant to 28 U.S.C. § 2202.

ANSWER: Defendants admit that the Court has the authority to issue declaratory judgments regarding the validity of ordinances under 28 U.S.C. § 2201. Defendants admit that 28 U.S.C. § 2201 authorizes the Court to award “[f]urther necessary or proper relief based on a declaratory judgment or decree.” Defendants deny that Plaintiffs are entitled to any relief.

PARTIES

5. Plaintiff International Union of Operating Engineers, Local 399, AFL-CIO (“Operating Engineers Local 399”), is a “labor organization” within the meaning of both the NLRA and the Ordinance. Local 399 is the collective bargaining representative of a unit of employees of Colliers International Asset and Property Management, LLC, located within Lincolnshire.

ANSWER: Defendants admit the allegations contained in the first sentence of Paragraph 5. Defendants lack sufficient information to form a belief about the truth of the remaining allegations of Paragraph 5.

6. Plaintiff International Union of Operating Engineers, Local 150, AFL-CIO (“Operating Engineers Local 150”), is a “labor organization” within the meaning of both the NLRA and the Ordinance. Local 150 is the collective bargaining representative of seven separate units of employees of employers located in Lincolnshire, including Central Boring, Inc.; Dick’s Heavy Equipment Repair; C.R. Nelson Landscaping; Accurate Group, Inc.; D.C.S. Trucking Co.; Jöhler Demolition Inc.; and, Revcon Construction Corp.

ANSWER: Defendants admit the allegations contained in the first sentence of Paragraph 6. Defendants lack sufficient information to form a belief about the truth of the remaining allegations of Paragraph 6.

7. Local 150 is the collective bargaining representative of over 30 separate units of employees of employers who currently are performing or have recently performed work in Lincolnshire and likely are to do so in the future.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 7.

8. Local 150 is the collective bargaining representative of numerous other units of employees of employers who are likely to perform work in Lincolnshire in the future.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 8.

9. Plaintiff Construction and General Laborers’ District Council of Chicago and Vicinity, Laborers International Union of North America, AFL-CIO (“Laborers District Council”), is a “labor organization” within the meaning of both the NLRA and the Ordinance. Laborers District Council is party to three collective bargaining agreements covering units of employees of employers located in Lincolnshire, specifically Central Boring, Inc.; Jöhler Demolition, Inc.; and, Revcon Construction Corp.

ANSWER: Defendants admit that the Laborers District Council is a “labor organization” within the meaning of the NLRA and the Ordinance but lack sufficient information to form

a belief about whether the Laborers District Council is party to any collective bargaining agreements covering units of employees of employers located in Lincolnshire.

10. Laborers District Council is party to collective bargaining agreements covering units of employees of over 20 employers who currently are performing or recently have performed work in Lincolnshire and likely are to do so in the future.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 10.

11. Laborers District Council is the collective bargaining representative of numerous other units of employees of employers who likely are to perform work in Lincolnshire in the future.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 11.

12. Chicago Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America (“Carpenters Regional Council”), is a “labor organization” within the meaning of both the NLRA and the Ordinance.

ANSWER: Defendants admit the allegations of this paragraph.

13. Carpenters Regional Council is party to collective bargaining agreements covering units of employees who are scheduled to perform work in Lincolnshire starting in the spring of 2016.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 13.

14. Carpenters Regional Council is the collective bargaining representative of numerous other units of employees of employers who are likely to perform work in Lincolnshire in the future.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 14.

15. Defendant Lincolnshire is a political subdivision of the State of Illinois.

ANSWER: Defendants admit the allegations of this paragraph.

16. Defendant Peter Kinsey is the Chief of Police of Lincolnshire. In that capacity, he has the authority to investigate alleged violations of the Ordinance and to ensure the effective enforcement of the Ordinance. Defendant Kinsey is sued in his official capacity.

ANSWER: Defendants admit the allegations of this paragraph.

17. Defendant Elizabeth Brandt is the Mayor of Lincolnshire. In that capacity, she has the authority to execute the provisions of the Ordinance. Defendant Brandt is sued in her official capacity.

ANSWER: Defendants admit the allegations of this paragraph.

18. Defendant Barbara Mastandrea is the Village Clerk of Lincolnshire. In that capacity, she has the authority to publish the Ordinance. Defendant Mastandrea is sued in her official capacity.

ANSWER: Defendants admit the allegations of this paragraph.

ALLEGATIONS COMMON TO ALL CLAIMS

19. The Ordinance was enacted by the Lincolnshire Board of Trustees and approved by the Mayor on December 14, 2015. The Ordinance was published on December 14, 2015, and immediately became in full force and effect.

ANSWER: Defendants admit the allegations of this paragraph.

20. The Ordinance applies only to those employees, employers, and labor organizations that are covered by the NLRA.

ANSWER: Defendants admit the allegations of this paragraph.

21. Section 8(a)(3) of the NLRA (29 U.S.C. § 158(a)(3)) grants to covered employers and labor organizations the right to negotiate agreements requiring union membership or the payment of union fees as a condition of employment (“union security agreements”). The NLRA regulates the negotiation and application of the authorized union security agreements.

ANSWER: Defendants admit so much of Paragraph 21 of the Complaint as may allege that Section 8(a)(3) of the NLRA, 29 U.S.C. § 158(a)(3), forbids “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; *provided*, that nothing in this Act, nor

any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the 30th day following the beginning of such employment,” provided that the union is the lawful representative of these employees, and other conditions are met as set out in Section 8(a)(3). The Defendants deny, however, that the Act otherwise regulates the negotiation and application of agreements requiring union membership, or payments to a union as a condition of employment, and further deny that the Act or other federal labor law preempts or otherwise prevents laws or ordinances, other than the Act and “statutes of the United States,” from regulating or prohibiting agreements requiring union membership or the payment of union dues, fines, or assessments as a condition of employment. On the contrary, the Act allows for and authorizes other government entities to regulate or prohibit agreements mandating union membership or payments, and related matters, within the geographic boundaries governed by them. Defendants deny any other allegation contained in paragraph 21.

22. Each of the Plaintiffs has negotiated and entered into collective bargaining agreements which include union security agreements authorized by the NLRA that apply to workplaces within Lincolnshire. Each of the Plaintiffs expects to include such union security agreements in successor collective bargaining agreements.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 22.

23. With respect to collective bargaining agreements entered into after December 14, 2015, the Ordinance prohibits the negotiation and application of union security agreements authorized and regulated by the NLRA, including the union security agreements that the Plaintiffs have entered into that apply to workplaces in Lincolnshire.

ANSWER: Defendants deny that the Ordinance applies to negotiation. Defendants deny that agreements prohibited by the Ordinance are “authorized” by the NLRA. Defendants

deny that the Ordinance affects any union security agreements that the Plaintiffs entered into before December 14, 2015. Defendants lack sufficient information to form a belief about the truth of the allegation that Plaintiffs have entered into agreements “that apply to workplaces in Lincolnshire.”

24. The NLRA grants to covered employers and labor organizations the right to enter into agreements granting the labor organization the exclusive right to refer employees for employment (“hiring hall agreements”). The NLRA regulates the negotiation and application of the authorized hiring hall agreements.

ANSWER: Defendants admit so much of the allegations of paragraph 24 of the Complaint as may allege that Section 8(f) of the Act, 29 U.S.C. § 158(8)(f), creates an exception for employers “engaged primarily in the building and construction industry” (“Construction Employers”) permitting them to enter into certain agreements with unions that would otherwise be unlawful as “unfair labor practices” under the Act. Section (8)(f) permits Construction Employers to enter into agreements with unions that: (1) recognize unions as the bargaining representative of employees even though the union does not have evidence that a majority of employees support or wish union representation; (2) permit a requirement that employees be or become union members within the 7th day following the beginning of such agreement or the effective date of the agreement (instead of 30 days as required by Section 8(a)(3) for other types of industry); (3) require the employer to notify the union of opportunities for employment and permit the union to refer qualified applicants for such employment; and (4) set minimum training or experience qualifications or give priority to length of employment based on service with the employer, in the industry, or in a particular geographic area. The Defendants deny that any provision of Section 8(f) of the Act prohibits or preempts the Ordinance, as well as any other allegations contained in paragraph 20 of the Complaint not admitted herein.

25. Operating Engineers Local 150 has negotiated and entered into hiring hall agreements authorized by the NLRA that apply to workplaces within Lincolnshire and Operating Engineers Local 150 expects to include such hiring hall agreements in successor collective bargaining agreements.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 25.

26. The Ordinance prohibits the negotiation and application of hiring hall agreements authorized and regulated by the NLRA, including the hiring hall agreements which Operating Engineers Local 150 has entered into, that apply to workplaces in Lincolnshire.

ANSWER: Defendants deny that the Ordinance prohibits negotiation. Defendants deny that agreements prohibited by the Ordinance are “authorized” by the NLRA. Defendants lack sufficient information to form a belief about whether Operating Engineers Local 150 has entered into hiring hall agreements that apply to workplaces in Lincolnshire.

27. The NLRA and LMRA § 302(c)(4) (29 U.S.C. § 186(c)(4)) grant to covered employers and labor organizations the right to enter into agreements for payroll deduction of labor organization dues, fees or assessments (“check-off”) and to apply such agreements in a manner consistent with the LMRA.

ANSWER: Defendants admit so much of the allegations of paragraph 27 that may allege that Section 302(c)(4) of the Labor Management Relations Act (“LMRA”), amending the Act, 29 U.S.C. § 186(c)(4), authorizes employers to enter into agreements with unions by which the employer agrees to collect union dues from the wages of employees and remit these monies to the Union. Defendants also admit that Section 302(c)(4) creates a maximum period during which a written assignment authorizing such dues deductions may be irrevocable, but Defendants deny that such agreements may lawfully be interpreted or applied to enforce involuntary payments to unions, against the consent of the employee earning the wages in the Village of Lincolnshire in violation of the Ordinance.

28. Each of the Plaintiffs has negotiated and entered into check-off agreements providing for the authorized payroll deduction of labor organization dues, fees or assessments. Each of the Plaintiffs expects to include such check-off agreements in successor collective bargaining agreements.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 28.

29. The Ordinance prohibits the payroll deduction of labor organization dues, fees or assessments, pursuant to the check-off agreements that the Plaintiffs have entered into that apply to workplaces in Lincolnshire, in circumstances where the deduction is lawful under LMRA § 302.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 29.

30. Several contracts between Plaintiffs and employers doing business in Lincolnshire, or likely to do so in the future, expire before a final judgment is likely in this case. Application and enforcement of the Ordinance, if not enjoined by this Court, will cause immediate and irreparable harm to Plaintiffs in that they will be denied its rights under the NLRA and LMRA in violation of the Supremacy Clause of the United States Constitution.

ANSWER: Defendants lack sufficient information to form a belief about the truth of the allegations of Paragraph 30. Plaintiffs deny the remaining allegations of Paragraph 30.

31. Violations of the Ordinance are classified as misdemeanors. The Lincolnshire Chief of Police has authority to prosecute violations of the Ordinance.

ANSWER: Defendants admit the allegations of this paragraph.

**COUNT I
VIOLATION OF THE SUPREMACY CLAUSE OF THE UNITED STATES
CONSTITUTION: UNION SECURITY ORDINANCE NO. 15-3389-116,
SECTION 4(A-D)**

1-31. The foregoing allegations are incorporated in this count.

ANSWER: Defendants incorporate by reference their responses to Paragraphs 1 through 31 as though fully set forth herein.

32. NLRA § 14(b) (29 U.S.C. § 164(b)) authorizes a State or Territory to enact laws prohibiting the execution or application within the State of certain union security agreements that

are otherwise authorized and regulated by the NLRA. State and local laws regulating the negotiation or application of union security agreements that do not come within the authorization of NLRA § 14(b) are preempted by the NLRA.

ANSWER: Defendants admit the allegations in the first sentence of Paragraph 32.

Defendants deny the allegations in the second sentence of Paragraph 32.

33. The Ordinance is a Lincolnshire law prohibiting the execution or application within Lincolnshire of union security agreements authorized and regulated by the NLRA.

ANSWER: Defendants deny the allegations in Paragraph 33.

34. Lincolnshire is not a “State or Territory” as contemplated in NLRA §14(b) and is therefore not authorized to enact a law prohibiting execution or application of union security agreements.

ANSWER: Defendants admit that the Village of Lincolnshire is not itself a State or Territory (though it is a political subdivision of a State) but deny that its ordinances are not laws of a “State or Territory” under NLRA § 14(b) and deny the remaining allegations of Paragraph 34.

35. The Ordinance is not a “State or Territorial law” within the meaning of NLRA § 14(b) and is therefore preempted by the NLRA insofar as the Ordinance prohibits the execution or application of union security agreements.

ANSWER: Defendants deny the allegations of Paragraph 35.

36. The Ordinance deprives the Plaintiffs of their right, secured by the NLRA, to include union security provisions in collective bargaining agreements entered into after December 14, 2015.

ANSWER: Defendants deny the allegations of Paragraph 36.

37. Insofar as the Ordinance prohibits the execution or application of union security provisions authorized and regulated by the NLRA, the Ordinance is preempted by the NLRA and its enforcement is prohibited by the Supremacy Clause of the United States Constitution.

ANSWER: Defendants deny that the union security provisions that the Ordinance prohibits are “authorized” by the NLRA and deny the remaining allegations of Paragraph 37.

WHEREFORE, Plaintiffs demand the following relief:

A. A declaratory judgment that the Ordinance is invalid insofar as it is preempted by the NLRA and the LMRA in the respects alleged above.

B. A preliminary and permanent injunction prohibiting the Defendants from taking any action to enforce the invalid portions of the Ordinance.

C. Damages for any harm caused to the Plaintiffs by the Defendants' adoption and enforcement of the Ordinance.

D. An award of the attorneys' fees and costs incurred in connection with this lawsuit pursuant to 42 U.S.C. § 1988 and such other statutory and common law provisions as may be applicable.

E. Such other relief as the Court finds just and proper.

ANSWER: Defendants admit that Plaintiffs seek the relief identified above but deny that Plaintiffs are entitled to any relief.

**COUNT II
VIOLATION OF THE SUPREMACY CLAUSE OF THE UNITED STATES
CONSTITUTION: HIRING HALLS ORDINANCE NO. 15-3389-116, SECTION 4(E)**

1-37. The foregoing allegations are incorporated in this count.

ANSWER: Defendants incorporate by reference their responses to Paragraphs 1 through 37 as though fully set forth herein.

38. The Ordinance deprives the Plaintiffs of their right, secured by the NLRA, to include hiring hall provisions in collective bargaining agreements entered into after December 14, 2015.

ANSWER: Defendants deny the allegations of Paragraph 38.

39. Insofar as the Ordinance prohibits the execution or application of hiring hall provisions authorized and regulated by the NLRA, the Ordinance is preempted by the NLRA and its enforcement is prohibited by the Supremacy Clause of the United States Constitution.

ANSWER: Defendants deny that any provisions the Ordinance prohibits are "authorized" by the NLRA and deny the remaining allegations of Paragraph 39.

WHEREFORE, Plaintiffs demand the following relief:

A. A declaratory judgment that the Ordinance is invalid insofar as it is preempted by the NLRA and the LMRA in the respects alleged above.

B. A preliminary and permanent injunction prohibiting the Defendants from taking any action to enforce the invalid portions of the Ordinance.

C. Damages for any harm caused to the Plaintiffs by the Defendants' adoption and enforcement of the Ordinance.

D. An award of the attorneys' fees and costs incurred in connection with this lawsuit pursuant to 42 U.S.C. § 1988 and such other statutory and common law provisions as may be applicable.

E. Such other relief as the Court finds just and proper.

ANSWER: Defendants admit that Plaintiffs seek the relief identified above but deny that Plaintiffs are entitled to any relief.

**COUNT III
VIOLATION OF THE SUPREMACY CLAUSE OF THE UNITED STATES
CONSTITUTION: DUES CHECKOFF ORDINANCE NO. 15-3389-116**

1-39. The foregoing allegations are incorporated in this count.

ANSWER: Defendants incorporate by reference their responses to Paragraphs 1 through 39 as though fully set forth herein.

40. The Ordinance deprives the Plaintiffs of their right, secured by the NLRA and the LMRA, to apply check-off provisions in collective bargaining agreements in the manner authorized by the NLRA and the LMRA.

ANSWER: Defendants deny the allegations of Paragraph 40.

41. Insofar as the Ordinance prohibits the application of check-off provisions authorized and regulated by the LMRA, the Ordinance is preempted by the NLRA and the LMRA and its enforcement is prohibited by the Supremacy Clause of the United States Constitution.

ANSWER: Defendants deny that any provisions the Ordinance prohibits are "authorized" by the NLRA and deny the remaining allegations of Paragraph 41.

WHEREFORE, Plaintiffs demand the following relief:

A. A declaratory judgment that the Ordinance is invalid insofar as it is preempted by the NLRA and the LMRA in the respects alleged above.

B. A preliminary and permanent injunction prohibiting the Defendants from taking any action to enforce the invalid portions of the Ordinance.

C. Damages for any harm caused to the Plaintiffs by the Defendants' adoption and enforcement of the Ordinance.

D. An award of the attorneys' fees and costs incurred in connection with this lawsuit pursuant to 42 U.S.C. § 1988 and such other statutory and common law provisions as may be applicable.

E. Such other relief as the Court finds just and proper.

ANSWER: Defendants admit that Plaintiffs seek the relief identified above but deny that Plaintiffs are entitled to any relief.

Defendants respectfully request that the Court dismiss Plaintiffs' claims with prejudice, with costs awarded to Defendants.

Dated: April 1, 2016

Respectfully submitted,

/s/ Jeffrey M. Schwab
Jacob H. Huebert
Jeffrey M. Schwab
Attorneys for Plaintiffs

LIBERTY JUSTICE CENTER
190 S. LaSalle Street, Suite 1500
Chicago, Illinois 60603
(312) 263-7668
jhuebert@libertyjusticecenter.org
jschwab@libertyjusticecenter.org

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer on all counsel of record on April 1, 2016, by filing it through the court's electronic filing system.

/s/ Jeffrey M. Schwab