IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

WESTERN CAB COMPANY Petitioners, vs. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the COUNTY OF CLARK, and THE HONORABLE LINDA MARIE BELL, District Judge, Respondents, and LAKSIRI PERERA, IRSHAD AHMED, MICHAEL SARGEANT, Individually and on behalf of others similarly situated, Real Parties in Interest	Dist. Ct No.:A-14-707425-C **Case No.: 69408**

REAL PARTIES IN INTEREST'S
NOTICE OF SUPPLEMENTAL AUTHORTY

COMES NOW, REAL PARTIES IN INTEREST, LAKSIRI PERERA, IRSHAD AHMED, MICHAEL SARGEANT and hereby submit the August 23, 2016 Opinion of United States Court of Appeal for the Ninth Circuit in the matter of *American Hotel and Lodging Association; Asian American Hotel Owners Association v. City of Los Angeles*, Case No. 15-55909, 2016 WL 4437618 (9th Cir. Aug. 23, 2016) (copy attached for the convenience of the court) as supplemental authority for the proposition there is no preemption of the Constitutional Minimum Wage Amendment in Nevada. Referring to the Los Angeles City (minimum) Wage Ordinance, the federal Court of Appeals stated:

> We have consistently held that minimum labor standards do not implicate Machinists preemption. The Wage Ordinance is no different.

Dated: October 21, 2016

Submitted by:

/s/Leon Greenberg

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 21, 2016, she served the within:

NOTICE OF SUPPLEMENTAL AUTHORITY

by court electronic service:

TO:
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And a true and correct copy of the foregoing

NOTICE OF SUPPLEMENTAL AUTHORITY

was served via personal service on October 24, 2016, to the following:

The Honorable Linda Marie Bell
District Court Judge
Eighth Judicial District Court of Nevada
200 Lewis Avenue, #3B
Las Vegas, NV 89101

Respondent

/s/Sydney Saucier
Sydney Saucier

2016 WL 4437618
United States Court of Appeals,
Ninth Circuit.

American Hotel and **Lodging Association**; **Asian American Hotel Owners Association**,
Plaintiffs–Appellants,
v.
City of **Los Angeles**, Defendant–Appellee,
and
Unite Here Local 11,
Intervenor–Defendant–Appellee.

No. 15–55909
|
Argued and Submitted February 1, 2016 Pasadena, California
|
August 23, 2016

Synopsis

Background: **Associations** of **hotel owners** brought action against **city**, challenging **city's** minimum wage ordinance. The United States District Court for the Central District of California, Andre Birotte, Jr., J., 119 F.Supp.2d 1177, denied **associations'** motion for preliminary injunction to stay effective date of ordinance and to enjoin enforcement of ordinance and denied **city's** motion to strike evidence.

Holdings: The Court of Appeals, Pregerson, Senior Circuit Judge, held that:

[1] **city's** minimum wage ordinance was not preempted by National Labor Relations Act (NLRA), and

[2] ordinance's opt-out provision for collective bargaining did not independently warrant preemption under NLRA.

Affirmed.

West Headnotes (8)

[1] **Federal Courts**
Preliminary injunction; temporary restraining order

Denial of a preliminary injunction is reviewed for abuse of discretion.

Cases that cite this headnote

[2] **Federal Courts**
Preliminary injunction; temporary restraining order

In denying a preliminary injunction, a district court abuses its discretion if the court rests its decision on an erroneous legal standard; to determine whether a district court abused its discretion in this way, the Court of Appeals reviews de novo the legal premises underlying the preliminary injunction.

Cases that cite this headnote

[3] **Labor and Employment**
Preemption
States
Labor and Employment

National Labor Relations Act (NLRA) preempts states from regulating an activity that Congress arguably expected the NLRA to protect or prohibit. National Labor Relations Act § 1, 29 U.S.C.A. § 151 et seq.

Cases that cite this headnote

[4] **Labor and Employment**
Preemption
States
Labor and Employment

National Labor Relations Act (NLRA) preempts states from restricting a weapon of self-help, such as a strike or lock-out. National Labor Relations Act § 1, 29 U.S.C.A. § 151 et seq.

Cases that cite this headnote

[5] **Labor and Employment**
Preemption
States
Labor and Employment

Minimum labor standards, such as minimum wages, are not subject to National Labor Relations Act (NLRA) preemption of states' restriction of a weapon of self-help, since such minimum labor standards affect union and nonunion employees equally, neither encouraging nor discouraging the collective bargaining processes covered by the NLRA. National Labor Relations Act § 1, 29 U.S.C.A. § 151 et seq.

Cases that cite this headnote

[6] **Labor and Employment**
Preemption
States
Labor and Employment

State action that intrudes on the mechanics of collective bargaining is preempted by the National Labor Relations Act (NLRA), but state action that sets the stage for such bargaining is not. National Labor Relations Act § 1, 29 U.S.C.A. § 151 et seq.

Cases that cite this headnote

[7] **Labor and Employment**
Preemption
States
Labor and Employment

City's minimum wage ordinance was not preempted by National Labor Relations Act (NLRA), as ordinance was kind of minimum labor standard that fell within ambit of state power, and, by providing basic minimum wage and time-off compensation, ordinance altered backdrop of negotiations, not mechanics of collective bargaining. National Labor Relations Act § 1, 29 U.S.C.A. § 151.

Cases that cite this headnote

[8] **Labor and Employment**
Preemption
States
Labor and Employment

In **city's** minimum wage ordinance, opt-out provision for collective bargaining did not independently warrant preemption under National Labor Relations Act (NLRA), since NLRA did not call into question validity of these familiar and narrowly drawn opt-out provisions. National Labor Relations Act § 1, 29 U.S.C.A. § 151 et seq.

Cases that cite this headnote

Appeal from the United States District Court for the Central District of California, Andre Birotte, Jr., District Judge, Presiding, D.C. No. 2:14–cv–09603–AB–SS

Attorneys and Law Firms

Michael Starr (argued) and Katherine Healy Marques, Holland & Knight LLP, New York, New York; Kristina S. Azlin and John A. Canale, Holland & Knight LLP, **Los Angeles**, California; for Plaintiffs–Appellants.

Sara Ugaz (argued), Ronald S. Whitaker, Thomas H. Peters, and James P. Clark, Deputy **City** Attorneys; Michael N. Feuer, **City** Attorney; Office of the **Los Angeles City** Attorney, **Los Angeles**, California; for Defendant–Appellee.

Paul L. More (argued), Yuval Miller, Andrew J. Kahn, and Richard G. McCracken; Davis, Cowell & Bowe, LLP, San Francisco, California; for Intervenor–Defendant–Appellee.

H. Christopher Bartolomucci and D. Zachary Hudson, Bancroft PLLC, Washington, D.C., for Amici Curiae Chamber of Commerce of the United States of America and Coalition for a Democratic Workplace.

Before: Harry Pregerson, Kim McLane Wardlaw, and Andrew D. Hurwitz, Circuit Judges.

OPINION

Opinion by Judge Pregerson, Senior Circuit Judge:

*1 The **American Hotel & Lodging Association** and **Asian American Hotel Owners Association** ("the **Hotels**") appeal the denial of their motion to preliminarily enjoin the **City** of **Los Angeles** ("the **City**") from enforcing the Citywide **Hotel** Worker Minimum Wage Ordinance ("the Wage Ordinance"). The **Hotels** argue that the entire Wage Ordinance is preempted by federal labor law, referred to as *Machinists* preemption, because the Ordinance interferes with labor-management relations. The **Hotels** also argue that the opt-out provision for collective bargaining agreements is independently preempted.

The district court concluded that preemption was inapplicable and denied the **Hotels**' motion for preliminary injunctive relief. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

I. Background

At issue in this case is the Citywide **Hotel** Worker Minimum Wage Ordinance ("the Wage Ordinance"), adopted by the **Los Angeles City** Council on October 1, 2014. The Wage Ordinance provides, among other provisions, an increased minimum wage for workers at select **hotels**—large **hotels** citywide with more than 150 rooms and some smaller **hotels** near the **Los Angeles** International airport ("LAX") that are already covered by another wage ordinance. An opt-out provision allows **hotels** covered by a collective bargaining agreement to waive the requirements of the Ordinance, and a hardship waiver allows those **hotels** whose viability might be threatened by the Ordinance to postpone implementation for one year.

A. *Earlier Wage–Related Ordinances*

The Wage Ordinance and its specific provisions follow a long history of minimum-wage ordinances that have been adopted by the **City** of **Los Angeles** ("the **City**") and subsequently contested by employers.

In 1997, the **City** adopted one of the country's first "living wage" ordinances ("Airport LWO"), mandating increased minimum wages and compensated time off for airport workers and certain contract employees working near LAX. *See* L.A. Admin. Code §§ 10.37 *et seq.* The Airport LWO contains a heightened minimum wage (a total cash minimum wage of $15.37 per hour as of 2013) and an opt-out for workers covered by collective bargaining agreements. In 2012, an LAX contractor sued the **City**, asserting that the Airport LWO was preempted by federal law, including the Railway Labor Act. The district court rejected the plaintiff's preemption theory and granted summary judgment for the **City**, *Calop Bus. Sys., Inc. v. **City of Los Angeles***, 984 F.Supp.2d 981 (C.D. Cal. 2013), and we affirmed, *Calop Bus. Sys., Inc. v. **City of Los Angeles***, 614 Fed.Appx. 867, 870 (9th Cir. 2015) ("The Act does not preempt state and local laws that, like the [Airport] LWO, impose minimum substantive requirements while permitting employers and unions to bargain around them.").

In 2006 and 2007, the **City** adopted two ordinances to regulate wages at **hotels** near LAX. The **City** had determined that **hotel** customers—believing that workers already received a portion of the "service charges" added to their bills—reduced or eliminated tips to **hotel** workers. In 2006, the **City** adopted the **Hotel** Service Charge Reform Ordinance ("Service Charge Ordinance"), Ordinance No. 178084, which required **hotels** to pass along service charges to the employees who rendered the actual services.

*2 In 2007, the **City** passed the Airport Hospitality Enhancement Zone Ordinance ("AHEZ Ordinance"), Ordinance No. 178432, to provide a living wage for employees of **hotels** with 50 or more rooms in the LAX area. The AHEZ Ordinance contains a heightened minimum wage (a total cash minimum wage of $12.28 per hour as of 2014), provides an opt-out for **hotels** covered by a collective bargaining agreement, and contains a hardship waiver for **hotel** employers. In 2008, the AHEZ Ordinance was challenged by an airport **hotel**, which argued that the ordinance was preempted by the National Labor Relations Act ("NLRA"). The district court disagreed, noting that "the employer will have the opportunity to negotiate a collective bargaining agreement whose rates could be higher or lower than the living wage." *Fortuna Enters., L.P. v. **City of Los Angeles***, 673 F.Supp.2d 1000, 1010 (C.D. Cal. 2008). The subsequent appeal was voluntarily dismissed.

B. *The Present Wage Ordinance*

Finding that the AHEZ Ordinance "has resulted in higher pay and real benefits for low-income families, and the **hotels** around LAX have thrived," the **City** sought to extend the benefits of increased minimum wages to large **hotels** citywide. Before reaching a decision, the **City** received input from economists and consultants; the public; advocacy organizations such as the **Los Angeles** Alliance for a New Economy ("LAANE"); and Appellee-in-Intervention, UNITE HERE Local 11 ("Local 11").[1] Based on this input, the **City** Council passed the Wage Ordinance on October 1, 2014, extending a "fair wage" of $15.37 to **hotels** with 150 or more rooms, which the Council determined were in a better position to absorb the cost of paying a living wage without layoffs.[2] The Wage Ordinance also replaces the 2007 AHEZ Ordinance governing **hotels** with 50 or more rooms close to LAX.

The official purpose of the Wage Ordinance is to promote "an employment environment that protects government resources," and "the health, safety and welfare of thousands of **hotel** workers by ensuring they receive decent compensation for the work they perform." Indeed, **Los Angeles hotel** workers are among the lowest paid in the nation. To achieve these goals, the final ordinance includes the following provisions:

- *Minimum Wage*: Minimum wages of $15.37 per hour for workers at covered **hotels** (exclusive of gratuities, service charge distributions, and bonuses), with staggered implementation (beginning first for **hotels** with 300 rooms or more and subsequently for **hotels** with 150 or more);

- *Compensated Time and Sick Leave*: 96 hours of compensated time off and an additional 80 hours of uncompensated sick leave for full-time **hotel** workers;

- *Service–Charge Pass–Through*: A requirement that service charges be distributed to the non-supervisory workers who provide the service to the customer;

- *Enforcement*: A private cause of action for back pay, attorneys' fees, and treble damages for willful violations;

- *Exemption for Collective Bargaining Agreements*: An opt-out for workers covered by a bona fide, non-expired collective bargaining agreement, if the waiver is set forth in that agreement in clear and unambiguous terms. (No exemptions are available for terms unilaterally implemented by the parties.)

- *One–Year Hardship Waiver*: A one-year waiver available to employers if necessary to avoid bankruptcy, shutdown, reduction in workforce by more than 20 percent, or reduction in workers' total hours by more than 30 percent.

Many of these provisions are identical to those in previous **City** ordinances that have been upheld by the courts.[3]

C. *Procedural History*

*3 On December 16, 2014, a few months after the Wage Ordinance was adopted, **American Hotel & Lodging Association** and **Asian American Hotel Owners Association** ("the **Hotels**") sued the **City**,[4] arguing that "[u]nder the guise of an ordinance purporting to require that a 'fair wage' be paid to **hotel** workers, the **City** has constructed ... an insidious mechanism that improperly aids the **Hotel** Workers' Union ... in its efforts to organize employees." On January 26, 2015, the **Hotels** filed a motion for preliminary injunction, arguing that the Wage Ordinance is preempted by federal labor law (so-called *Machinists* preemption) because it interferes with labor-management relations. On May 13, 2015, District Court Judge André Birotte, Jr., denied the **Hotels**' motion for a preliminary injunction, holding that the **Hotels** had failed to show a likelihood of success on the merits. The **Hotels** timely appealed.

II. Standard of Review

[1] [2]Denial of a preliminary injunction is reviewed for abuse of discretion. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A district court abuses its discretion if its analysis is premised on an inaccurate view of the law. *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1123 (9th Cir. 2014). In such instances, the court reviews *de novo* the legal premises underlying the preliminary injunction. *Id.*

III. Discussion

A. *The Wage Ordinance Is a Minimum Labor Standard That Is Not Preempted by the National Labor Relations Act*

1. States cannot regulate the mechanics of collective bargaining but may set minimum labor standards

[3]The NLRA—the federal architecture that governs relations between labor and management, for example, union organizing, collective bargaining, and conduct of labor disputes—has no express preemption provision. *See* 29 U.S.C. §§ 151–169; *Chamber of Commerce v. Brown*, 554 U.S. 60, 65, 128 S.Ct. 2408, 171 L.Ed.2d 264 (2008). Nonetheless, the Supreme Court has recognized two implicit preemption mandates: *Garmon* preemption and *Machinists* preemption. *Brown*, 554 U.S. at 65, 128 S.Ct. 2408. *Garmon* preemption, not at issue in this case, forbids states from regulating activity that Congress (arguably) expected the NLRA to protect or prohibit. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959).

[4]Under *Machinists* preemption, at issue here, the NLRA prohibits states from restricting a "weapon of self-help," such as a strike or lock-out. *Int'l Ass'n of Machinists v. Wis. Emp't Relations Comm'n* ("*Machinists*"), 427 U.S. 132, 146, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976) (internal quotations omitted). Congress left these self-help tools unregulated to allow tactical bargaining decisions "to be controlled by the free play of economic forces." *Id.* at 140, 96 S.Ct. 2548 (internal quotations omitted). In *Machinists*, a union refused to work overtime. When Wisconsin attempted to enforce a cease and desist order, the Supreme Court held the order preempted. *Id.* at 155, 96 S.Ct. 2548. By interfering with the union's bargaining tactic, Wisconsin interfered with "activity which must be free of regulation by the States if the congressional intent in enacting the comprehensive federal law of labor relations is not to be frustrated." *Id.*

[5]Minimum labor standards, such as minimum wages, are not subject to *Machinists* preemption. *Metro. Life Ins. Co. v. Massachusetts* ("*Metropolitan Life*"), 471 U.S. 724, 755, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985). Such minimum labor standards affect union and nonunion employees equally, neither encouraging nor discouraging the collective bargaining processes covered by the NLRA. *Id.* Minimum labor standards do technically interfere with labor-management relations and may impact labor or management unequally, much in the same way that California's at-will employment may favor employers over employees. Nevertheless, these standards are not preempted, because they do not "regulate the mechanics of labor dispute resolution." *Concerned Home Care Providers, Inc. v. Cuomo*, 783 F.3d 77, 86 (2d Cir. 2015). Rather, these standards merely provide the "backdrop" for negotiations. *Metropolitan Life*, 471 U.S. at 757, 105 S.Ct. 2380 (internal quotations omitted). Such standards are a valid exercise of states' police power to protect workers. *Fort Halifax Packing Co. v. Coyne* ("*Fort Halifax*"), 482 U.S. 1, 21–22, 107 S.Ct. 2211, 96 L.Ed.2d 1 (1987).

***4** The Supreme Court clarified the distinction between nonpreempted employment standards and preempted regulation of the collective bargaining process in *Metropolitan Life* and *Fort Halifax*. In *Metropolitan Life*, the Court was faced with a Massachusetts law requiring general insurance policies and health care plans to provide specific mental-health care benefits. 471 U.S. at 727, 105 S.Ct. 2380. The employer argued that the requirement was preempted because it imposed a contract term that otherwise would be the subject of collective bargaining. *Id.* at 733, 105 S.Ct. 2380. The Court was not persuaded. It held that "Massachusetts' mandated-benefit law is an insurance regulation designed to implement the Commonwealth's policy on mental-health care, and as such is a valid and unexceptional exercise of the Commonwealth's police power." *Id.* at 758, 105 S.Ct. 2380. The Court determined that the mandated-benefit law, "like many laws affecting terms of employment, potentially limits an employee's right to choose one thing by requiring that he be provided with something else, [but] *it does not limit the rights of self-organization or collective bargaining* protected by the NLRA, and is not preempted by that Act." *Id.* (emphasis added).

In *Fort Halifax*, the Court reiterated the distinction between minimum labor standards and laws that intrude into the process of collective bargaining. 482 U.S. at 19–22, 107 S.Ct. 2211. The Court was faced with a Maine law that required employers to provide a one-time severance payment to employees affected by plant closures, unless the employment contract dealt with severance pay. *Id.* at 1, 107 S.Ct. 2211. When the employer argued that the law was preempted because it intruded into the collective bargaining process, the Court underscored the critical role of the state in regulating employment conditions:

> It is true that the Maine statute gives employees something for which they otherwise might have to bargain. That is true, however, with regard to any state law that substantively regulates employment conditions. Both employers and

> employees come to the bargaining table with rights under state law that form a "backdrop" for their negotiations. Absent a collective bargaining agreement, for instance, state common law generally permits an employer to run the workplace as it wishes. The employer enjoys this authority without having to bargain for it.

Id. at 21, 107 S.Ct. 2211 (internal citation omitted). In other words, minimum labor standards set the stage for labor-management engagement. *See also Livadas v. Bradshaw*, 512 U.S. 107, 132 & n.26, 114 S.Ct. 2068, 129 L.Ed.2d 93 (1994) (noting that "familiar and narrowly drawn opt-out provisions" for collective bargaining agreements are valid because they do not impact rights to collective bargaining).

[6]As *Metropolitan Life* and *Fort Halifax* clarify, state action that intrudes on the mechanics of collective bargaining is preempted, but state action that sets the stage for such bargaining is not. Compare *Metropolitan Life* and *Fort Halifax* with, for example, *Golden State Transit Corp. v. **City of Los Angeles***, 475 U.S. 608, 618, 106 S.Ct. 1395, 89 L.Ed.2d 616 (1986) (preempting renewal of a taxicab franchise because it was conditioned on the settlement of a strike), *Brown*, 554 U.S. at 68, 128 S.Ct. 2408 (preempting state provisions prohibiting employers from using funds "to assist, promote or deter union organizing" because of the "explicit direction from Congress to leave [such] noncoercive speech unregulated"), and even *Machinists* itself, 427 U.S. at 155, 96 S.Ct. 2548 (preempting an order requiring union workers to work overtime). It is no surprise, then, that "state minimum benefit protections have repeatedly survived *Machinists* preemption challenges," because they do not alter the process of collective bargaining. *Assoc'd Builders & Contractors of S. Cal., Inc. v. Nunn*, 356 F.3d 979, 989 (9th Cir. 2004), *as amended*, No. 02–56735, 2004 WL 292128 (9th Cir. Feb. 17, 2004) (internal quotations omitted).

2. The Wage Ordinance is a minimum labor standard that is not preempted by federal labor law

[7]The district court did not err in finding the Wage Ordinance to be the kind of minimum labor standard that falls within the ambit of state power. By providing a basic minimum wage and time-off compensation, the Wage Ordinance alters the backdrop of negotiations, not the mechanics of collective bargaining. Its many provisions, including the opt-out for collective bargaining (*see* Section B below), are valid. As such, the Wage Ordinance is not preempted.[5]

B. *The Exemption for Collective Bargaining Agreements Does Not Warrant Preemption*

*5 [8]The **Hotels** also argue that the Wage Ordinance's opt-out provision for collective bargaining independently warrants preemption. The Supreme Court has made clear, however, that the NLRA "cast[s] no shadow on the validity of these familiar and narrowly drawn opt-out provisions." *Livadas*, 512 U.S. at 132, 114 S.Ct. 2068; *see also id.* at 132 n.26, 114 S.Ct. 2068 ("Nor does it seem plausible to suggest that Congress meant to preempt such opt-out laws as 'burdening' the statutory right of employees not to join unions by denying nonrepresented employees the 'benefit' of being able to 'contract out' of such standards.").[6]

IV. Conclusion

The district court did not abuse its discretion by denying the **Hotels'** motion for a preliminary injunction to stop enforcement of the **City's** Wage Ordinance, because the **Hotels** failed to show a likelihood of success on the merits. We have consistently held that minimum labor standards do not implicate *Machinists* preemption. The Wage Ordinance is no different.

AFFIRMED.

All Citations

--- F.3d ----, 2016 WL 4437618, 207 L.R.R.M. (BNA) 3110, 16 Cal. Daily Op. Serv. 9315, 2016 Daily Journal D.A.R. 8797

Footnotes

1 Local 11, affiliated with LAANE, is currently the only union representative for **hotel** workers in **Los Angeles**.

2 An hourly rate of $15.37 equates to an annual salary close to $32,000.

3 For example, the collective bargaining agreement exemption, is identical to that in the Airport LWO; the Service Charge Ordinance; and the AHEZ Ordinance. Likewise, the language for the one-year hardship waiver, closely matches the language used in the AHEZ Ordinance.

4 Local 11 was granted status as Intervenor–Defendant on March 25, 2015.

5 The **Hotels** argue that *Bragdon* should govern the preemption analysis. *See Chamber of Commerce v. Bragdon*, 64 F.3d 497, 501 (9th Cir. 1995) ("Viewed in the extreme, the substantive requirements could be so restrictive as to virtually dictate the results of the contract."). In *Bragdon*, we struck down a county ordinance requiring employers to pay "prevailing wages" on private construction projects costing over $500,000. *Id.* at 498. The prevailing wages were defined as the per diem wages set by the state for public works projects, which in turn were based on the wages in local collective bargaining agreements, effectively forcing nonunion employers to pay what amounted to a union wage. *Id.* at 498–99, 502–03. As such, we held that this ordinance interfered with the collective bargaining process governed by the NLRA. *Id.* at 504. As we noted in *Nunn*, "[i]n invalidating [the] *prevailing* wage ordinance [in *Bragdon*], we carefully distinguished, for purposes of preemption, state established *minimum* wage regulations, which we acknowledged to be lawful." 356 F.3d at 991 n.8. The Wage Ordinance before us is like the minimum wage upheld in *Nunn*, not the prevailing wage struck down in *Bragdon*.

6 The **Hotels** also contend that the opt-out for collective bargaining is preempted because employers cannot unilaterally implement terms and conditions of employment—and still be eligible for a waiver—once a collective bargaining agreement has expired. Once a collective bargaining agreement expires, the Wage Ordinance controls, and the employer is required to comply with the Wage Ordinance; the employer cannot unilaterally reinstate the terms of the expired agreement. The Wage Ordinance, in effect, has changed the bargaining conditions. The **Hotels** argue that such interference in labor-management relations after the collective bargaining agreement has expired warrants preemption.

We have previously rejected this argument. *See Nat'l Broad. Co. v. Bradshaw*, 70 F.3d 69, 72 (9th Cir. 1995) *as amended on denial of reh'g*, No. 92–56178, 1995 WL 708163 (9th Cir. Dec. 4, 1995). In *National Broadcasting*, an employer brought a *Machinists* challenge to a state overtime law that exempted employers covered by collective bargaining agreements. 70 F.3d at 69–70. The employer argued that its ability to bargain was limited after an agreement expired because it was forced to pay state minimum wages or negotiate a retroactive overtime provision. *Id.* at 72. This court held that these effects were "without consequence in federal labor law." *Id.* Relying on *Fort Halifax*, the court noted that minimum labor standards always form the "backdrop" of negotiations and so default to this backdrop was not grounds for preemption. *Id.*

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