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

International Union of Operating Engineers, Local 399, AFL-CIO, *et al.*,	
Plaintiffs,	Case No. 16-cv-2395
v.	Judge Matthew F. Kennelly Magistrate Judge Susan E. Cox
Village of Lincolnshire, Illinois, *et al.*,	
Defendants.	

PLAINTIFF UNIONS' RESPONSE BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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ARGUMENT

I. PLAINTIFF UNIONS HAVE STANDING TO CHALLENGE THE ORDINANCE.

While Defendants begin their summary judgment brief with an extended standing argument, they concede that Operating Engineers Local 399 does have standing to challenge the core union security provision and the check-off provision in the Ordinance (Def. SJ Mem. 4).[1] That concession is sufficient to establish that the Court has jurisdiction to decide the principal issue in this case, i.e., whether the Ordinance is preempted by the National Labor Relations Act (NLRA) because it regulates matters covered by the Act and is not saved from preemption by NLRA § 14(b).

The principal ground on which Plaintiff Unions have challenged the Ordinance is that it is not a "State law" within the meaning of NLRA § 14(b) and is thus preempted by the NLRA's comprehensive regulation of union security agreements. This ground applies to what Defendants call "[t]he Ordinance's core Right-to-Work provisions" as well as to what they call its "two ancillary provisions" (Def. SJ Mem. 2). Thus, if Local 399 prevails on the claim that the Ordinance

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[1] Local 399 represents a unit of employees permanently assigned to a facility located within the Village of Lincolnshire who are covered by a collective bargaining agreement that contains union security and check-off provisions (Pltff. Facts ¶¶ 12-16). Operating Engineers Local 150 has submitted supplemental certifications showing that it represents employees who are permanently assigned to the Lincolnshire facilities of two different employers and who are covered by collective bargaining agreements containing union security and check-off provisions—one of which contains a hiring hall provision (Plaintiff Unions' Statement of Additional Facts ("Pltffs. Add. Facts") ¶¶ 1-2). Given this submission, we expect that Defendants also will concede that Local 150 has standing to challenge the union security and check-off provisions of the Ordinance. We address Local 150's standing to challenge the hiring hall provision later in this section.

The other two Plaintiff Unions have shown that they have entered into collective bargaining agreements containing union security and check-off clauses with employers that are located within the boundaries of the Village of Lincolnshire (Pltff. Facts ¶¶ 53-57, 61-63, 77-78). They also have shown that employees covered by their collective bargaining agreements containing such clauses currently are or recently have performed work within the boundaries of Lincolnshire and likely are to do so in the future (Pltff. Facts ¶¶ 57, 68-72, 77-79). Thus, the other two Unions have standing, as well.

is not a "State" law within the meaning of NLRA § 14(b), all three of the challenged provisions in the Ordinance will be invalid.

Defendants' standing arguments become relevant only if the Ordinance is found to be a "State law" within the meaning of § 14(b). Plaintiff Unions have challenged the check-off and hiring hall provisions of the Ordinance on the alternative grounds that these are not matters that may be regulated by a State law adopted pursuant to § 14(b). Defendants have conceded that Local 399 has standing to challenge the check-off provision in the Ordinance.[2] Thus, the only standing issue that would have to be addressed, were the Court to determine that the Ordinance is a "State law" within the meaning of § 14(b), is whether one of the Plaintiff Unions has standing to challenge the hiring hall provision on the alternative ground that § 14(b) does not authorize State law regulation of hiring halls.

Operating Engineers Local 150 has demonstrated that it has standing to challenge the Ordinance's hiring hall provision. Operating Engineers Local 150 has negotiated collective bargaining agreements containing hiring hall clauses with four employers located within the boundaries of Lincolnshire (Pltff. Facts ¶¶ 18-20, 24-26, 33-35, 43-45). Three of these agreements with Lincolnshire-based employers cover employees who regularly perform work at the employers' Lincolnshire facilities (Pltffs. Facts ¶¶ 27, 37, 46; Pltffs. Add. Facts ¶¶ 1-3). In

[2] Operating Engineers Local 150 and Construction and Laborers' District Council receive dues and fees deducted from the pay of employees whose employers are located in Lincolnshire pursuant to written authorizations that are irrevocable for one year (Pltff. Facts ¶¶ 49, 70; Pltff. Add. Facts ¶¶ 1, 2, 4). Section 5 of the Ordinance makes it "unlawful" for "employers located in the Village to deduct from the wages, earning, or compensation of an employee any union dues [or] fees . . . unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time." Section 5 thus forbids employers located in Lincolnshire to deduct union dues and fees pursuant to an authorization that is not revocable at any time. Section 6 declares that "[a]ny agreement" that violates the Ordinance is "null and void, and of no legal effect." Section 6 would nullify the dues deduction authorizations that employees represented by Local 150 and by the Laborers' District Council have given to their Lincolnshire-based employers. Thus, Local 150 and the Laborers' District Council clearly have standing to challenge the check-off provision on the alternative ground advanced by the complaint.

addition, 25 construction companies identified by Lincolnshire itself as having recently performed construction work for the Village are parties to collective bargaining agreements with Operating Engineers Local 150 that contain hiring hall clauses (Pltffs. Add. Facts ¶ 7).

The Ordinance broadly declares that "[n]o person covered by the NLRA shall be required as a condition of employment . . . to be recommended, approved, referred, or cleared for employment by or through a labor organization." (Section 4(E)). This provision clearly forbids Operating Engineers Local 150 from continuing to apply its hiring hall agreements with regard to referral of employees to be hired by Lincolnshire-based employers or to perform work at a jobsite located within Lincolnshire. Agreements that violate any provision of the Ordinance are declared "null and void, and of no legal effect." (Sec. 6). And anyone who violates the Ordinance is subject to both criminal and civil sanctions (Secs. 8, 9). Given the scope of Operating Engineers Local 150's hiring hall agreements and the Union's recent experience in making referrals pursuant to those agreements, it is certain that the Ordinance will infringe on Local 150's contractual rights to refer employees to Lincolnshire-based employers or to perform work at a jobsite located within Lincolnshire. This is sufficient to "demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers*, 442 U.S. 289, 298 (1979). "Injury need not be certain," *American Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 593 (7th Cir. 2012), "a probability of future injury counts as 'injury' for the purpose of standing," *Bauer v. Shepard*, 620 F.3d 704, 708 (7th Cir. 2010).

Operating Engineers Local 150 has demonstrated that it recently referred employees to Lincolnshire-based employers and to perform work at jobsites that are located within Lincolnshire (Pltff. Add. Facts ¶¶ 4-7). Operating Engineers Local 150 will continue to make such referrals pursuant to its many collective bargaining agreements encompassing areas that include the Village

territory (Pltff. Facts ¶¶ 47, 51; Pltff. Add. Facts ¶ 5). Nevertheless, Defendants maintain that this showing is insufficient, because Operating Engineers Local 150 has "fail[ed] to establish that anyone who currently works for these companies spends the majority of his or her working hours in Lincolnshire." (Def. SJ Mem. 6).

The Ordinance's prohibition on exclusive hiring hall referrals is not confined to referrals that result in an employee "spend[ing] the majority of his or her working hours in Lincolnshire." (Def. SJ Mem. 6). What the Ordinance prohibits is "requir[ing] as a condition of employment" that any "person" "be recommended, approved, referred, or cleared for employment by or through a labor organization." (Sec. 4(E)). That prohibition is directed at a requirement that is imposed before the person starts works and would be violated by imposing that precondition on obtaining employment without any regard to the expected duration of the resulting employment. There is no question that this prohibition would apply to the requirement set forth in Operating Engineers Local 150's hiring hall agreements.

Even if the Ordinance did apply only to referrals resulting in jobs that have a primary situs in Lincolnshire, it would apply to Operating Engineers Local 150's referrals to work at Lincolnshire jobsites. This is so, because, by definition, that jobsite would be the employee's primary jobsite during the period of the referral. Typically, once a construction job is completed, the employee would return to the Local 150 hiring hall for referral to another job.

In sum, Defendants have conceded that at least one of Plaintiff Unions has standing to challenge the union security, check-off, and hiring hall provisions of the Ordinance on the general ground that it is not a "State law" within the meaning of NLRA § 14(b), and they have conceded that at least one of Plaintiff Unions has standing to challenge the check-off provision on the alternative ground that it is not permitted by § 14(b), even if the Ordinance is a "State law." What

is more, all of Plaintiff Unions have presented ample evidence that they will be directly affected by the Ordinance's union security and check-off provisions. Operating Engineers Local 150 has further demonstrated that its hiring hall agreements covering jobsites located within Lincolnshire will be directly affected by the Ordinance's hiring hall provision. Thus, there is no serious question that Plaintiff Unions have standing to challenge all three provisions of the Ordinance on both of the alternative legal theories advanced by their Complaint.

II. THE LINCOLNSHIRE ORDINANCE IS PREEMPTED BY THE NATIONAL LABOR RELATIONS ACT.

A. The National Labor Relations Act, as Amended in 1947, Preempts State Regulation of Union Security Agreements Except to the Extent State Laws Are Saved by § 14(b).

Defendants' assertion that the NLRA "does not implicitly preempt the field with respect to laws regulating union security agreements" (Def. SJ Mem. 10) rests entirely on their stubborn refusal to recognize that the 1947 amendments to the NLRA extended federal regulation of labor relations to encompass the negotiation and application of union security agreements. While the NLRA as enacted in 1935 "merely disclaim[ed] a national policy hostile to the closed shop or other forms of union-security agreement" as a result of the 1947 amendments, "the new Act forbids the closed shop and strictly regulates the conditions under which a union-shop agreement may be entered." *Algoma Plywood Co. v. Wisconsin Board*, 336 U.S. 301, 307, 314 (1949). *See* Pltff. SJ Mem. 9-11 (describing the 1947 union security amendments). As a result of the 1947 amendments, the negotiation and enforcement of "union security clause[s]" became "a matter as to which . . . federal concern is pervasive and its regulation complex." *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 296 (1971).

"When it amended the Federal Act in 1947 . . . Congress knew full well that its labor legislation *preempts the field that the act covers* . . . and demonstrated its ability to *spell out with*

particularity those areas in which it desired state regulation to be operative." *Bus Employees v. Wisconsin Board*, 340 U.S. 383, 397-98 (1951) (emphasis added; quotation marks and footnotes omitted). *Bus Employees* cites NLRA § 14(b), *id.* at 398 n. 25, as an example of the 1947 Congress "spell[ing] out with particularity those areas in which it desired state regulation to be operative."

As the brief filed by the National Labor Relations Board (NLRB) in this case demonstrates, the NLRA, as amended in 1947, comprehensively regulates the negotiation and application of union security, hiring hall, and dues check-off agreements. NLRB Br. 6-8. As the Board's brief also demonstrates, state and local government regulation of these matters would undermine substantially the NLRA's uniform regulation of labor relations. *Id.* at 9-12. For that reason, the Lincolnshire Ordinance's regulation of union security, hiring hall, and dues check-off agreements can escape "the Act's generally preemptive provisions" only if the Ordinance comes within NLRA § 14(b)'s "clearly-worded and limited exception to the nationwide application of the NLRA, empowering States and Territories to prohibit union security." *Id.* at 12.

In *Oil, Chemical & Atomic Workers v. Mobil Oil Corp.*, 426 U.S. 407, 409 (1976), the Supreme Court squarely held that it is only "Section 14(b) [that] allows individual States to exempt themselves from [the authorization and regulation of union security agreements in] § 8(a)(3) and to enact so-called 'right-to-work' laws prohibiting union or agency shops." For precisely that reason, the Court held that "right-to-work laws which are not encompassed under § 14(b) . . . are no[t] permissible." *Id.* at 413 n. 7. Defendants' argument that the scope of § 14(b) is irrelevant to the preemptive effect of the NLRA flies in the face of the holding and rationale of *Mobil Oil* (a precedent on which we heavily relied in our opening brief and which the defendants barely acknowledge in their response) (*see* Pltff. SJ Mem. 6 & n. 6 (describing the holding and rationale of *Mobil Oil*)).

To be clear, *Mobil Oil*'s focus on § 14(b) does *not* rest on any notion "that the inclusion of §14(b) *implies* that the NLRA actually preempts the field except to the extent that § 14(b) specifically authorizes state and territorial laws regarding union security agreements." (Def. SJ Mem. 12 (emphasis added)). Thus, *Mobil Oil* is not in any tension with the two Supreme Court cases cited by Defendants for the proposition that "[*s*]*tanding alone*, a provision of federal law authorizing a 'State' to enact a particular type of law does not implicitly prohibit a state's political subdivisions—i.e., local governments—from enacting that same type of law." (*id*. at 17 (emphasis added),) citing *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 607-08 (1991), and *City of Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 432 (2002). The whole point is that § 14(b) does *not* stand alone, it is an express exception to the field preemption that would ordinarily follow from the comprehensive regulation of union security agreements enacted by the 1947 amendments to the NLRA. Because of the NLRA's "field pre-emption" in the areas of labor relations regulated by that statute, § 14(b) is properly "understood . . . as *authorizing* certain types of state regulation (for which purpose it makes eminent sense to authorize States but not their subdivisions)." *Mortier*, 501 U.S. at 616 (Scalia, J., concurring) (emphasis in original); *see also id*. at 607, 612-13 (majority opinion) (emphasizing the absence of "field pre-emption" under the statute at issue there)[3]; NLRB Br. 12-13).

B. NLRA § 14(b) Creates a Narrow Exception from Federal Preemption that Preserves Only State Laws Prohibiting Union Security Agreements.

NLRA "§ 14(b) gives *the States* power to outlaw even a union-security agreement that passes muster by federal standards," *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963)

[3] In addition to not involving any question of "field preemption" by the federal statutes at issue, the delegations of state authority to local governments in *Mortier* and *Ours Garage* both concerned "the regulation of health and safety matters [which] is primarily, and historically, a matter of local concern." *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 719 (1985).

(emphasis added), so that "any *State* or Territory that wishes to may *exempt itself* from [federal] *policy*" by "*express*[*ing*] *a contrary policy* via right-to-work laws." *Mobil Oil*, 426 U.S. at 416-17, 420 (emphasis added). "[W]ith respect to those state laws which § 14(b) permits to be exempted from § 8(a)(3)'s national policy '[t]here is . . . conflict between state and federal law; but it is a conflict sanctioned by Congress with directions to give the right of way to state laws.'" *Id.* at 417, quoting *Schermerhorn*, 375 U.S. at 103. Of critical importance here, it is only "*state* policy that [has] overriding authority." *Schermerhorn*, 375 U.S. at 103 (emphasis added).

The State of Illinois has *not* taken any steps to "exempt itself" from the "national policy that certain union-security agreements are valid." *Mobil Oil*, 426 U.S. at 416-17. Even though "Illinois has no statewide Right-to-Work law," Defendants maintain that "its political subdivisions with 'home rule' powers have the authority to pass their own Right-to-Work laws that apply within their respective jurisdictions . . . , because neither the Illinois Constitution nor the Illinois General Assembly has prohibited home-rule units from enacting Right-to-Work laws." (Def. SJ Mem. 1). In other words, it is Defendants' position that a state that wants the federal policy favoring union security agreements to prevail throughout its territory must take affirmative steps to ensure that its political subdivisions do not thwart that policy choice by enacting local Right-to-Work laws. There is nothing in the language or legislative history of § 14(b) indicating that Congress meant to require this unheard of type of state legislation.[4]

The "conflict between state and federal law" permitted by § 14(b) is a conflict only at the level of "state policy." *Schermerhorn*, 375 U.S. at 103. "[A] municipality's action undertaken pursuant to its 'Home Rule' authority is not action contemplated by the state and not an affirmative

[4] The legislative history relied upon by Defendants (Def. SJ Mem. 13-14) confirms Congress's intent to preserve the sort of "State[] statutes or constitutional provisions . . . about which Congress seems to have been well informed during the 1947 debates." *Schermerhorn*, 375 U.S. at 100.

expression of state policy." *Perry v. City of Fort Wayne*, 542 F.Supp. 268, 273 (N.D. Ind. 1982), citing *Community Communications Co. v. Boulder*, 455 U.S. 40, 55-56 (1982). The Supreme Court's decisions defining the preemptive effect of the federal antitrust laws demonstrate the important difference between state and local policy when it comes to accommodating state and federal law.

The Supreme Court has concluded that "the [Sherman] Act should not be read to bar States from imposing market restraints 'as an act of government.'" *FTC v. Phoebe Putney Health System, Inc.*, 568 U.S. ___, 133 S.Ct. 1003, 1010 (2013), quoting *Parker v. Brown*, 317 U.S. 341, 352 (1943). State or local "[l]egislation that would otherwise be pre-empted [as conflicting with the federal antitrust laws] may nonetheless survive if it is found to be state action immune from antitrust scrutiny under *Parker v. Brown*. 317 U.S. 341 (1943)." *Fisher v. City of Berkeley*, 475 U.S. 260, 265 (1986). However, of particular pertinence here, to avoid federal preemption, "[t]he ultimate source of that immunity can be only the State not its subdivisions." *Ibid.*, citing *Community Communications*, 455 U.S. at 50-51, and *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 412-13 (1978) (opinion of Brennan, J.).

In applying the "State action" exemption to the antitrust laws, the Supreme Court has held that a municipal "ordinance cannot be exempt from antitrust scrutiny unless it constitutes the action of the State . . . itself in its sovereign capacity or unless it constitutes municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy." *Community Communications*, 455 U.S. at 52. And, the Court rejected the proposition "that these criteria are met by the direct delegation of powers to municipalities through [a] Home Rule Amendment to the [State] Constitution." *Ibid.* The Court explained, "A State that allows its municipalities to do as they please can hardly be said to have 'contemplated' the specific

anticompetitive actions for which municipal liability is sought." *Id*. at 55. "In light of the serious economic dislocation which could result if cities were free to place their own parochial interests above the Nation's economic goals reflected in the antitrust laws," the Court declined to read the antitrust laws "to exclude anticompetitive municipal action from their reach." *Id*. at 51, quoting *Louisiana Power & Light* at 412-413 (Opinion of Brennan, J.). *See Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 47 (1985) ("Where the actor is a municipality, . . . [t]he only real danger is that it will seek to further purely parochial interests at the expense of more overriding state goals.").

The "serious economic dislocation which could result if [local governments] were free to place their own parochial interests above the Nation's economic goals reflected in the [labor] laws," *Community Communications*, 455 U.S. at 51, strongly indicates that it is "only the State, not its subdivisions," *Fisher*, 475 U.S. at 265, that comes within § 14(b)'s exemption from NLRA preemption. This is especially so, given that the federal labor laws have a much more potent preemptive effect than the federal antitrust laws. *Compare Wisconsin Dep't of Labor & Human Relations v. Gould*, 475 U.S. 282, 286 (1986) ("in passing the NLRA Congress largely displaced state regulation of industrial relations") *with Parker*, 371 U.S. at 351 ("The Sherman Act . . . gives no hint that it was intended to restrain state action or official action directed by a state.").

C. Defendants' Strained Interpretation of the Ordinance Demonstrates Why NLRA § 14(b) Should Not Be Read to Authorize Local Right-to-Work Laws.

Defendants have argued that the challenged provisions of the Ordinance apply to an individual only "if Lincolnshire is . . . the place where the worker spends the majority of his or her working hours." (Def. SJ Mem. 5). There is nothing in the language of the Ordinance to suggest that it has this limited application. Indeed, the check-off and hiring provisions in the Ordinance

clearly apply to the employees of any employer located within the Village, no matter how long those employees may perform work at jobsites within the Village territory.[5]

The defendants suggest, Def. SJ Mem. 5, that their eccentric reading of the Ordinance derives from *Mobil Oil*'s holding that "§ 14(b) does not allow enforcement of right-to-work laws with regard to an employment relationship whose principal job situs is *outside of a State having such laws*." *Mobil Oil*, 426 U.S. at 418 (emphasis added). But this formulation of the "job situs test" clearly rests on the fact that 14(b) lifts the federal authorization of union security agreements "*in any State* or Territory *in which* [the] execution or application [of such agreements] is prohibited by State or Territorial law." If a local Right-to-Work law is deemed to be a "State law" within the meaning of § 14(b), there is nothing in § 14(b) itself to prevent that local law from applying everywhere "in [the] State."

As Defendants recognize, the notion that § 14(b) authorizes the enactment of myriad local Right-to-Work laws, each potentially having statewide application, is absurd. But what that demonstrates is that the "State law" referred to in § 14(b) is a law that could sensibly apply everywhere "in [the] State," i.e., a law enacted by the State itself and not by one of its political subdivisions.

It is true, as Defendants note, that local governments' home-rule authority typically extends no further than enacting "laws that apply within their respective jurisdiction." (Def. SJ Mem. 1). But as we demonstrated in our opening brief (Pltff. SJ Mem. 13-14), it is far from clear what that

[5] The hiring hall provision states: "No person covered by the NLRA shall be required as a condition of employment or continuation of employment with a private sector employer . . . to be recommended, approved, referred, or cleared for employment by or through a labor organization." (Sec. 4(E)). The check-off provision states: "For employers located in the Village, it shall be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges . . . unless the employee has first presented . . . a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer." (Sec. 5).

limitation would mean with respect to local Right-to-Work laws. And, while Defendants assert that there is "no reason to think that answering this question would be especially difficult" (Def. SJ Mem. 15), they make no attempt themselves to define the scope of Lincolnshire's home rule authority. The Ordinance could be understood to apply "within [Lincolnshire's] jurisdiction" (Def. SJ Mem. 1) if it were construed as applying variously: to employers located within the Village, to hiring done within the Village, or to employment relationships having some connection to the Village. But each of these different constructions would result in the Ordinance having a widely varying scope of application.

Even Defendants' peculiarly narrow reading of the Ordinance would raise difficult questions of application. The Village of Lincolnshire encompasses only 4.58 square miles, and by Defendants' interpretation, the Ordinance would apply only to a "worker [who] spends the majority of his or her working hours" within that small territory (Def. SJ Mem. 5). Plaintiff Unions have numerous collective bargaining agreements with employers located both within and without the Village that apply to employees who frequently spend some amount of time working within the Village. The vast majority of those employees, however, also work at locations outside the Village. It would virtually be impossible for Plaintiff Unions and the employers to determine which employees will be deemed to work "the majority of his or her working hours" within the Village and which will not. Thus, it would virtually be impossible to determine whether the union security, hiring hall, and check-off clauses in their agreements can apply to any employee who spends any amount of time working with Lincolnshire. *See* NLRB Br. 9-10, n. 6 ("Such a scheme would make it virtually impossible to administer the type of regional – let alone national – 'industry agreements,' regularly used in the construction industry to address the transient nature of the work, with explicit Congressional approval.").

The Supreme Court has held that § 14(b) should be interpreted so that "parties entering a collective bargaining agreement will easily be able to determine in virtually all situations whether a union- or agency-shop provision is valid." *Mobil Oil*, 426 U.S. at 419. Defendants' attempt to suggest a workable interpretation of the Lincolnshire Ordinance demonstrates that interpreting § 14(b) to authorize local Right-to-Work laws does not meet that test.

III. HIRING HALL AND CHECK-OFF AGREEMENTS ARE NOT SUBJECT TO STATE REGULATION UNDER § 14(b).

In their opening brief, Plaintiff Unions demonstrated that the hiring hall and check-off provisions of the Ordinance would be preempted even if § 14(b) authorized local Right-to-Work laws (Pltff SJ Mem. 17-20). *Accord* NLRB Br. 7-8, 14-15. This is so, Plaintiff Unions explained, because hiring hall and check-off agreements are not "agreements requiring membership in a labor organization as a condition of employment." 29 U.S.C. § 164(b). And, Plaintiff Unions cited unanimous precedent holding that even states may not regulate hiring hall and check-off agreements.

Defendants do not even attempt to show that state regulation of hiring hall and check-off agreements comes within § 14(b). And, they cite no precedent holding that states may regulate these matters. Accordingly, Plaintiff Unions rest on the showing in their opening brief and in the brief for the National Labor Relations Board.

IV. THE COMPLAINT STATES A CLAIM UNDER 42 U.S.C. § 1983.

Defendants' assertion that "the Unions fail to state a § 1983 claim . . ., even if they were correct on the merits of their preemption arguments" (Def. SJ Mem. 24) is contrary to the Supreme Court's decisions in *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 109 (1989), and *Livadas v. Bradshaw*, 512 U.S. 107, 133 (1994), which hold that preemption claims under the

National Labor Relations Act are cognizable under § 1983. *See also Chamber of Commerce v. Brown*, 554 U.S. 60 (2008).

In *Golden State Transit*, the Supreme Court squarely held that "the NLRA creates 'rights' in labor and management that are protected against governmental interference," 493 U.S. 108, and "that the NLRA gives [labor and management] rights enforceable against governmental interference in an action under § 1983," *id*. at 109. The Court explained that, "[i]n the NLRA, Congress has not just 'occupied the field'" of labor relations, it has "create[d] rights in labor and management both against one another and against the State." *Ibid*. Among the rights created by the NLRA "against the State" is the right to be free of "governmental interference with the collective-bargaining process." *Ibid*. In *Livadas*, the Court held that the NLRA grants "[t]he right . . . to complete the collective-bargaining process and agree to [lawful contract] clause[s]" free of state or local government interference and that a claim for violation of this right by a state or local government is "properly brought under § 1983." 512 U.S. at 134. *See Blessing v. Freestone*, 520 U.S. 329, 343 (1997) (the NLRA grants "the very specific right of employees" to complete the collective bargaining process and agree to lawful clauses).

The Lincolnshire Ordinance interferes with Plaintiff Unions' NLRA-protected rights to negotiate and enforce lawful union security, hiring hall, and check-off agreements free of state or local government interference. *See Georgia State AFL-CIO v. Olens*, 2016 U.S. Dist. LEXIS 94011, p. *11 (N.D. Ga., July 7, 2016) ("the right to engage in the collective bargaining process without state interference . . . is sufficiently definite to permit a § 1983 claim"). "Once a plaintiff demonstrates that a statute confers an individual right [against state or local government interference], the right is presumptively enforceable by § 1983." *Gonzaga University v. Doe*, 536 U.S. 273, 284 (2002).

CONCLUSION

The Court should grant the plaintiffs' motion for summary judgment and deny the defendants' motion for summary judgment.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on August 11, 2016, he electronically filed the foregoing with the Clerk of Court using the CM/CM/ECF system, which sent notification to the following:

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