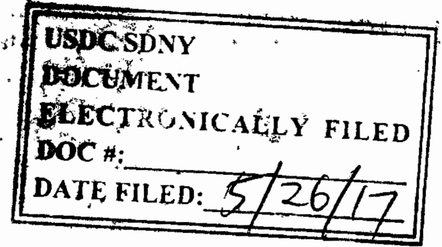


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATION OF CAR WASH OWNERS INC., *et al.*,

Plaintiffs,

-against-

CITY OF NEW YORK, *et al.*,

Defendants.

ORDER GRANTING PLAINTIFFS' SUMMARY JUDGMENT MOTION INVALIDATING N.Y.C. LOCAL LAW 62, AND GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS DISMISSING OTHER FEDERAL AND STATE CLAIMS

15 Civ. 8157 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiffs, the Association of Car Wash Owners, Inc., a voluntary association formed in 2012 under New York law to promote the car wash industry in New York City, and two of its individual members, filed this lawsuit against the City and its Commissioner of Consumer Affairs (DCA), Lorelei Salas, to challenge the validity of Local Law 62. Local Law 62, a New York City ordinance, requires car wash companies, as a pre-condition for an operating license, to post a $150,000 surety bond in favor of employees, but reduces that requirement to $30,000 if the company either enters into a collective bargaining agreement or an active monitoring agreement that meet certain conditions to assure expeditious adjudications of wage disputes and timely payments of wages. Plaintiffs allege that the provision unlawfully favors unionization, that it is preempted by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq*, and the New York Labor Law, and that it violates Plaintiffs' constitutional rights to Equal

Protection and Due Process, as well as Article 78 of the New York Civil Practice Laws and Rules (CPLR).

Both sides move for dispositive relief: plaintiffs, for partial summary judgment that Local Law 62 is preempted by federal and New York State laws, and defendants, for judgment dismissing the complaint. For the reasons discussed below, I hold: (1) the NLRA preempts Section 20-542(b)(1) of Local Law 62; (2) plaintiffs' equal protection, due process, and Section 1983 claims are dismissed with prejudice; and (3) plaintiffs' state law preemption and Article 78 claims are dismissed without prejudice for lack of subject matter jurisdiction.

I. FACTS

New York City Local Law 62 for the Year 2015 ("Local Law 62"), codified at N.Y.C. Admin. Code §§ 20-539-546, was passed by the New York City Council on June 10, 2015. It was signed into law by Mayor Bill de Blasio on June 29, 2015. Although scheduled to take effect 180 days thereafter, or on December 26, 2015, the parties, by agreement, postponed the effective date.[1]

Local Law 62 makes it unlawful for a car wash business to operate without a license. N.Y.C. Code § 20-541(a). The condition for such a license is the posting of a surety payment bond in the amount of $150,000. However, if the car wash license applicant satisfies either of two conditions, the amount of the bond is reduced to $30,000. One condition is to be a party to a collective bargaining agreement that provides for the timely payment of wages and an expeditious process to resolve wage payment disputes. The second condition is to be covered by an active monitoring agreement that provides for the timely payment of wages, at least monthly

[1] The parties to this case stipulated that Local Law 62 would not take effect until plaintiffs' motion for summary judgment was decided and that this case would be stayed pending adoption of implementing rules by the New York City Department of Consumer Affairs. *See* ECF 18, Ex. 1 (Stipulation).

monitoring by an independent monitor, and an expeditious process to resolve wage payment disputes, including a mechanism to ensure that funds are available to satisfy any award for unpaid wages. N.Y.C. Admin. Code § 20-542(b).

On September 26, 2016, following public hearings, the DCA adopted implementing Rules which included, *inter alia*, a requirement that car wash operators obtain liability insurance covering at least $1 million per occurrence and $2 million in the aggregate, and that such policies name the City as an insured party. *See* Kitzinger Declaration, ECF 49, at ¶ 14.

Plaintiffs filed their Amended Complaint on October 26, 2015, alleging, *inter alia*, that the NLRA preempts Local Law 62. The NLRA states and defines rights of employees to organize and to bargain collectively with their employers through representatives of their own choosing, and characterizes certain practices of employers and unions as unfair labor practices. 29 U.S.C. § 151 *et seq*. Plaintiffs allege that, in addition to activities specifically protected or prohibited by the NLRA, Congress "meant to leave some activities unregulated and to be controlled by the free play of economic forces." Pl. Brief, ECF 42, at 10 (quoting *Int'l Ass'n of Machinists v. Wis. Emp't Relations Comm'n*, 427 U.S. 132, 144 (1976)).

Plaintiffs argue also that Local Law 62 is preempted by the New York Labor Law. They assert that the Labor Law occupies the field of nonpayment of wages and that Local Law 62 conflicts with Section 196(1) of the Labor Law. Section 196(1) authorizes the Commissioner of the Department of Labor to, *inter alia*, require an employer to secure a bond prior to doing business in the State, in a "sufficient and adequate" sum, if (1) the employer has been convicted of a violation of any provision in the Labor Law, or (2) any order to comply with

the Labor Law issued against an employer remains unsatisfied for a period of ten days after the time to appeal has expired. N.Y. Lab. Law § 196(1).

Lastly, plaintiffs' complaint alleges that Local Law 62 violates their constitutional rights to Equal Protection and Due Process because there is no rational basis for the law, as well as Article 78 of the CPLR. On April 4, 2017, I heard oral argument on all issues. I consider each argument in the following sections below.

II. DISCUSSION

After due consideration, and for the reasons discussed below, I hold that: (1) the NLRA preempts Section 20-542(b)(1) of Local Law 62; (2) plaintiffs' equal protection, due process, and Section 1983 claims are dismissed with prejudice; and (3) plaintiffs' state law preemption and Article 78 claims are dismissed without prejudice for lack of subject matter jurisdiction.

a. Federal Claims

I grant plaintiffs' summary judgment motion invalidating Local Law 62 and grant defendants' motion for judgment on the pleadings dismissing with prejudice the remainder of plaintiffs' federal claims.

i. NLRA Preemption

States have inherent power to provide for the health and welfare of their citizens, including proper working conditions and minimum rates of pay. *N.Y. State Club Ass'n, Inc. v. City of N.Y.*, 69 N.Y.2d 211, 217, *aff'd*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (N.Y. 1988) ("The constitutional home rule provision confers broad police power upon local government relating to the welfare of its citizens."); *see Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 21 (1987) ("[T]he establishment of labor standards falls within the traditional police power of the

State."). Incident to their police powers, States may legislate protective measures for workers, to assure prompt and reliable payment of wages due to them. *See, e.g.*, N.Y. Labor Law § 196(1). New York City's ordinance requiring licensing and surety payment bonds for car wash businesses reflects an application of New York States' police powers, delegated under home rule to New York City. *See* N.Y. Mun. Home. Rule L. § 10(l)(ii)(a)(12) ("Every local government shall have power to . . . adopt local laws providing for the regulation or licensing of occupations."); *Balbuena v. IDR Realty LLC*, 6 N.Y.3d 338, 358, 845 N.E.2d 1246, 1256 (N.Y. 2006) ("States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State" (internal quotation marks omitted)).

However, States may not legislate in opposition to a federal law. The Supreme Court recognized in *Int'l Ass'n of Machinists v. Wis. Emp't Relations Comm'n*, 427 U.S. 132 (1976), that, although the NLRA itself contains no express pre-emption provision, Congress implicitly forbade States from regulating conduct that it intended to be left unregulated and "controlled by the free play of economic forces." *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60, 65 (2008) (quoting *Machinists*, 427 U.S. at 140). "*Machinists* pre-emption is based on the premise that Congress struck a balance of protection, prohibition, and laissez-faire in respect to union organization, collective bargaining, and labor disputes." *Id.* (internal quotation marks and citations omitted). The Supreme Court has emphasized that under the NLRA, local governments "are without authority to attempt 'to introduce some standard of properly 'balanced' bargaining power' . . . or to define 'what economic sanctions might be permitted negotiating parties in an 'ideal' or 'balanced' state of collective bargaining.'" *Machinists*, 427 U.S. at 149–50. Thus, state action is preempted if "the state or local government has entered into the substantive aspects of the bargaining process to an extent Congress has not countenanced."

Rondout Elec., Inc. v. NYS Dep't of Labor, 335 F.3d 162, 167 (2d Cir. 2003) (internal quotation marks omitted).

Applying *Machinists* preemption here, I hold that the NLRA preempts Local Law 62 Section 20-541(b)(1). Section 20-541(b)(1) explicitly encourages unionization, and therefore impermissibly intrudes on the labor-management bargaining process, by imposing a penalty that requires a fivefold increase in the amount of a surety bond required for car washing companies that are not parties to a collective bargaining agreement or, alternatively, an independent monitoring scheme and large security deposits. *See Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 755 (1985) (holding that state and local minimum labor standards may "neither encourage nor discourage the [labor-management] bargaining processes that are the subject of the NLRA."); *Concerned Home Care Providers, Inc. v. Cuomo*, 783 F.3d 77, 84 (2d Cir. 2015) ("[The NLRA] forbids states and localities from intruding upon the [labor-management] bargaining process." (internal quotation marks omitted)). Pressuring businesses to unionize is impermissible under the NLRA, as it inserts the City directly into labor-management bargaining. *See Golden State Transit Corp. v. Los Angeles*, 475 U.S. 608, 619 (1986) ("Free collective bargaining is the cornerstone of the structure of labor-management relations carefully designed by Congress when it enacted the NLRA. Even though agreement is sometimes impossible, government may not step in and become a party to the negotiations." (internal quotation marks and citations omitted)).

Lest there be doubt about the plain meaning of the text, the legislative history makes clear that a central purpose of Local Law 62 is to encourage unionization in the car wash industry. *See, e.g.*, 2012 Hearing Transcript (Pl. Ex. 4 at 5:11–18) ("Chairperson Sanders: There's some good news . . . there is talk of some car washes unionizing in the city, perhaps

we'll hear more of that"); 2013 Hearing Transcript (Pl. Ex. 7 at 9:8–10) ("Chairperson Nelson: [S]ome car washes have unionized in the city so hopefully the city is moving in the right direction to make this industry shape up"); (Pl. Ex. 7 at 9:23–10:4) ("Council Member Mark-Viverito: [I]t's almost been two years that some of the unions that are represented here and the organizations like New York Communities for Change, Make the Road, RWDSU have been organizing the carwash workers."). Accordingly, Section 20-541(b)(1) of Local Law 62 is not a minimum labor standard that is permissible under state or local law.

Plaintiffs' motion with respect to NLRA preemption is therefore granted, and defendants' corresponding motion is denied.[2]

ii. Equal Protection

The promise of equal protection "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). When applying the Equal Protection Clause, "[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440. This presumption gives way "when a statute classifies by race, alienage, or national origin." *Id.* However, economic legislation, such as Local Law 62, that does not implicate these suspect classifications, "must be upheld against equal protection attack when the legislative means are rationally related to a legitimate governmental purpose." *Hodel v. Indiana*, 452 U.S. 314, 331 (1981); *see City of Cleburne*, 473 U.S. at 440 ("When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude").

[2] Neither plaintiffs nor defendants directly raised in their pleadings or briefs the issue of whether Section 20-541(b)(1) is severable from Local Law 62. I therefore do not rule on this point.

Local Law 62, as a social and economic measure, satisfies the rational relationship standard. *See Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2080 (2012) ("[R]ational basis review requires deference to reasonable underlying legislative judgments" in the commercial context). The ordinance is not intended to affect race, gender, national origin or other classes of people protected against discrimination. The ordinance is intended to protect workers in a specific industry. *See Concerned Home Care Providers, Inc. v. Cuomo*, 783 F.3d 77, 91 (2d Cir. 2015) (economic legislation carries a "presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality." (quoting *Hodel*, 452 U.S. at 331)). The ordinance may be invalid in other respects, but not because it makes distinctions between union and non-union work places in relation to protection of workers' pay. "[E]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313–14 (1993).

iii. Due Process

The Due Process Clause of the Fourteenth Amendment "provide[s] a guarantee of fair procedure in connection with any deprivation of life, liberty, or property by a State." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125, (1992). It also "protects individual liberty against certain government actions regardless of the fairness of the procedures used to implement them." *Id.* (quoting *Daniels v. Williams,* 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986)). However, economic legislation, such as Local Law 62, "does not offend the Constitution simply because the correction of a particular evil creates classifications that result in some inequality so long as the classifications have a rational basis." *Beatie v. City of N.Y.*, 123 F.3d 707, 711–12 (2d Cir. 1997). Local Law 62 does not vitiate plaintiffs' due process rights because, as discussed above, the law is rationally related to its purpose of protecting workers'

pay. *See id.* at 711 ("Legislative acts that do not interfere with fundamental rights . . . carry with them a strong presumption of constitutionality").

iv. 42 U.S.C. Section 1983

Plaintiffs assert a claim based on defendants' alleged violation of 42 U.S.C. Section 1983. However, it is well-settled that "Section 1983 itself creates no substantive rights; it provides only a procedure of redress for the deprivation of rights established elsewhere." *Sykes v. James*, 13 F.3d 515, 519 (2d Cir. 1993) (citing *City of Okla. City v. Tuttle*, 471 U.S. 808, 816 (1985)); *see Albright v. Oliver*, 510 U.S. 266, 271 (1994) ("Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." (internal quotation marks and citation omitted)). As I find that Local Law 62 does not infringe plaintiffs' equal protection and due process rights, there is no underlying violation of a federal right on which plaintiffs can base a Section 1983 claim. The claim is therefore dismissed. *See Sykes*, 13 F.3d at 519 ("In order to prevail on a [S]ection 1983 claim, the plaintiff must show that the defendant's conduct deprived him of a federal right.").

b. State Law Claims

Plaintiffs' state law preemption and Article 78 claims are dismissed without prejudice, as I decline to exercise supplemental jurisdiction over them. *See* 28 U.S.C. § 1367(c)(1).

i. State Law Preemption

Having held that Section 20-541(b)(1) of Local Law 62 is preempted by the NLRA, a federal statute, I need not reach the issue of whether Local Law 62 is preempted by the New York Labor Law. I decline to exercise supplemental jurisdiction over this claim because whether the New York Labor Law preempts Local Law 62 raises a "novel or complex issue of

State law" that is unnecessary to resolve this case. 28 U.S.C. § 1367(c)(1); *see Oneida Indian Nation of N.Y. v. Madison Cty.*, 665 F.3d 408, 436 (2d Cir. 2011) ("Although federal courts may exercise jurisdiction over related state-law claims where an independent basis of subject-matter jurisdiction exists, such a court may, for various reasons, nonetheless decline to exercise supplemental jurisdiction over a claim." (citations and internal quotation marks omitted)). Plaintiffs' state law preemption claim is therefore dismissed without prejudice.

ii. Article 78

Plaintiffs challenge the liability insurance requirement of the DCA's implementing rules under Article 78 of the New York CPLR. However, "District Courts in this Circuit have consistently declined to exercise supplemental jurisdiction over Article 78 claims." *Furk v. Orange-Ulster BOCES*, 2016 WL 6560408, at *6 (S.D.N.Y. Nov. 2, 2016) (collecting cases); *see, e.g.*, *DeJesus v. City of New York*, 2012 WL 569176, at *4 (S.D.N.Y. 2012) ("Article 78 is not in and of itself a cause of action, but a procedure best suited for state courts."). This is because "[a]n Article 78 proceeding is a novel and special creation of state law, and differs markedly from the typical civil action brought in [federal district court] in a number of ways." *Morningside Supermarket Corp. v. N.Y. State Dep't of Health*, 432 F. Supp. 2d 334, 346 (S.D.N.Y. 2006) (internal quotation marks and citation omitted). District Courts therefore decline to hear Article 78 proceedings even when the case contains federal claims. *See, e.g.*, *Birmingham v. Ogden*, 70 F. Supp. 2d 353, 372 (S.D.N.Y. 1999) ("[F]ederal courts are loath to exercise jurisdiction over Article 78 claims. Even where a plaintiff has one or more federal claims still alive . . . the interests of judicial economy are not served by embroiling this court in a dispute over local laws and state procedural requirements."). I therefore decline to exercise supplemental jurisdiction over plaintiffs' Article 78 claim, as "I do not function as an Article 78

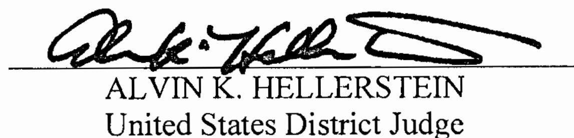
court, reviewing actions of a state or municipal officer for arbitrariness." *Walton v. Safir*, 122 F. Supp. 2d 466, 481 (Hellerstein, J.) (S.D.N.Y. 2000); *see* 28 U.S.C. § 1367(c)(1) ("The district courts may decline to exercise supplemental jurisdiction over a claim [if] . . . the claim raises a novel or complex issue of State law").

III. CONCLUSION

Plaintiffs' motion as to federal preemption of Section 20-541(b)(1) of Local Law 62 is granted, and defendants' corresponding motion is denied. Since the NLRA preempts Section 20-541(b)(1) of Local Law 62 and the Local Law is invalid, there is no reason to enjoin its enforcement, and I decline to issue a preliminary injunction. Defendants' motion for judgment on the pleadings is granted, dismissing with prejudice plaintiffs' equal protection, due process, and Section 1983 claims, and dismissing without prejudice plaintiffs' state law preemption and Article 78 claims. The Clerk shall terminate the motions (ECF 23, 41, and 48) and close the case.

SO ORDERED.

Dated: New York, New York
May 26, 2017



ALVIN K. HELLERSTEIN
United States District Judge