Nos. 17-1300 & 17-1325

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 399, AFL-CIO; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO; CONSTRUCTION AND GENERAL LABORERS' DISTRICT COUNCIL OF CHICAGO AND VICINITY, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO; and CHICAGO REGIONAL COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Plaintiffs-Appellees, Cross-Appellants,

v.

VILLAGE OF LINCOLNSHIRE, ILLINOIS; PETER KINSEY, Chief of Police; ELIZABETH BRANDT, Mayor; and BARBARA MASTANDREA, Village Clerk,

Defendants-Appellants, Cross-Appellees.

Appeal from the United States District Court for the Northern District of Illinois
Case No. 16-cv-2395
The Honorable Matthew F. Kennelly, Judge Presiding

BRIEF AND REQUIRED SHORT APPENDIX OF DEFENDANTS-APPELLANTS

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-1300 & 17-1325

Short Caption: International Union of Operating Engineers, Local 399, AFL-CIO, et al. v. Village of Lincolnshire, Ill., et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

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Village of Lincolnshire, Illinois; Peter Kinsey, Chief of Police of Lincolnshire, Illinois; Elizabeth Brandt, Mayor of Lincolnshire, Illinois; and Barbara Mastandrea, Village Clerk of Lincolnshire, Illinois

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature: /s/ Jacob H. Huebert Date: 5/8/2017

Attorney's Printed Name: Jacob H. Huebert

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X No

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Attorney's Signature: /s/ Jeffrey M. Schwab Date: 5/8/2017

Attorney's Printed Name: Jeffrey M. Schwab

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JURISDICTIONAL STATEMENT

Plaintiffs-Appellees – International Union of Operating Engineers, Local 399, AFL-CIO and several other labor unions – brought this civil action against Defendants-Appellants – the Village of Lincolnshire, Illinois, and several of its officials – asserting claims under 42 U.S.C. § 1983 and the Supremacy Clause of the United States Constitution. The district court had subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

This Court has jurisdiction over this appeal under 28 U.S.C. § 1291. This appeal seeks review of the district court's judgment of January 18, 2017, which was a final judgment disposing of all the parties' claims. R. 1735-36. Defendants filed their timely notice of appeal and docketing statement on February 13, 2017.

STATEMENT OF THE ISSUES

I. The National Labor Relations Act does not explicitly preempt "Right-to-Work" laws, and the Supreme Court has held that Congress intended to "abandon any search for [national] uniformity" with respect to such laws. Does the NLRA nonetheless implicitly preempt the field of Right-to-Work laws except to the extent that NLRA § 14(b) specifically allows them?

II. The Supreme Court has held that a federal statute authorizing "States" to enact a particular type of law implicitly authorizes states' political subdivisions to enact the same type of law unless Congress has shown a clear and manifest purpose to preempt local authority. NLRA § 14(b) allows for "State" Right-to-Work laws and is silent on whether Congress intended to preempt local governments' authority to enact such laws. Does NLRA § 14(b) therefore allow Right-to-Work laws enacted by a state's political subdivisions?

III. The NLRA is neutral on whether employers should use union hiring halls. May a local government therefore prohibit hiring halls to prevent compulsory unionism?

IV. Courts consider compulsory union fees to be equivalent to union membership. Does a local government's authority to protect workers from compulsory union membership therefore allow it to (1) require workers' authorizations to have union fees deducted from their paychecks to be in writing and (2) give workers the right to revoke such authorizations at any time?

STATEMENT OF THE CASE

"Right-to-Work" laws prohibit agreements between unions and private-sector employers that require workers to join a union as a condition of their employment, commonly known as "union security agreements." Since Congress passed the National Labor Relations Act ("NLRA") – which regulates many facets of the relationship between a labor union and an employer but does not regulate union security agreements – 28 states have enacted Right-to-Work laws that prohibit union security agreements throughout those states.[1] This case is about whether, in states such as Illinois that lack a statewide Right-to-Work law, the state's political subdivisions, such as Defendant Village of Lincolnshire, may adopt Right-to-Work laws for their respective local jurisdictions .

Lincolnshire's Ordinance

In December 2015, the Village of Lincolnshire, Illinois, enacted a local Right-to-Work law, Ordinance No. 15-3389-116 (the "Ordinance"). Its declared purpose is to "protect individual choice and worker freedoms" by ensuring that, in Lincolnshire, "no employee covered by the National Labor Relations Act ("NLRA") shall be compelled to join or pay dues to a union, or refrain from joining a union as a condition of employment." A-28.

The "core" Right-to-Work provisions in § 4(A)-(D) of the Ordinance prohibit union security agreements that would force workers in Lincolnshire to join or pay fees to a union as a condition of their employment:

---

[1] *See* Right to Work States, National Right to Work Legal Defense Foundation, http://www.nrtw.org/right-to-work-states/.

> **SECTION 4: GUARANTEE OF EMPLOYEE RIGHTS**
>
> No person covered by the NLRA shall be required as a condition of employment or continuation of employment with a private-sector employer:
>
> (A) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
>
> (B) to become or remain a member of a labor organization;
>
> (C) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;
>
> (D) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization
> . . . .

A-29.

An ancillary provision, § 4(E), restricts the use of mandatory union "hiring halls," stating that no 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." A-29.

Another ancillary provision, § 5, ensures that workers will not have union fees deducted from their paychecks without their written permission and that workers who have given that permission can stop fee deductions immediately if they no longer wish to support the union. Specifically, § 5 prohibits employers in Lincolnshire from deducting union fees from a worker's paycheck unless the worker "has first presented, and the employer has received, a signed written authorization

of such deductions," and it allows a worker to revoke his or her authorization "at any time by giving written notice of such revocation to the employer." A-29-30.

The Unions' Lawsuit

Soon after the Ordinance became law, several unions (the "Unions") filed this lawsuit against the Village of Lincolnshire and several of its officials (collectively, the "Village"). The Unions' claims, brought under 42 U.S.C. § 1983 and the Supremacy Clause of the United States Constitution, allege that the NLRA preempts the Ordinance's core Right-to-Work provisions and hiring-hall provision and that both the NLRA and the Labor Management Relations Act of 1947 preempt the Ordinance's dues authorization provision. R. 1-10.

On cross-motions for summary judgment, the district court accepted the Unions' preemption arguments and struck down the Ordinance. R.1717-28, 1735-36 (A-13-24, A-26-27). But the court also concluded that the Unions failed to state a claim under 42 U.S.C. § 1983 because they had not shown that the Ordinance violated a federally protected right. R. 1716-17, 1736 (A-12-13, A-27). The court also ruled that all of the Unions but one lacked standing to challenge the Ordinance's hiring-hall provision. R. 1709-15 (A-5-11, A-26).

The Village then filed this appeal seeking review of the district court's grant of partial summary judgment against it on the preemption question. R. 1737. The Unions cross-appealed, seeking review of the district court's grant of partial summary judgment against them on their § 1983 claims. R. 1766. This Court then consolidated the cases.

SUMMARY OF THE ARGUMENT

The Unions' challenge to the Ordinance's core Right-to-Work provisions must fail because the National Labor Relations Act ("NLRA") does not preempt the field of restrictions on union security agreements. Indeed, Congress has never preempted that field; it has maintained a policy of neutrality, tolerating union security agreements as a matter of federal law but leaving states free to prohibit them. The Supreme Court held that was true under the original NLRA legislation, the Wagner Act, which was silent on the question. The Court later held that it remained true when the Taft-Hartley Act added NLRA § 14(b), 29 U.S.C. § 164(b), which explicitly provides that the NLRA should not be construed as authorizing union security agreements where the law of a "State or Territory" prohibits them, concluding that Congress chose "to abandon any search for uniformity" with respect to union security agreements. *Retail Clerks Int'l Ass'n, Local 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96, 100-04 (1963).

And there is no conflict between the NLRA and the Ordinance that could give rise to "conflict preemption." It is possible to comply with both because the NLRA does not mandate compulsory unionism. And the Ordinance would not obstruct the achievement of any objective of the NLRA because the NLRA does not seek to establish or encourage compulsory unionism.

Further, even if the NLRA did implicitly preempt Right-to-Work laws generally, it still would not preempt the Ordinance because the Ordinance is a "State" right to work law expressly authorized by § 14(b).

A federal statute allowing a "State" to enact a particular type of law implicitly allows the states' political subdivisions to do the same (to the extent that state law permits) because political subdivisions are components of a state, and states have absolute discretion to decide whether to exercise their powers through their central governments or through their subdivisions. Courts will only conclude that a federal statute authorizing "State" laws preempts laws of states' political subdivisions if Congress has set forth a clear and manifest purpose to preempt local authority.

Here, nothing in the NLRA's text or legislative history establishes a clear and manifest intention to preempt local laws. Congress's silence means the default rule applies: the "State" laws referenced in § 14(b) include local laws.

The district court's analysis reaching the opposite conclusion was fundamentally flawed because it reversed the usual presumption that "State" laws encompass local laws, concluding that the NLRA's (supposed) general preemption of Right-to-Work laws required the court to construe § 14(b)'s approval of "State" laws narrowly. That makes little sense because Congress's (presumed) decision to preempt the field does not, in itself, shed any light on what Congress meant when it used the word "State" in § 14(b). Moreover, the district court followed an approach favored by a concurring opinion – but *rejected* by an eight-justice majority – in a seminal case on this issue, *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991).

Also, policy considerations do not warrant construing § 14(b)'s use of "State" narrowly. Contrary to the district court's opinion, preemption of local Right-to-Work laws would not serve the federal government's interest in uniform labor regulations

because, again, Congress chose not to pursue uniformity with respect to union security agreements. And local Right-to-Work laws would not interfere with the NLRB's interpretation and enforcement of the NLRA because § 14(b) puts Right-to-Work laws outside the NLRB's jurisdiction.

The district court erred by construing "State" narrowly based on the incorrect premise that § 14(b) makes an exception to a federal policy favoring union security agreements. Again, federal policy does *not* favor union security agreements; it is neutral toward them.

The district court also erred in construing "State" narrowly based on its prediction that unions would find it difficult to comply with local Right-to-Work laws. Even if unions would have difficulty adjusting to local Right-to-Work laws, it does not follow that Congress must have considered that consequence so undesirable that it could only have intended to prohibit local laws. Also, if local Right-to-Work laws would lead to consequences some consider undesirable, state legislatures – which Congress left free to make policy determinations on the desirability of Right-to-Work laws – could always prohibit them. Besides, it is not obvious that unions actually would have extraordinary difficulty complying with local Right-to-Work laws, given that organizations operating across multiple jurisdictions already comply with many types of local laws.

Also, contrary to the district court's decision, other provisions of federal law – a reference to "local or national" laws in another provision of the NLRA and a reference to "municipal ordinance[s]" in an unrelated provision of the Fair Labor

Standards Act – cannot support the inference that Congress would have mentioned local laws specifically if it meant to approve them in § 14(b).

Just as the NLRA does not preempt the Ordinance's core Right-to-Work provisions, it also does not prohibit the Ordinance's ancillary provision prohibiting arrangements that require workers to be referred for employment through union hiring halls. The NLRA does not establish a federal policy on whether employers should use hiring halls; its only goal with respect to hiring halls is to prevent them from discriminating against workers who are not union members. The discrimination issue does not arise where, as here, a law prohibits mandatory hiring-hall arrangements entirely.

Finally, the Ordinance's provision governing deductions of union dues from workers' paychecks is also valid. The Supreme Court has held that forced payment of union fees is equivalent to union membership. Therefore, a law requiring union dues authorizations to be in writing, and allowing workers to revoke their dues authorizations at any time, ensures that workers will not be forced to accept union membership as a condition of their employment – and is precisely the type of law that NLRA § 14(b) expressly condones.

For these reasons, the Court should conclude that federal law does not preempt the Ordinance, in whole or in part, and reverse the district court's grant of partial summary judgment against the Village on that issue.

STANDARD OF REVIEW

This Court reviews a district court's grant of summary judgment *de novo*. *Yahnke v. Kane Cty.*, 823 F.3d 1066, 1070 (7th Cir. 2016). "Summary judgment is appropriate when there are no genuine disputes of material fact and the movant is entitled to judgment as a matter of law." *Id.* This appeal presents pure questions of law; there are no disputed questions of fact.

ARGUMENT

When Congress passed the National Labor Relations Act ("NLRA"), it determined that the federal government should have the exclusive authority to regulate many facets of the relationship between a labor union and a private-sector employer. But Congress deliberately declined to regulate union security agreements and left the states free to prohibit them. Congress's decision to leave this issue to the states was implicit in the original NLRA legislation, the Wagner Act of 1935, and was made explicit in 1947, when the Taft-Hartley Act added NLRA § 14(b), 29 U.S.C § 164(b), which expressly recognizes states' authority to enact Right-to-Work laws.

Illinois has no statewide Right-to-Work law, but state law allows the state's political subdivisions with "home rule" powers to pass their own Right-to-Work laws for their respective jurisdictions. Article VII, § 6 of the Illinois Constitution authorizes a "home rule unit" to, among other things, "exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety,

morals, and welfare," except to the extent prohibited by the Illinois Constitution or by Illinois law. Neither the Illinois Constitution nor the Illinois General Assembly has prohibited home rule units from enacting Right-to-Work laws applying exclusively to their local jurisdictions, so they may do so.

The Unions do not argue that the Village of Lincolnshire's Right-to-Work Ordinance violates state law, but they do argue that the NLRA preempts the Ordinance's core Right-to-Work provisions and hiring-hall provision and that the NLRA and the Labor Management Relations Act ("LMRA") preempt the Ordinance's dues-authorization provision.

The Unions' challenge must fail for several reasons. The NLRA does not preempt the Ordinance's core Right-to-Work provisions because, as the Supreme Court has long recognized, Congress has not preempted the field of restricting union security agreements. In the absence of field preemption, both state and local governments are free to enact Right-to-Work laws. Further, in any event, the NLRA does not preempt the Ordinance because the "State" Right-to-Work laws that NLRA § 14(b) explicitly allows include laws enacted by a state's political subdivisions. Federal courts presume that a federal statute authorizing "State" laws implicitly authorizes laws enacted by a state's political subdivisions unless Congress has shown a clear and manifest intention to interfere with states' authority to delegate their powers to local governments. In passing the NLRA, Congress expressed no such intention. Also, the NLRA does not forbid state or local governments from prohibiting mandatory "hiring hall" arrangements as Ordinance § 4(E) does, and state or local

prohibitions on such arrangements would not interfere with federal labor policy. And the NLRA and LMRA do not preempt the dues-authorization provision of Ordinance § 5, which simply prevents workers from being compelled to support a union when they do not wish to do so and therefore is a valid "Right-to-Work" provision allowed by NLRA § 14(b).

This Court should therefore conclude that federal law does not preempt the Ordinance and reverse the district court's partial summary judgment against the Village.

1. The NLRA does not preempt the field of Right-to-Work laws and therefore does not preempt the Village's Ordinance.

The Unions' challenge to the Ordinance's core Right-to-Work provisions must fail because the NLRA does not preempt state or local Right-to-Work laws at all.

"When considering preemption, [federal courts] start with the assumption that the historic police powers of the States were not to be superseded by [federal law] unless that was the clear and manifest purpose of Congress." *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 605 (1991). This assumption is only overcome where there is: (1) express preemption (i.e., a provision of federal law explicitly preempting state or local laws); (2) implied preemption through pervasive regulation; or (3) a conflict between federal law and state or local law. *English v. Gen. Elec. Co.*, 496 U.S. 72, 78-79 (1990).

The NLRA does not preempt Right-to-Work laws in any of these ways: It does not expressly preempt Right-to-Work laws; it does not implicitly preempt the field through pervasive regulation; and it does not conflict with state and local Right-to-

Work laws. To the contrary, in passing and amending the NLRA, Congress deliberately declined to interfere with Right-to-Work laws and consistently showed that it did not intend to preempt them.

A. Congress has not expressly preempted local Right-to-Work laws.

It is undisputed that the NLRA does not expressly preempt local Right-to-Work ordinances. It does not contain a general preemption clause, *Chamber of Commerce v. Brown*, 554 U.S. 60, 65 (2008); nor does it expressly preempt Right-to-Work ordinances generally or local Right-to-Work ordinances in particular.

B. Congress has not implicitly preempted local Right-to-Work laws.

The NLRA also does not implicitly preempt state and local regulation of union security agreements.

The Supreme Court has held that "Congress implicitly mandated two types of pre-emption as necessary to implement federal labor policy." *Brown*, 554 U.S. at 65. The first type, known as "*Garmon* preemption," "is intended to preclude state interference with the National Labor Relations Board's interpretation and active enforcement of the integrated scheme of regulation established by the NLRA," and it "forbids States to regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits." *Id.* (internal marks and citations omitted); *see also San Diego Bldg. Trades Council v. Garmon*, 356 U.S. 236, 245 (1959). The second type, known as "*Machinists* preemption," forbids both the NLRB and the states from regulating "conduct that Congress intended to be unregulated . . . [and] controlled by the free play of economic forces." *Brown*, 554 U.S. at 65 (internal marks omitted); *see also*

Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Employment Relations Comm'n, 427 U.S. 132, 138-51 (1976).

As the district court recognized, the Unions apparently base their arguments on *Garmon* preemption, not *Machinists* preemption, because they have not argued that Congress intended to leave union security agreements to the control of the free market. A-13.

Although the NLRA does implicitly preempt the field with respect to many aspects of labor relations under *Garmon*, it does not implicitly preempt the field with respect to laws prohibiting union security agreements. In passing the NLRA, Congress deliberately declined to either prohibit union security agreements or require states to allow them. This is reflected in NLRA § 8(a)(3), which prohibits employers from engaging in "discrimination . . . to encourage or discourage membership in any labor organization" but then states:

> *Provided*, That nothing in this Act, or in 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 thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . . .

29 U.S.C. § 158(a)(3). The proviso simply indicates that union security agreements do not violate federal law, notwithstanding any provisions of federal law (such as the immediately preceding prohibition on employer discrimination) that might suggest otherwise. In other words, § 8(a)(3) establishes a federal policy of neutrality on union security agreements. As the Supreme Court put it, the NLRA's language

"merely *disclaims a national policy* hostile to . . . [any] forms of union-security agreement" because that "is the obvious inference to be drawn from the choice of words 'nothing in this Act . . . or in any other statute of the United States,' and it is confirmed by the legislative history." *Algoma Plywood & Veneer Co. v. Wis. Employment Relations Bd.*, 336 U.S. 301, 307 (1949) (emphasis added).[2] Therefore, § 8(a)(3) implies that non-federal Right-to-Work laws are permitted, not preempted.

The Supreme Court explicitly confirmed that the original Wagner Act version of the NLRA did not preempt state laws restricting union security agreements in *Algoma Plywood*, based on the statute's text and legislative history. 336 U.S. at 307-12. The Court later held that the Taft-Hartley Act version of the NLRA still did not "preempt the field" with respect to union security agreements in *Retail Clerks International Association, Local 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96, 100-04 (1963). The Court noted that Congress made its desire not to preempt the field clear with the Taft-Hartley Act's addition of NLRA § 14(b), which provides:

> Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

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[2] *Algoma Plywood* interpreted § 8(3) of the original NLRA, which became § 8(a)(3) in the Taft-Hartley amendments to the Act, because the case arose before Taft-Hartley's enactment. The old § 8(3) permitted "closed shops" (i.e., shops that only hire workers who are already union members); the current § 8(a)(3) prohibits closed shops but allows shops in which a worker must join a union 30 or more days after being hired. *See Sweeney v. Pence*, 767 F.3d 654, 658-59 (7th Cir. 2014); 29 U.S.C. § 158(a)(3). The provisions are otherwise substantially identical, however, and the Court concluded that neither version preempted state laws prohibiting compulsory unionism. *Algoma Plywood*, 336 U.S. at 305.

29 U.S.C. § 164(b). As the Court stated, § 14(b) reflects Congress's intention "to abandon any search for uniformity in dealing with state laws [regulating union security agreements] and . . . to suffer a medley of attitudes and philosophies on the subject." *Schermerhorn*, 375 U.S. at 104-05; *see also Sweeney v. Pence*, 767 F.3d 654, 659-60 (7th Cir. 2014) (noting states' "broad," "extensive" authority to prohibit union security agreements).

The addition of § 14(b) does not imply that, as the district court concluded (A-14), the NLRA preempts the field except to the extent that § 14(b) specifically condones state and territorial laws prohibiting union security agreements. Rather, § 14(b) simply makes explicit what was previously implicit: that the NLRA should not be construed as preempting Right-to-Work laws. As the Court recognized in *Schermerhorn,* the purpose of § 14(b) was just to make "clear and unambiguous" Congress's intention "not to preempt the field" with respect to union-security agreements and thus "forestall the inference that federal policy was to be exclusive on the matter of union-security agreements." 375 U.S. at 101, 104. That is, § 14(b) simply clarified – for those who would argue (and had argued) otherwise – that Congress never intended to preempt state laws prohibiting union security agreements with the NLRA.

The Tenth Circuit reached that conclusion in upholding a Right-to-Work law enacted by an Indian tribe against an argument that the NLRA preempted it. With § 8(a)(3), the court concluded, Congress's purpose was not to "sw[eep] away state authority to regulate union security measures" or to "declare a national policy that

they were desirable" but rather "simply to express Congress' judgment that closed shops [or, later, union shops] were not illegal where authorized." *NLRB v. Pueblo of San Juan*, 276 F.3d 1186, 1197 (10th Cir. 2002). Therefore, "[w]hen Congress enacted § 14(b), it did not grant new authority to states and territories, but merely recognized and affirmed their existing authority." *Id.* at 1198. The court summarized:

> What Congress has not taken away by § 8(a)(3) it need not give back (by § 14(b)) in order for [a] tribe to continue to have authority to pass a Right-to-Work law. Although the Supreme Court has characterized § 8(a)(3) as articulating a national policy that certain union-security agreements are valid as a matter of federal law, the Court has also made clear that § 8(a)(3) was not intended to be preemptive . . . [and] left the States free to pursue their own more restrictive policies in the matter of union-security agreements.

Id. at 1197 (citing *Schermerhorn*, 375 U.S. at 101; *Algoma Plywood*, 336 U.S. at 307).

The Taft-Hartley Act's legislative history confirms that the NLRA has never preempted Right-to-Work laws. "Senator Taft in the Senate debates stated that § 14(b) was to *continue the policy of the Wagner Act* and avoid federal interference with state laws in this field." *Schermerhorn*, 375 U.S. at 102 (citing 93 Cong. Rec. 6520, 2 Leg. Hist. of the Labor Mgmt. Relations Act 1947, 1957) (emphasis added). As the Supreme Court recognized in *Schermerhorn*, Senator Taft made clear that § 14(b) was intended to clarify the law, not to change it:

> As to the Wagner Act, he stated, "But that did not in any way prohibit *the enforcement of State laws* which already prohibited closed shops.' (Italics added.) He went on to

> say, '*That has been the law ever since that time.* It was the law of the Senate bill [which lacked § 14(b)]; and in putting in [§ 14(b)] we in no way change the bill as passed by the Senate of the United States."

385 U.S. at 102 (citing 93 Cong. Rec. 6520, 2 Leg. Hist. of the Labor Mgmt. Relations Act 1947, 1597) (second emphasis added); *see also Algoma Plywood*, 336 U.S. at 307-12 (reviewing Wagner Act legislative history establishing Congress's intention not to preempt state laws prohibiting compulsory unionism).

The House Report on the Taft-Hartley Act likewise reflected the view that the NLRA had always allowed Right-to-Work laws and that clarification was necessary only to end disputes over the issue. Because the courts had not finally ruled on the question at that time,[3] the Taft-Hartley Act

> provided expressly in section 13 [which became § 14(b)] that laws and constitutional provisions of any State that restrict the right of employers to require employees to become or remain members of labor organizations are valid, notwithstanding any provision of the [NLRA]. *In reporting the bill that became the [original NLRA], the Senate committee to which the bill had been referred declared that the act would not invalidate any such State law or constitutional provision.* The new section 13 is consistent with this view.

Schermerhorn, 375 U.S. at 101 n.8 (quoting H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 44) (emphasis added).

The House Conference Report made the point even more directly:

> It was *never the intention* of the [NLRA] . . . to preempt the field . . . so as to deprive the States of their powers to

[3] Congress passed the Taft-Hartley Act before the Court held in *Algoma Plywood* that the Wagner Act did not preempt local laws prohibiting union security agreements. *See Algoma Plywood*, 336 U.S. at 304-05, 307-12.

> prevent compulsory unionism. Neither the 'closed shop' provision in section 8(3) of the existing act nor the union shop and maintenance of membership provision of section 8(a)(3) of the [Taft-Hartley Act] conference agreement could be said to authorize arrangement of this sort in States where such arrangements were contrary to State policy. *To make certain that there should be no question about this*, section 13 was included in the House bill. *The conference agreement, in section 14(b), contains a provision having the same effect*.

Id. at 102 n.9 (quoting H.R. Rep. No. 510, 80th Cong., 1st Sess., p. 60) (first and second emphases added); *see also Sweeney*, 767 F.3d at 682 (Wood, J., dissenting) ("The legislative history of section 14(b) indicates that the drafters understood it as a reaffirmation of the original NLRA . . . .").

The district court's opinion disregarded these statements in the legislative history and instead relied (A-16) on a statement in the House Report, quoted in *Schermerhorn*, that "by the Labor Act Congress preempts the field that the Act covers." 375 U.S. at 101 n.8 (quoting H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 44). But, as quoted above, the House Report went on to state (in the same paragraph) that Congress's original intent in the Wagner Act was *not* to preempt Right-to-Work laws and that § 14(b) was added to make that abundantly clear. *See id.* Besides, a lone statement in the legislative history that the NLRA preempts the field "that the Act covers" cannot suffice to establish the required clear and manifest intention to preempt Right-to-Work laws. Combined with the multiple statements in the legislative history that the NLRA never preempted Right-to-Work laws, it at most creates arguable ambiguity, which is not enough.

In sum, the statutory text, legislative history, and case law all establish that Congress did not have a clear and manifest purpose to preempt the field with respect to union security agreements when it enacted and amended the NLRA. To the contrary, Congress clearly and consistently has manifested its intention *not* to preempt Right-to-Work laws.

C. No conflict exists between the NLRA and local Right-to-Work laws.

Finally, "conflict preemption" does not apply because there is no conflict between the NLRA and local Right-to-Work laws. Conflict preemption exists where either (1) it is impossible to comply with both federal law and a state or local law, or (2) a state or local law "stands as an obstacle" to achieving the objectives Congress intended when passing a federal law. *Gade v. Nat'l Solid Waste Mgmt. Ass'n*, 505 U.S. 88, 98 (1992).

The first conflict-preemption scenario does not exist here because it is possible to comply with both the NLRA and the Ordinance. The NLRA neither mandates compulsory unionism nor prohibits Right-to-Work laws.

The second conflict preemption scenario does not exist here because the Ordinance does not obstruct the achievement of any objectives of the NLRA. It is not the NLRA's objective to establish compulsory unionism nationwide or as widely as possible. Again, its only objective with respect to union security agreements is to be neutral – to tolerate them as a matter of federal law, subject to prohibition in the states.

Because local Right-to-Work ordinances do not conflict with the NLRA and would not obstruct the achievement of the NLRA's objectives, "conflict preemption" does not prohibit them.

2. The Ordinance is a valid "State" Right-to-Work law expressly authorized by NLRA § 14(b).

Because the NLRA does not preempt Right-to-Work laws, lower units of government are free to enact them, and, for that reason alone, this Court should reverse the portion of the district court's judgment striking down the Ordinance's core Right-to-Work provisions. And even if the NLRA did implicitly preempt the field of Right-to-Work laws generally, it still would not preempt the core provisions of the Village's Ordinance because they constitute a "State" Right-to-Work law expressly authorized by NLRA § 14(b), which, again, provides:

> Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

29 U.S.C § 164(b).

A. A federal statute approving certain "State" laws implicitly allows a state's political subdivisions to enact the same type of laws unless Congress has shown a clear and manifest intention to preempt local laws.

Standing alone, a provision of federal law that authorizes a "State" to enact a particular type of law does not implicitly prohibit a state's political subdivisions – i.e., local governments – from enacting the same type of law. Rather, a federal statute approving of "State" laws implicitly *allows* laws enacted by states' political

subdivisions because local governments are simply "components" of a state, "the very entity the statute empowers." *Mortier*, 501 U.S. at 608. In other words, the term "State," on its face, "is not self-limiting" but rather encompasses the political subdivisions of a state "since political subdivisions are merely subordinate components of the whole." *Id.* at 612.

It is "well-settled" that states have "absolute discretion" to decide whether to exercise their powers through their central governments or through the "convenient agencies" of local governments. *Id.* at 608. "Whether and how [states] use that discretion is a question central to [their] self-government." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 437 (2002). Courts should therefore treat "federal legislation threatening to trench on the States' arrangements for conducting their own governments . . . with great skepticism, and read [it] in a way that preserves a State's chosen disposition of its own power, in the absence of [a] plain statement" by Congress to the contrary. *Nixon v. Mo. Mun. League*, 541 U.S. 125, 140 (2004).

For these reasons, federal courts will conclude that a statute allowing a "State" to enact a particular type of law allows the states' political subdivisions to do the same (to the extent that state law permits) unless Congress has set forth a "clear and manifest purpose to preempt local authority." *Ours Garage*, 536 U.S. at 432.

Mortier and *Ours Garage* illustrate how the Supreme Court has applied these principles.

In *Mortier*, the Court concluded that a provision of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") authorizing "States" to "regulate the sale or use of pesticides so long as state regulation does not permit a sale or use prohibited by the Act" implicitly allowed local governments, as political subdivisions of states, to engage in the same type of regulation. 501 U.S. at 606-16. Congress's silence on whether it intended to preempt local laws meant that states retained their power to exercise their authority through their political subdivisions. *See id.*

Similarly, in *Ours Garage*, the Court concluded that the Interstate Commerce Act did not preempt a local government's regulations on tow trucks. That statute expressly preempted laws by a "State [or] political subdivision of a State . . . related to a price, route, or source of any motor carrier . . . with respect to the transportation of property" but made several exceptions, one of which allowed certain laws enacted under the "authority of a State," and one of which allowed certain laws enacted under "the authority of a State or political subdivision of a State." 536 U.S. at 428-42. The Court held that the exemption for "State" laws that did not specifically reference laws of political subdivisions implicitly allowed local laws even though the general preemption rule and another exemption did specifically reference laws of both States and their political subdivisions. *Id.* As in *Mortier*, Congress's silence on whether it intended to preempt local laws required the Court to conclude that the statute did not do so.

B. The Ordinance is a permissible "State" Right-to-Work law under § 14(b) because Congress has expressed no clear and manifest intention to preempt local Right-to-Work laws.

Here, the "State" laws referenced in NLRA § 14(b) encompass laws enacted by states' political subdivisions for the same reasons that the "State" laws referenced in the federal statutes at issue in *Mortier* and *Ours Garage* encompassed local laws. Nothing in the NLRA's text or legislative history shows that Congress had a clear and manifest intention to exclude laws enacted by states' political subdivisions from the "State" Right-to-Work laws it expressly approved in § 14(b). Because Congress was silent on this question, the states retained their absolute discretion to delegate their power to prohibit union security agreements to their subdivisions.

The only other federal appellate court to consider this issue, the Sixth Circuit, reached that conclusion when it recently upheld the core provisions of a Kentucky county's Right-to-Work ordinance substantially identical to the Village's Ordinance. The court could "find no persuasive basis . . . in the [NLRA's] statutory language, [its] legislative history or [the] rules of construction" for distinguishing the case from *Mortier* and *Ours Garage*: in each case, Congress was silent on whether it intended to preempt local laws, and the courts therefore lacked any basis for concluding that Congress's had a clear and manifest intention to do so. *United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty.*, 842 F.3d 407, 413-17 (6th Cir. 2016). The court therefore held that § 14(b)'s approval of

"State" Right-to-Work laws encompassed the challenged ordinance's core Right-to-Work provisions. *Id.* at 417.[4]

This Court should reach the same conclusion and uphold the core Right-to-Work provisions of the Village's Ordinance as a "State" law expressly allowed by NLRA § 14(b).

C. Field preemption does not reverse the presumption that "State" laws encompass local laws.

The district court's analysis of § 14(b) was fundamentally flawed because it reversed the required presumption that "State" laws encompass local laws, concluding that the NLRA's (supposed) general preemption of Right-to-Work laws required the court to construe § 14(b)'s approval of "State" laws narrowly. A-15, A-19. That makes little sense: Congress's (assumed) preemption of the field does not, in itself, shed any light on whether Congress intended to create a broad or narrow exception in § 14(b). To answer that question, one must look to the words Congress used in § 14(b). And in § 14(b), Congress used the word "State" – a term that presumptively includes, by definition, a state's political subdivisions.

The district court founded its analysis on an opinion concurring in the judgment in *Mortier*, in which Justice Scalia (alone) opined that, if FIFRA had preempted the

[4] The *Hardin County* plaintiffs challenged the ordinance at issue in that case on exactly the same grounds that the Unions challenge the Village's Ordinance. Candor requires the Village to note that, although the Sixth Circuit upheld the county ordinance's core Right-to-Work provisions as permissible "State" laws under § 14(b), it accepted the Unions' arguments on whether the NLRA preempts Right-to-Work laws not specifically authorized by § 14(b) and whether federal law preempts the hiring-hall and dues-authorization provisions. *See Hardin County*, 842 F.3d at 417-22. Of course the Village respectfully disagrees with the Sixth Circuit on these points for the reasons stated in Sections I, III, and IV.

field of pesticide regulation (which it did not), then the Court could have appropriately read the statute's authorization of "State" laws narrowly to exclude local laws. 501 U.S. at 616 (Scalia, J., concurring). A-15, A-19. In Justice Scalia's view, federal statutes restricting the authority of a "State" to pass certain laws that would otherwise be permissible should be read broadly to encompass (and therefore prohibit) local laws; but statutes authorizing a "State" to pass certain laws that would otherwise be preempted should be read narrowly to authorize only laws enacted by states' central governments. *See Mortier*, 501 U.S. at 616 (Scalia, J., concurring).

But the eight justices in the *Mortier* majority did not accept Justice Scalia's position, noting that field preemption would not, by itself, change the definition of "State," a term that "is not self-limiting since political subdivisions are merely subordinate components of the whole":

> [Even if Congress preempted the field,] it would still have to be shown under ordinary canons of construction that FIFRA's delegation to 'States' would not therefore allow the State in turn to redelegate some of this authority to their political subdivisions either specifically or by leaving undisturbed their existing statutes that would provide local government with ample authority to regulate.

Id. at 612.

The Court also rejected the approach favored by Justice Scalia (and by the district court here) in *Ours Garage*, in which it considered exceptions to a general rule of preemption. Over a dissent by Justice Scalia, the Court concluded that an exception for certain "State" laws encompassed local laws – even though the general

preemption rule and one of the other exceptions specifically referenced laws of "political subdivisions" but the exception at issue did not – because Congress was silent on whether it intended to interfere with states' authority to delegate their powers to their subdivisions. 536 U.S. at 432-40. The statute's general rule of preemption did not give rise to a presumption that a reference to "State" laws excluded political subdivisions.

Here, even if the NLRA preempts the field of Right-to-Work laws generally, its authorization of "State" laws includes local laws because, as in *Mortier* and *Ours Garage*, Congress has not shown a clear and manifest intention to depart from the usual definition of "State" laws and interfere with states' inherent absolute discretion to divide their powers as they see fit.

D. Policy considerations do not warrant a narrow construction of "State" that excludes local laws in § 14(b).

Policy considerations do not warrant construing § 14(b)'s use of the word "State" narrowly to exclude local laws.

Preemption of local laws would not serve the two policies underlying *Garmon* preemption: (1) to "maintain[] uniformity in the administration of the federal regulatory jurisdiction," *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 110 (1989); and (2) "to preclude state interference with the National Labor Relations Board's interpretation and active enforcement of the integrated scheme of regulation established by the NLRA," *Brown*, 554 U.S. at 65. Contrary to the district court's analysis (A-17), preemption of local Right-to-Work laws would not help maintain uniformity in the administration of federal regulation because, again,

Congress declined to regulate union security agreements and chose to "abandon any search for uniformity" with them. *Schermerhorn*, 375 U.S. at 103-05. And preemption of local Right-to-Work laws would not interfere with the NLRB's interpretation and enforcement of the NLRA because the NLRA does not require the NLRB to interpret and enforce Right-to-Work laws. *See id.*

The district court erred in construing § 14(b)'s use of "State" narrowly based on the incorrect premise that § 14(b) makes an exception to a federal policy favoring union security agreements. A-17-20. Again, federal policy does not "favor" union security agreements; it is neutral toward them. *See Schermerhorn*, 375 U.S. at 104-05; *Algoma Plywood*, 336 U.S. at 307. The district court inferred the existence of this supposed federal policy from a statement that § 14(b) creates an exemption from a "national policy that certain union-security agreements are valid as a matter of federal law" in *Oil, Chemical & Atomic Workers v. Mobil Oil Corp.*, 426 U.S. 407, 417 (1976). A-17-18. But only four justices joined Justice Marshall's majority opinion in that case – and one of them wrote a concurring opinion to say that he rejected Justice Marshall's "suggestion that federal policy favors permitting union-shop and agency-shop agreements." *Id.* at 421 (Stevens, J., concurring). Therefore, even if the *Mobil Oil* opinion could be read as implying the existence of a national policy favoring union security agreements, that view – which contradicts the Court's analyses in *Schermerhorn* and *Algoma Plywood* – was not accepted by a majority of

the Court. The district court therefore erred in relying on *Mobil Oil* for the proposition that federal policy favors union security agreements.[5]

Moreover, even if federal policy did generally favor union security agreements, that would not necessarily require a narrow construction of "State" in § 14(b). "A congressional decision to enact both a general policy that furthers a particular goal and a specific exception that might tend against that goal does not invariably call for the narrowest possible construction of the exception." *Ours Garage*, 536 U.S. at 440. It is not obvious that allowing local Right-to-Work laws necessarily undermines a (hypothetical) federal policy favoring union security agreements. Although local Right-to-Work ordinances could create zones where union security agreements are illegal in states where a statewide Right-to-Work law would be politically infeasible (Illinois might be an example), they could also serve to prevent some states from enacting statewide Right-to-Work laws by allowing them (through their subdivisions) to prohibit union security agreements only in parts of the state where voters favor Right-to-Work.

The district court also erred in construing § 14(b)'s use of "State" narrowly based on its predictions of the consequences local Right-to-Work laws would have – specifically, that unions would find it "difficult" to comply with local Right-to-Work laws under "[collective bargaining] agreements that cover employees across multiple cities and towns" and that this difficulty could lead unions to "abandon"

[5] A District of New Mexico decision that the district court cited (A-18) made the same error. *See N.M. Fed'n of Labor, United Food & Comm. Workers Union Local 1564 v. City of Clovis*, 735 F. Supp. 999, 1003 (D.N.M. 1990).

union security agreements entirely. A-18. Speculation about the consequences of local Right-to-Work laws, and about whether Congress intended to tolerate such consequences, cannot establish the required clear and manifest intention to preempt. Even if one assumes that the district court's ideas about the consequences of local Right-to-Work laws were well-founded, it does not follow that Congress must have considered those consequences so undesirable that it could only have intended to prohibit local Right-to-Work laws. It is not obvious that Congress must have wanted to ban local Right-to-Work laws based on the possibility that they would discourage the use of union-security agreements, given that, in § 14(b), Congress contemplated and condoned the possibility that union security agreements would be prohibited across entire states and, potentially, the entire country. Indeed, § 14(b) and its legislative history make clear that Congress was content to leave all policy decisions regarding the desirability of Right-to-Work laws and their consequences in the hands of the states. *See Sweeney*, 767 F.3d at 659-60 (noting Congress's intention for states to have "extensive," "broad" freedom to legislate, and the "final say," with respect to prohibition of union security agreements).

Besides, it is not self-evident that unions would actually find it intolerably difficult to comply with local Right-to-Work laws. Organizations of all types that operate across multiple local jurisdictions must comply with those jurisdictions' differing laws and regulations pertaining to a great variety of matters. There is no reason to believe they could not comply with local Right-to-Work laws as well. True, local Right-to-Work laws might require unions to change the geographic scope of

their collective bargaining agreements, but unions have no special right to continue to do business in exactly the same manner they always have – particularly with respect to union security agreements, which Congress deliberately declined to regulate and left states free to prohibit entirely.

E. No references to local laws elsewhere in federal law imply that Congress intended to exclude local laws from the "State" laws referenced in § 14(b).

Contrary to the district court's decision, no references to local laws in the NLRA or anywhere else in federal law support the inference that Congress intended to exclude local laws from the "State" laws referenced in § 14(b), much less establish that Congress had a clear and manifest intention to do so.

A federal statute that referred to "State" laws alone in some instances but referred to laws of "States and their political subdivisions" in others might create uncertainty about whether Congress intended to exclude local laws where it did not specifically include them. But even that would not suffice by itself to establish the requisite clear and manifest intent to preempt local laws.

Indeed, it was not enough in *Ours Garage*. Again, that case involved the Interstate Commerce Act, which expressly preempts laws enacted by "*a State [or] political subdivision of a State* . . . related to a price, route, or service of any motor carrier . . . with respect to the transportation of property" but carves out from that preemption several exceptions, two of which are relevant here:

> (2) MATTERS NOT COVERED.
>
> (A) [the preemption clause] shall not restrict the safety regulatory *authority of a State* with respect to motor

> vehicles. . . .
>
> . . .
>
> (C) [the preemption clause] does not apply to the *authority of a State or a political subdivision of a State* to enact or enforce a law . . . relating to the price of for-hire motor vehicle transportation by a tow truck if such transportation is performed without the prior consent or

536 U.S. at 429-30 (quoting 49 U.S.C. § 14501(c)) (emphasis added). The *Ours Garage* plaintiffs argued that the statute's references to political subdivisions in its preemption clause and exception (C) implied that its use of "State" alone in exception (A) excluded a state's political subdivisions. *Id.* at 433-34. But the Supreme Court held that this difference alone could not "provide the requisite 'clear and manifest indication that Congress intended to supplant local authority.'" *Id.* at 434. Congress's silence on whether it intended to preempt local laws meant that the default rule applied: "State" laws included local laws.

Here, the NLRA does *not* alternately include and omit references to states' political subdivisions in references to the states' authority as the statute in *Ours Garage* did. That makes this an easier case than *Ours Garage*: with no references to "political subdivisions" to create arguable ambiguity, and no statement by Congress that it intended to preempt local laws, the NLRA's reference to "State" laws necessarily includes local laws. *See id.* at 432 ("Had [the relevant subsection of the statute at issue] contained no reference at all to 'political subdivisions of a state,' the preemption provision's exception for ['State' laws] undoubtedly would have

embraced both state and local regulation. . . . [because] *Mortier* . . . would have been definitive.").

The district court erred in inferring that the "State" laws referenced in NLRA § 14(b) did not encompass local laws based on a reference to "local" laws in § 14(a), which states:

> Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, *either national or local*, relating to collective bargaining.

29 U.S.C. § 164(a) (emphasis added). According to the district court, § 14(a) demonstrates that, where Congress intended to include local laws, it specifically referred to them. A-16. But the term "local" in § 14(a) does not refer specifically to laws enacted by local governments; it just refers to laws other than "national" laws. *See Beasley v. Food Fair of N.C., Inc.*, 416 U.S. 653, 658-62 (1974) (striking down state law for violating § 14(a)). The broad meaning of "local" in § 14(a) does not imply – much less clearly and manifestly establish – that Congress intended to give "State" an unusually narrow meaning in § 14(b). And there is no reason to believe that Congress intended the words "local" and "State" in §§ 14(a) and 14(b), respectively, to be interpreted by reference to each other, as they do not relate to one another and address different subject matter.

The district court also erred in inferring Congress's intention in § 14(b) from a provision of the Fair Labor Standards Act stating that nothing in that statute would

"excuse noncompliance with any Federal or State law or municipal ordinance," 29 U.S.C. § 218(a). A-16. *Mortier* and *Ours Garage* do not suggest that courts can find Congress's intent in using the word "State" in a particular statutory provision by searching through other statutes for provisions that happen to reference both state and municipal laws. In both *Mortier* and *Ours Garage*, the Court looked only to the terms and legislative history of the particular statute at issue. And if Congress's inconsistent inclusion and exclusion of the words "political subdivision" within a single statutory subsection could not suffice to show an intent to preempt local laws through use of the term "State" alone in *Ours Garage*, a single reference to municipal ordinances in an entirely different statute cannot establish an intent to preempt local laws through use of the term "State" in NLRA § 14(b). Even if the language of an unrelated provision of the FLSA could provide a reason to think that Congress *might* have intended to exclude municipal ordinances in NLRA § 14(b) – itself a stretch, especially given that they are different statutes passed by different Congresses in different decades[6] – it falls far short of establishing the clear and manifest intention to preempt required under *Mortier* and *Ours Garage*.

3. The Ordinance's ban on mandatory union hiring halls is a permissible Right-to-Work provision because it addresses an issue outside the NLRB's jurisdiction and protects workers from compulsory unionism.

Just as it does not preempt the Ordinance's core Right-to-Work provisions, the NLRA also does not preempt the prohibition on union hiring halls in Ordinance

[6] The district court stated that Congress enacted NLRA § 14(b) and the FLSA provision it cited "around the same time," A-16, but in fact Congress enacted § 14(b) nearly a decade after the FLSA provision. *See* 61 Stat. 136, 151 (1947) (enacting § 14(b)); 52 Stat. 1060, 1069 (1938) (enacting the FLSA provision).

§ 4(E), which addresses an issue outside the NLRB's jurisdiction and serves to protect workers from compulsory unionism.

First, federal law does not expressly preempt § 4(E). Neither the NLRA nor any other federal law expressly prohibits state or local bans on hiring hall arrangements.

Second, federal law does not implicitly preempt § 4(E). The NLRA does not grant a positive right to enter into hiring hall agreements. Rather, it simply does not forbid such agreements; as with union shops, it tolerates them as a matter of federal law. *See Local 357, Teamsters v. NLRB*, 365 U.S. 667, 676 (1961). Whether employers and unions enter into hiring hall agreements is no concern of the federal government; it is "a matter of negotiation between the parties," and the NLRB therefore "has no power to compel directly or indirectly that the hiring hall be included or excluded in collective agreements." *Id.* Because inclusion or exclusion of a hiring-hall agreement in a collective bargaining agreement is outside the NLRB's jurisdiction, allowing states and their subdivisions to prohibit hiring halls would not interfere with the NLRB's interpretation and enforcement of the NLRA.

Moreover, preemption would not serve the interest that the federal government does have with respect to hiring hall agreements: ensuring that they do not discriminate against workers who are not union members. *See id.* at 674-77. The NLRB has exclusive jurisdiction over the discrimination issue because "the problems inherent in the operation of union hiring halls are difficult and complex" and therefore are best adjudicated by "a single expert federal agency." *United Ass'n*

of Journeymen & Apprentices v. Borden, 373 U.S. 690, 695-96 (1963). The "difficult and complex" issues that warrant exclusive NLRB jurisdiction over discrimination-related claims do not arise where, as here, a law prohibits mandatory hiring-hall arrangements entirely.

Further, prohibition of mandatory union hiring halls is proper under states' authority to protect workers against compulsory unionism, recognized in NLRA § 14(b). As a practical matter, mandatory union referrals are a means of pressuring workers to become union members. Prohibiting them therefore serves to ensure that all union membership is truly voluntary.

Third, there is no conflict preemption. It is possible to comply with the NLRA, which does not mandate the use of hiring halls, and the Ordinance, which prohibits mandatory hiring halls. And laws prohibiting hiring halls would not impede the achievement of the NLRA's objectives because, again, the NLRA is neutral on whether employers should use hiring halls.

In the absence of express, implied, or conflict preemption, this Court should uphold Ordinance § 4(E)'s prohibition of arrangements requiring workers to be referred for employment through a union hiring hall.

4. The Ordinance's restrictions on deductions of union fees from workers' paychecks are valid Right-to-Work provisions because they protect workers from compulsory union membership.

Finally, neither the NLRA nor the LMRA preempts Ordinance § 5, which (1) prohibits employers from deducting union fees from an employee's paycheck without receiving a written authorization from the employee, and (2) allows an employee to revoke an authorization to deduct union fees at any time by giving written notice. A-29-30.

First, federal law does not expressly preempt § 5. No federal law expressly prohibits state or local governments from requiring dues-deduction authorizations to be in writing or from giving employees the right to revoke their dues authorizations at any time.

Second, federal law does not implicitly preempt § 5 because § 5 is simply a Right-to-Work provision permissible for the same reasons that the Ordinance's core Right-to-Work provisions are permissible. Payment of union dues or fees is equivalent to union "membership" as that term is used in NLRA §§ 8(a)(3) and 14(b). *NLRB v. Gen. Motors Corp.*, 373 U.S. 734, 743 (1963); *Sweeney*, 767 F.3d at 660-61. Therefore, a worker who decides that he or she no longer wants to pay union fees, but who cannot immediately revoke his or her dues authorization, is forced to accept union membership as a condition of his or her employment for some period of time. Hence, the Ordinance's dues-authorization provision serves to protect workers from compulsory union membership – and is therefore precisely the type of Right-to-

Work law expressly approved (and exempted from any preemption that would otherwise apply) by NLRA § 14(b).

Third, there is no conflict preemption. LMRA § 302(c)(4) requires that union dues authorizations "not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective bargaining agreement, whichever occurs sooner." 29 U.S.C. § 186(c)(4). This sets a maximum – not a minimum – duration that a dues authorization may be irrevocable under federal law. The Ordinance's provision allowing a worker to revoke authorization at any time does not conflict with § 302(c)(4) because it does not allow dues authorizations lasting longer than the one-year federal maximum.

And the Ordinance does not "stand[] as an obstacle" to achieving the LMRA's objectives. *Gade*, 505 U.S. at 98. The apparent purpose of § 302(c)(4) is to protect workers from being permanently bound by a dues authorizations, not to set one-year dues authorizations as a mandatory nationwide policy. If anything, the Ordinance furthers the policy underlying § 302(c) by giving workers additional protection against having dues withheld from their paychecks after they no longer wish to support a union.

In sum, this Court should uphold Ordinance § 5 because it protects workers from compulsory union membership as NLRA § 14(b) explicitly allows and does not otherwise conflict with the NLRA or the LMRA.

CONCLUSION

The district court's partial denial of Defendants' motion for summary judgment and partial grant of Plaintiffs' motion for summary judgment should be reversed.

Dated: May 8, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the type-volume limitations imposed by Fed. R. App. P. 32 and Circuit Rule 32 for a brief produced using the following font: Proportional Century Schoolbook Font 12 pt body text, 11 pt for footnotes. Microsoft Word 2007 was used. The length of this brief is 9,727 words.

/s/ Jacob H. Huebert
Jacob H. Huebert

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, I served the foregoing brief upon all counsel of record by electronically filing it with the appellate CM/ECF system.

/s/ Jacob H. Huebert
Jacob H. Huebert

REQUIRED SHORT APPENDIX

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CIRCUIT RULE 30(d) STATEMENT

Counsel certifies that this short appendix contains all materials required by parts (a) and (b) of Circuit Rule 30.

Dated: May 8, 2017

/s/ Jacob H. Huebert
Jacob H. Huebert
Attorney for Defendants-Appellants

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

International Union of Operating Engineers, Local 399, AFL-CIO; International Union of Operating Engineers, Local 150, AFL-CIO; Construction and General Laborers' District Council of Chicago and Vicinity, Laborers International Union of North America, AFL-CIO; and Chicago Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America,	)	
Plaintiffs,	)	
vs.	)	**Case No. 16 C 2395**
Village of Lincolnshire, Illinois; Peter Kinsey, Chief of Police; Elizabeth Brandt, Mayor; and Barbara Mastandrea, Village Clerk,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

In December 2015, the Village of Lincolnshire adopted an ordinance that imposed new restrictions on labor relations between labor unions, employers, and employees. The plaintiffs, four unions that operate in Lincolnshire (the Unions), challenge the ordinance, alleging that it is invalid under the Supremacy Clause and deprives the Unions of their rights in violation of 42 U.S.C. § 1983. The Unions have moved for summary judgment. The defendants have filed a cross-motion for summary judgment, contending that each of the Unions lacks standing to bring at least one of the claims and that the Unions' claims lack merit.

For the reasons stated below, the Court concludes that three of the four unions lack standing to challenge a particular part of the Lincolnshire ordinance and that none of the unions may bring claims under section 1983 but otherwise denies defendants' motion for summary judgment. The Court concludes that all four unions have standing to challenge the remaining parts of the ordinance. The Court therefore grants summary judgment on the preemption claims in favor of all four unions, finding that federal law preempts the challenged provisions of the Lincolnshire ordinance.

Background

The plaintiffs are four labor organizations that operate within Lincolnshire. International Union of Operating Engineers, Local 399, AFL-CIO (Local 399) is the collective bargaining representative for a bargaining unit composed of workers at Colliers International Asset and Property Management, LLC in Lincolnshire. Compl. ¶ 5. International Union of Operating Engineers, Local 150, AFL-CIO (Local 150) is the collective bargaining representative for seven separate bargaining units with various businesses in Lincolnshire, including Central Boring, Inc.; Dick's Heavy Equipment Repair; C.R. Nelson Landscaping; Accurate Group, Inc.; D.C.S. Trucking Co.; Johler Demolition Inc.; and Revcon Construction Corp. *Id.* ¶ 6. Local 150 also alleges that it is the representative for numerous other units of employees who are likely to perform work in Lincolnshire in the future. *Id.* ¶ 8.

Construction and General Laborers' District Council of Chicago and Vicinity, Laborers International Union of North America, AFL-CIO (LDC) is party to three collective bargaining agreements that cover employees of employers located in Lincolnshire, including Central Boring, Inc.; Johler Demolition, Inc.; and Revcon

Construction Corp. *Id*. ¶ 9. LDC also alleges that it is the representative for numerous other units of employees who are likely to perform work in Lincolnshire in the future. *Id*. ¶ 11. Chicago Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America (CRC) is party to collective bargaining agreements covering units of employees who were scheduled to perform work in Lincolnshire starting in the spring of 2016. Compl. ¶ 13. CRC also alleges that it is the representative for numerous other units of employees who are likely to perform work in Lincolnshire in the future. Compl. ¶ 14.

Lincolnshire is a "home rule" unit as defined in the Illinois Constitution, meaning that it can "exercise any power and perform any function pertaining to its government and affairs." *See* Pls.' Corrected Br. in Supp. of Mot. for Summ. J. (Pls.' Opening Brief) at 1; Ill. Const. Art. VII, § 6. In December 2015, Lincolnshire passed Ordinance No. 15-3389-116. Pls.' Opening Br. at 1. In relevant part, the ordinance provides:

SECTION 4: GUARANTEE OF EMPLOYEE RIGHTS

> No person covered by the NLRA shall be required as a condition of employment or continuation of employment with a private-sector employer:
>
> (A) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
> (B) to become or remain a member of a labor organization;
> (C) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;
> (D) to pay any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of labor organization; or
> (E) to be recommended, approved, referred, or cleared for employment by or through a labor organization.

SECTION 5: VOLUNTARY DEDUCTIONS PROTECTED

> 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 to be held for, transferred to, or paid over to a labor organization 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 by giving written notice of such revocation to the employer.

Pls.' Resp. to Defs.' Stat. of Facts, Tab 13 Ex. C, 02475–76.

The Unions filed suit against Lincolnshire and three Lincolnshire officials in their official capacity: Chief of Police Peter Kinsey; Mayor Elizabeth Brandt; and Village Clerk Barbara Mastandrea. Compl. ¶¶ 15–18. The Unions contend that the quoted portions of the ordinance are preempted by the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151–69, and the Labor-Management Relations Act (LMRA), 29 U.S.C. §§ 401–531. *See* Pls.' Opening Brief at 1, 17–19. In particular, the Unions contend that sections 4(A)–(D) of the ordinance prohibit what are known as "union security agreements" and as such are preempted by the NLRA. Compl. ¶¶ 32–37. In count 2, the Unions allege that section 4(E) of the ordinance prohibits what are known as "hiring hall provisions" and that this section is likewise preempted by the NLRA. *Id.* ¶ 38. Finally, the Unions allege in count 3 that section 5 restricts what are known as "check-off provisions" and is preempted by the NLRA and the LMRA. *Id*. ¶ 40. On all three counts, the Unions request declaratory and injunctive relief, as well as damages and attorneys' fees as authorized by 42 U.S.C. § 1988. *Id*. ¶¶ 37, 39, 41.

Discussion

The Unions have moved for summary judgment, arguing that the quoted

provisions of the Lincolnshire ordinance are preempted by federal law and that the Unions are entitled to judgment on the merits. Lincolnshire[1] has cross-moved for summary judgment, arguing that the Unions lack standing to bring these claims and that all four Unions' claims lack merit. The Court first addresses the issue of standing and the viability of the Unions' claim under 42 U.S.C. § 1983 and then addresses the preemption issue, which is argued in both sides' motions.

In considering each side's motion for summary judgment, the Court views the evidence in the light most favorable to the moving party and draws reasonable inferences in that party's favor. *See Calumet River Fleeting, Inc. v. Int'l Union of Operating Eng'rs, Local 150, AFL-CIO*, 824 F.3d 645, 647–48 (7th Cir. 2016). Summary judgment is appropriate only when there is no genuine dispute regarding any material fact and the moving party is entitled to judgment as a matter of law. *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., and its Local 2343 v. ZF Boge Elastmetall LLC*, 649 F.3d 641, 646 (7th Cir. 2011).

I. Standing

In order to bring a claim in federal court, a plaintiff must have standing as required by Article III of the Constitution. *Diedrich v. Ocwen Loan Servicing, LLC*, 839 F.3d 583, 587 (7th Cir. 2016). To have standing, a plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id*. at 587–88 (citing *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). In response to a motion for

[1] Because the defendants have filed their motion and responses collectively, the Court will use the term "Lincolnshire" to refer to both the Village and the individual defendants.

summary judgment, the plaintiff bears the burden of establishing standing by setting forth specific facts through affidavits or other evidence. *Edgewood Manor Apartment Homes, LLC v. RSUI Indem. Co.*, 733 F.3d 761, 771 (7th Cir. 2013).

The Unions allege that they are the collective bargaining representatives for various units of employees who are employed by companies located in Lincolnshire. The Unions allege that they have negotiated collective bargaining agreements on behalf of these employees that contain provisions now prohibited by the ordinance. The Unions further contend that the ordinance will invalidate these agreements and prevent the Unions from negotiating agreements with similar provisions in the future. In this way, the Unions allege that they have been injured by Lincolnshire's adoption of the ordinance and that this injury can be addressed through the requested relief. Lincolnshire contends that this is insufficient to establish the Unions' standing to challenge the ordinance.

It appears that the Supreme Court has not directly addressed what constitutes standing to bring a preemption challenge to state or local ordinances based on the NLRA or the LMRA. But in *Oil, Chemical & Atomic Workers International Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407 (1976), the Supreme Court held that laws like the one at issue here, commonly referred to as "right-to-work laws," apply only to employees whose "predominant job situs" is located within the jurisdiction that passed the ordinance. *Id*. at 412–14. It would appear, therefore, that Lincolnshire's ordinance imposes limits on the Unions' agreements—and thus generates an injury sufficient to confer standing—only if the Unions represent employees who work *predominantly* in Lincolnshire under agreements containing provisions prohibited by the ordinance.

A. Local 399

Lincolnshire concedes that Local 399 has standing to bring counts 1 and 3. Defs.' Mem. in Supp. of Mot. for Summ. J. and Resp. in Opp'n to Pls.' Mot. for Summ. J. (Defs.' Opening Br.) at 4. Lincolnshire argues that Local 399 lacks standing to bring count 2 because it has not alleged that it has entered into any agreements containing the hiring hall provisions prohibited by section 4(E). Defs.' Opening Br. at 8. The Unions do not dispute this contention. *See* Pls.' Resp. Br. in Opp'n to Defs.' Mot. for Summ. J. (Pls.' Reply) at 1 n.1 (indicating only that Local 399 has entered into agreements containing union security agreements and check-off provisions). The Court therefore concludes that Local 399 lacks standing to bring count 2.

B. Local 150

Lincolnshire next argues that Local 150 lacks standing to bring any of the claims alleged in the complaint. Defs.' Opening Br. at 5–6, 8–9. Lincolnshire says that Local 150 has failed to establish that it will be affected by the ordinance, because it has not shown that it represents any employee whose predominant job site is in Lincolnshire. *Id.* at 5. The Court finds, however, that the Unions have established that employees represented by Local 150 work predominantly in Lincolnshire.

Local 150 submitted declarations by two of its members who meet the requirements for standing. One member, Roberto Zavala, stated that he works for Revcon Construction Corp., located in Lincolnshire. Pls.' Resp. to Defs.' Stat. of Facts, Tab 10 (Zavala Decl.) ¶ 2. Zavala further indicated that he spends the "vast majority of [his] workday, about 80% to 90%" working at Revcon's facility in Lincolnshire. *Id.* ¶ 3. Finally, Zavala stated that his employment is governed by the MARBA Illinois Building

Agreement, which contains a union security clause, a hiring hall provision, and a check-off provision. *Id.* ¶ 4. Mark Beinlich, another Local 150 member, made similar statements. Specifically, he indicated that he works for Dick's Heavy Equipment Repair, also located in Lincolnshire. Pls.' Resp. to Defs.' Stat. of Facts, Tab 11 (Beinlich Decl.) ¶ 2. Beinlich stated that every day he reports to a facility in Lincolnshire and spends "50% to 60% of [his] workday" at this facility. *Id.* ¶ 3. These affidavits are sufficient to establish that Local 150 represents employees whose predominant job site is in Lincolnshire.

Lincolnshire argues that this Court should prohibit Local 150 from using these declarations in support of its motion. *See* Defs.' Reply at 10–11. Lincolnshire says that it served Local 150 with interrogatories requesting the names of every member currently working in Lincolnshire, as well as the number of hours these members spend there. *Id.* Local 150 declined to provide this information on the grounds that it was "irrelevant, cumulative, and overly burdensome." *See, e.g.*, Defs.' Reply, Tab 1 (Answers to Interrogs.) at 3. As a result, Lincolnshire argues, the Court should preclude Local 150 from using this information to support its response to Lincolnshire's motion under Federal Rule of Civil Procedure 37, which says that if a party fails to provide information as required by the rules of discovery, "the party is not allowed to use that information . . . to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). Lincolnshire has not, however, identified any harm from the late disclosure of this information. The Court finds the late disclosure was harmless under Rule 37(c)(1).

Local 150 has established that it represents employees whose predominant work

site is in Lincolnshire and that at least one of these employees is party to an agreement containing the types of provisions prohibited by the ordinance. The Court therefore concludes that Local 150 has standing to bring all three claims.

C. LDC

Like Local 399, LDC appears to concede that it does not have standing to bring count 2, as it alleges only that it has entered into agreements "containing union security and check-off clauses," and not containing hiring hall provisions. *See* Pls.' Reply at 1 n.1. Lincolnshire argues that LDC also lacks standing to bring counts 1 and 3, on the grounds that it has not "identified a single employee it represents who actually spends most of his or her working hours in Lincolnshire." Defs.' Opening Br. at 7; *see also id*. at 8-9.

Two of the declarations that LDC points to in support of its standing do not permit an inference that any LDC members have Lincolnshire as their primary job site. The declaration of James Connolly, LDC's business manager, only discusses the bargaining agreements between LDC and the various employers and does not provide any evidence concerning how often LDC members worked in Lincolnshire. *See* Pls.' Stat. of Uncontested Facts, Tab 6 (Connolly Decl.). Further, the declaration of Daniel Davis, a member of LDC, is insufficient to permit the conclusion that LDC has standing. Davis states that he works for Central Boring, Inc., which is located in Lincolnshire. *Id.*, Tab 7 (Davis Decl.) ¶¶ 1–2. Although Davis states that he regularly works out of a facility in Lincolnshire, he describes this as "usually at least once a week." *Id*. ¶ 3. This is insufficient, without more, to meet the predominance standard in *Mobil Oil*. Further, although Davis states that he reports his hours to supervisors at Lincolnshire and

receives his paycheck from there, *id*. ¶ 4, the Supreme Court has indicated that these factors are insignificant in determining whether local labor laws apply to a particular employee. *See Mobil Oil*, 426 U.S. at 418.

The declaration of Edwin Stuckey, however, supports an inference that LDC has members whose primary job site is in Lincolnshire. Stuckey is the president of Stuckey Construction Company and party to an agreement with LDC. Pls.' Stat. of Uncontested Facts, Tab 8 (Stuckey Decl.) ¶¶ 1–2. Stuckey states that, from 2011 to 2014, he regularly employed LDC members to perform work for elementary schools in Lincolnshire. *Id*. ¶ 5. Further, Stuckey states that he currently employs LDC members who are working on a project at Stevenson High School in Lincolnshire. *Id*. ¶ 6. Lincolnshire argues that this evidence is insufficient to establish LDC's standing to challenge the ordinance as Stuckey does not "identify any employee who spends, has spent, or will spend the majority of his or her working hours in Lincolnshire." Def.'s Opening Br. at 7–8. But Lincolnshire does not identify any viable reason why identification of specific employees is required. Stuckey's affidavit is sufficient to carry LDC's burden to establish standing, and Lincolnshire has offered no contrary evidence. The Court finds that LDC has established its standing to bring counts 1 and 3.

D. CRC

Like Local 399 and LDC, CRC appears to concede that it does not have standing to bring count 2, as it likewise has not entered into agreements containing hiring hall provisions. *See* Pls.' Resp. at 1 n.1. Lincolnshire argues that CRC lacks standing to bring counts 1 and 3 on the ground that it has not "alleged, let alone shown, that any unionized employee of either company" party to agreements with CRC "has ever

performed any work in Lincolnshire." Defs.' Opening Br. at 8–9.

CRC has provided sufficient evidence to establish its standing to bring counts 1 and 3. CRC provides the declaration of Robert Lid, CRC's contract and bonds manager, who states that CRC has agreements with Interior Investments and Build Corps, both of which are located in Lincolnshire. *See* Pls.' Stat. of Uncontested Facts, Tab 9 (Decl. of Robert Lid) ¶¶ 6–7. Lid further indicates that Interior Investments employs approximately fifty CRC members and that Build Corps employs four CRC members. *Id*. ¶¶ 6–7. Finally, Lid states that approximately 3,000 contractors are signatories to an agreement with CRC and have the ability to bid on and perform work in Lincolnshire. *Id*. ¶ 9. In conjunction with his declaration, Lid also provides reporting documents on Interior Investments and Build Corps that support his employment estimates. *See* Decl. of Robert Lid, Exs. C & D.

In response, Lincolnshire again argues only that CRC's failure to identify particular employees renders its evidence insufficient. Def.'s Opening Br. at 8. The Court disagrees. Lid's affidavit is sufficient to establish that CRC has members who work predominantly in Lincolnshire.

5. Summary

The Court concludes that Local 399, LDC, and CRC each have standing to bring counts 1 and 3 but lack standing to bring count 2 and therefore grants Lincolnshire's motion for summary judgment to that extent only. The Court concludes that Local 150 has standing to bring all three counts and therefore denies Lincolnshire's motion for summary judgment on the standing issue.

II. Section 1983 claim

The Unions have brought all three claims under both the Supremacy Clause of the Constitution and 42 U.S.C. § 1983. Compl. ¶ 1. In its cross-motion for summary judgment, Lincolnshire argues that the Unions have failed to state a claim under section 1983 because they cannot show that Lincolnshire violated a federally protected right. Defs.' Opening Br. at 24–25.

The Supreme Court has held that the NLRA creates rights for labor and management that are "enforceable against governmental interference in an action under § 1983." *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 108–09 (1989). This appears to apply, however, only for certain types of preemption claims based on the NLRA. The Court has identified two types of preemption under the NLRA. *Chamber of Commerce v. Brown*, 554 U.S. 60, 65 (2008). The first, known as *Garmon* preemption, prohibits states from regulating activity that the NLRA protects or prohibits. *Id*. The second, known as *Machinists* preemption, prohibits interference by states and the National Labor Relations Board (NLRB) on the ground that Congress intended certain conduct "to be controlled by the free play of economic forces." *Id*. The Court in *Golden State* found that the NLRA implicitly establishes a federal right protected by section 1983 based on a *Machinists* preemption challenge. *Golden State*, 493 U.S. at 112. In doing so, the Supreme Court expressly distinguished a challenge based on *Garmon* preemption. *See id*. The Court stated that "[t]he *Machinists* rule is not designed—as is the *Garmon* rule—to answer the question whether state or federal regulations should apply to certain conduct. Rather, it is more akin to a rule that denies either sovereign the authority to abridge a personal liberty." *Id*. *Golden Gate* therefore

suggests that *Machinists* preemption claims are based on a personal liberty protected by section 1983, whereas *Garmon* preemption claims are not. In a subsequent case, the Court again indicated that *Garmon* preemption claims and *Machinists* preemption claims may be treated differently for the purpose of claims brought under section 1983. *See Livadas v. Bradshaw*, 512 U.S. 107, 133 & n.27 (suggesting that *Garmon* preemption is "fundamentally different" from *Machinists* preemption and that this difference may be significant when deciding the availability of section 1983 relief).

The Unions appear to have brought their claims as *Garmon* preemption claims. They do not argue that Lincolnshire has abridged a right or course of conduct that Congress intended to leave to the control of the free market. Instead, the Unions argue that Lincolnshire has attempted to regulate an area otherwise reserved to the federal government through the NLRA. The Unions' claims therefore do not fall within the reach of section 1983 as established by *Golden State*. The Court therefore dismisses the Unions' claims under 42 U.S.C. § 1983. The Court evaluates the Unions' claims under the Supremacy Clause in the section that follows.

III. Preemption claim

The Unions argue that the challenged provisions of the ordinance are preempted by the NLRA and that the Unions are entitled to judgment as a matter of law. Pls.' Opening Br. at 1. In its cross-motion, Lincolnshire argues that the ordinance falls under a preemption exception in the NLRA and that therefore Lincolnshire is entitled to summary judgment.

A. Count 1

In count 1, the Unions claim that sections 4(A)–(D) of the Lincolnshire ordinance

are preempted by the NLRA. Compl. ¶¶ 32–37. They contend that the NLRA generally preempts state and local regulation of labor relations. Further, the Unions argue that the preemption exception created by 29 U.S.C. § 164(b) applies only to state, and not local, ordinances.

It is well-accepted "that in passing the NLRA Congress largely displaced state regulation of industrial relations." *Wis. Dep't of Indus., Labor & Human Relations v. Gould Inc.*, 475 U.S. 282, 286 (1986). Thus states "may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits." *Id*. The NLRA does, however, create a single exception. The NLRA states that it shall not be construed "as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or territorial law." 29 U.S.C. § 164(b). The Supreme Court has interpreted section 164(b) as creating an exception to the NLRA's "national policy that certain union-security agreements are valid as a matter of law" in that it permits "any State or Territory that wishes" to exempt itself from that policy. *Mobil Oil*, 426 U.S. at 416–17; *see also Sweeney v. Pence*, 767 F.3d 654, 659–660 (7th Cir. 2014). In other words, section 164(b) permits states to regulate or prohibit the use of union security agreements.

Both parties appear to agree that the ordinance provisions challenged in count 1 prohibit union security agreements, which are agreements that require union membership as a condition of employment. *See* Pls.' Opening Br. at 3 & n.2; Defs.' Opening Br. at 9–14. There is no question if the State of Illinois had adopted a statute enacting the same provisions at issue in count 1, the provisions would not be

preempted by the NLRA, as they would fall within the exception created by section 164(b). *See* Pls.' Opening Br. at 5. The Unions argue, however, that the exception in section 164(b) does not extend to local law and therefore does not permit Lincolnshire, a municipality, to prohibit union security agreements. Pls.' Opening Br. at 6.

Neither the Supreme Court nor the Seventh Circuit has expressly addressed whether the power given to states and territories in the NLRA to prohibit union security agreements extends to political subdivisions of the state. In considering the same question regarding other statutes, however, the Supreme Court has indicated that whether an exception for state regulation also extends to local regulation depends on whether Congress, in enacting the statute, intended to occupy the entire field. *See Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 607 (1991) (considering preemption of local law under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)). When a federal statute preempts a particular field but provides an exception for regulation by a state, the statute should not be read as *restricting* only a narrow set of state regulation—i.e., that which falls outside of the exception. *Id*. at 616 (Scalia, J., concurring). If this were so, it would make sense to conclude that the local subdivisions faced the same narrow restriction and were otherwise free to regulate. *Id*. Instead, where the statute preempts a particular field, the statute should be read as *authorizing* only a narrow set of state regulation, in which case it makes sense that only states and not their subdivisions would benefit from this limited authorization. *Id*. In other words, when Congress has intended a statute to preempt regulation in that field, any exception to such preemption must be read as a narrow authorization—as opposed to an expansive protection—of state regulation. Therefore if the NLRA preempts the field of

union security agreements, the exception for state regulation in section 164(b) does not extend to regulation by local subdivisions.

1. Preemption

A review of the language and history of the NLRA indicates that Congress intended to preempt the field of union security agreements. The language of section 164(b) only refers to state law. The section provides that the NLRA does not authorize union security agreements "in any State or Territory" where "State or Territorial law" prohibits these agreements. The provision avoids any mention of local law, in contrast to section 164(a), which says that no employer is required to deem individuals as supervisors "for the purpose of any law, either national or local," 29 U.S.C. § 164(a), and the Fair Labor Standards Act (FLSA), passed around the same time, which says that nothing in the FLSA "shall excuse noncompliance with any Federal or State law or municipal ordinance . . . ." 29 U.S.C. § 218(a). Thus, in contemplating the scope of a national policy on labor relations, Congress clearly articulated when local ordinances can override this policy. Section 164(b) evinces no such intent, and its exception therefore extends only to state law.

The legislative history further supports the conclusion that Congress intended to preempt the field of union security agreements. As noted by the Supreme Court, the House Report on the NLRA itself stated that "by the Labor Act Congress preempts the field that the act covers." *Retail Clerks Int'l Ass'n, Local 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96, 101 n.8 (1963) (quoting H.R. Rep. No. 510, 80th Cong., 1st Sess., p. 44). The Court then went on to conclude that Congress added section 164(b) to make clear that the NLRA did not preempt state law on the particular topic covered

by that section. *See id*. In doing so, the Court did note that Congress "chose to abandon any search for uniformity in dealing with the problems of state laws barring the execution and application of agreements authorized by [§ 164(b)] and decided to suffer a medley of attitudes and philosophies on the subject." *Id*. at 104–05. But the issue before the Court was "whether the Congress had precluded *state enforcement of select state laws* adopted pursuant to its authority." *Id*. at 103 (emphasis added). The Court went on to conclude that the "special legislative history" of the NLRA required "[s]tate power . . . to exist alongside of federal power," *id*. at 104, in light of the purpose of "avoid[ing] federal interference with *state* laws in this field," *id*. at 102 (emphasis added). *Schermerhorn* therefore does not contradict the conclusion that Congress intended to preempt the field of union security agreements, leaving an exception only for regulation by the states. And as discussed by Justice Scalia in *Mortimer*, this congressional intent to preempt thus makes it reasonable to interpret section 164(b) as a narrow authorization that does not extend to local regulation of union security agreements.

Finally, extending the preemption exception to local ordinances would create an impossibly disparate system that would undermine Congress's intent to create uniformity in the regulation of labor relations. The Supreme Court has held that the NLRA "articulates a national policy that certain union-security agreements are valid as a matter of federal law." *Mobil Oil*, 426 U.S. at 417. Though section 164(b) permits a narrow exception for authorized state regulation, it is highly unlikely that Congress intended to subject this national policy to the patchwork scheme that would result from city-by-city or county-by-county regulation of such agreements. If the NLRA permitted

local governmental entities to enact their own laws regarding union security agreements, "[t]he result would be a crazy-quilt of regulations within the various states." *See N.M. Fed'n of Labor, United Food and Commercial Workers Union Local 1564 v. City of Clovis*, 735 F. Supp. 999, 1002 (D.N.M. 1990). And because unions often enter into agreements that cover employees across multiple cities and towns within a given state, these agreements would be subject to multiple, potentially conflicting, laws. This would make it difficult for unions to comply with local law and would create a strong "incentive to abandon union security agreements," thereby undermining Congress's creation of a federal policy in favor of such agreements. *Id*. at 1003. And the Supreme Court in *Mobil Oil* indicated that section 164(b) should be interpreted such 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." *See Mobil Oil*, 426 U.S. at 419. In sum, the Court concludes that section 164(b) does not permit local subdivisions to regulate union security agreements.

2. *Mortier* and *Ours Garage*

In arguing that the exception under section 164(b) extends to local laws, Lincolnshire points to two decisions by the Supreme Court addressing a parallel issue in the context of other statutes. Although the Court ruled in both cases that a statutory preemption exception for state regulation extended to local subdivisions as well, the statutes in those cases are distinguishable from the NLRA and therefore do not persuade this Court to find that the same extension applies here.

In *Mortier*, mentioned above, the Court considered a provision of FIFRA which provides that "[a] State may regulate the sale or use of any federally registered pesticide

or device in the State." *Mortier*, 501 U.S. at 606 (citing 7 U.S.C. § 136v(a)). The Court first concluded that FIFRA is not "a comprehensive statute that occupie[s] the field of pesticide regulation," finding that there was neither a clear indication that Congress intended this result nor evidence from which to infer preemption. *Mortier*, 501 U.S. at 612. Because FIFRA does not preempt the field, the Court held that the reference to "States" in section 136v(a) preserves state power in this area, which includes a state's ability to allocate its regulatory authority to political subdivisions. *Id*. at 612, 608.

As discussed above, Congress—in adopting the NLRA—intended to create a federal policy in favor of union security agreements and otherwise preempt the field in order to impose greater uniformity in the regulation of labor relations. The NLRA is therefore distinguishable from FIFRA and *Mortier*'s determination that the Act's exception for state regulations extends to local regulation as well. Because the NLRA preempts regulation in this area, the exception for state authority in section 164(b) only "authoriz[es] certain types of state regulation (for which purpose it makes eminent sense to authorize States but not their subdivisions)." *See id*. at 616 (Scalia, J., concurring).

This holding is likewise consistent with the Supreme Court's ruling in *City of Columbus v. Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424 (2002). There, the Court considered a provision of the Interstate Commerce Act stating that the Act's prohibition against state or local regulation "related to a price, route, or service of any motor carrier" would not "restrict the safety regulatory authority of a State with respect to motor vehicles." *Id*. at 428 (citing 49 U.S.C. § 14501(c)(1)–(2)). The Court determined that—despite the fact that the exception in section 14501(c)(2) omitted any mention of political subdivisions while section 14501(c)(1) included one—Congress intended

section 14501(c)(2) to permit local exercise of safety regulatory authority. *Id*. at 439–40. The Court suggested that when a statute's specific exception to preemption "might tend against" the general policy aim of a statute, the exception should be narrowly construed. *Id*. at 440. The Court then determined that the purpose of the Interstate Commerce Act—to preempt *economic* regulation—does not conflict with the statute's exception for state *safety* regulation. *See id*. at 441. The Court therefore determined that the exception in section 14501(c)(2) need not be construed narrowly in order to avoid interfering with the general policy aims of the Interstate Commerce Act.

This principle further indicates that the exception for state regulation in section 164(b) of the NLRA does not extend to local regulation. The NLRA expressly "permits employers as a matter of federal law to enter into agreements with unions to establish union or agency shops." *Mobil Oil*, 426 U.S. at 410; *see also* 29 U.S.C. § 153(a)(3). The result of such provision is a federal policy that favors permitting union security agreements. *Mobil Oil*, 426 U.S. at 420. Because the preemption exception in section 164(b) directly conflicts with the statute's policy aim, it must be read narrowly and not expanded to permit local regulation of these agreements.

In arguing otherwise, Lincolnshire relies heavily on a recent decision by the Sixth Circuit in which the court held that section 164(b) extends to local law and therefore that an ordinance similar to Lincolnshire's was not preempted by the NLRA. *See generally United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty.*, 842 F.3d 407 (6th Cir. 2016). The Sixth Circuit analyzed the language of section 164(b), as well as *Mortier* and *Ours Garage*, and concluded that the dispositive question was whether Congress had indicated "a clear and manifest purpose to preempt state

authority to delegate governmental power to its political subdivisions." *Id*. at 420. The court ultimately determined that there was no showing of a clear and manifest purpose and therefore that section 164(b) permits local subdivisions to regulate union security agreements. *Id*. Though this Court relies on the same sources, it respectfully disagrees with the Sixth Circuit's determination of the point. The dispositive question is not whether Congress intended to preempt state authority to delegate governmental power. Rather, the question is whether Congress intended to preempt legislation in general in the field of union security agreements. Because this Court concludes that Congress, with its passage of the NLRA, did have this intention, *Mortier* and *Ours Garage* require the exception in section 164(b) to be read narrowly to extend to states and no further.

This Court therefore concludes that laws of political subdivisions do not qualify as "State law" under 29 U.S.C. § 164(b) and therefore that sections 4(A)–(D) of the ordinance are preempted by the NLRA. Accordingly, the Court grants summary judgment in favor of the Unions on count 1.

B. Count 2

In count 2, the Unions challenge section 4(E) of the Lincolnshire ordinance, which prohibits unions from imposing hiring hall provisions in its agreements with employers. Only Local 150 has negotiated any agreements containing hiring hall provisions, and therefore only Local 150 has standing to bring count 2. Because the Court holds that local ordinances do not qualify as state law under section 164(b), section 4(E) of Lincolnshire's ordinance is likewise preempted by the NLRA. But even if the Court had determined that section 164(b) permits local regulation of union security agreements, Local 150 would still be entitled to summary judgment on count 2.

Section 164(b) permits states to prohibit only "agreements requiring membership in a labor organization as a condition of employment." 29 U.S.C. § 164(b). Courts have therefore held that the NLRA permits states to regulate only those provisions that amount to "compulsory unionism." *See Simms v. Local 1752, Int'l Longshoremen Ass'n*, 838 F.3d 613, 619–20 (5th Cir. 2016). Hiring hall provisions—requiring that all new hires by an employer be referred through a labor organization—do not amount to compulsory unionism. The result of a hiring hall provision is typically that non-union members looking to work for a particular employer are required to pay a small fee to the hiring hall for their referral service. The Fifth Circuit in *Simms* considered a similar provision and concluded that the state of Mississippi was not permitted to prohibit hiring hall arrangements. *Id*. In doing so, the court emphasized that charging referral fees relates to an employee's "pre-hire" conduct, which does not amount to compelled union membership. *Id*. Section 164(b) permits states to regulate only "the [p]ost-hiring employer-employee-union relationship." *Mobil Oil*, 426 U.S. at 417. Because the hiring hall provisions require individuals to pay referral fees before they are hired, they do not require membership in a labor organization as a condition of employment. Therefore, section 164(b) does not give states or its subdivisions the authority to regulate these provisions. The Court concludes that section 4(E) of the ordinance is preempted by the NLRA and grants summary judgment on count 2 in favor of Local 150.

C. Count 3

In count 3, the Unions challenge section 5 of the Lincolnshire ordinance, which requires any "dues check-off arrangement"—whereby an employee authorizes his employer to automatically deduct union dues from his paycheck—to be revocable by the

employee at any time. The Unions are entitled to summary judgment on this claim, because the ordinance is preempted by the NLRA and does not fall within the exception in section 164(b). And even if the Court had held that section 164(b) permits local regulation, the Unions would still be entitled to summary judgment on count 3, because the regulation of check-off provisions—either by states or by their subdivisions—is preempted by the LMRA.

The LMRA authorizes check-off arrangements so long as the employee makes "a written assignment" to his employer "which shall not be irrevocable for a period of more than one year." 29 U.S.C. § 186(c)(4). The LMRA's express regulation of this aspect of labor relations is sufficient to preempt state regulation, given that Lincolnshire's ordinance conflicts with section 186(c)(4). *See Patriotic Veterans, Inc. v. State of Indiana*, 736 F.3d 1041, 1049 (7th Cir. 2013) ("conflict preemption" arises "when state law conflicts with federal law to the extent that compliance with both federal and state regulations is a physical impossibility" (internal quotation marks omitted)). Lincolnshire argues that this is not the case, because an employee may satisfy both the LMRA and the ordinance simply by having a check-off agreement that is revocable at any time. But in the context of labor relations, the Supreme Court has made it clear that if a particular agreement could meet all federal hurdles but not all state hurdles, then the hurdles imposed by state law conflict with federal law. *Schermerhorn*, 375 U.S. at 102–03. In *Schermerhorn*, the Court found such a conflict to be permissible, but only because the conflict was authorized by Congress in section 164(b). *Id*. at 103. The Court concluded, essentially, that the language of section 164(b) permits states to impose more stringent requirements on union security agreements, despite the fact that

such requirements would conflict with the NLRA.

Section 164(b) does not, however, permit states to regulate check-off arrangements as it does union security agreements. This is, again, because check-off arrangements clearly do not amount to the "compulsory unionism" that states are permitted to regulate under section 164(b). The LMRA does not require employees to use a check-off provision for union dues—it merely enables them to do so. Employers cannot deduct the dues automatically but instead must have written authorization from each employee. Thus check-off arrangements do not compel employees to unionize; they simply make it easier for those who are union members to pay their dues. Lincolnshire argues that "a worker who decides that he or she no longer wants to pay union fees, but who cannot immediately revoke his or her dues authorization" is compelled to accept union membership as a condition of his or her employment for some period of time. Defs.' Opening Br. at 22. But giving an employee the choice whether to enter into a dues check-off arrangement, and permitting the arrangement to be irrevocable for a certain period of time, does not amount to compulsory unionism.

Because section 5 of Lincolnshire's ordinance imposes more stringent requirements than federal law, it conflicts with the LMRA. This conflict is not authorized by section 164(b), and therefore section 5 of the ordinance is preempted. The Court grants summary judgment in favor of the Unions on count 3.

Conclusion

For the foregoing reasons, the Court grants defendants' motion for summary judgment in part and denies it in part [dkt. no. 52]. Specifically, the Court dismisses the claims of plaintiffs Local 399, LDC, and CRC in count 2 for lack of standing and

dismisses all of the plaintiffs' claims brought under 42 U.S.C. § 1983 but otherwise denies defendants' motion. The Court also grants plaintiffs' motion for summary judgment in part and denies it in part [dkt. no. 35]. Specifically, the Court grants summary judgment in favor of plaintiffs Local 399, LDC, and CRC on counts 1 and 3 and in favor of Local 150 on counts 1, 2, and 3 and concludes that federal law preempts the union security agreement, hiring hall, and dues check-off provisions of Lincolnshire Ordinance No. 15-3389-116. The Court otherwise denies plaintiffs' motion. Plaintiffs are directed to file a proposed form of judgment by no later than January 12, 2017. The case is set for a status hearing on January 18, 2017 at 9:30 a.m. for the purpose of addressing and entering an appropriate judgment.

MATTHEW F. KENNELLY
United States District Judge

Date: January 7, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

International Union of Operating Engineers, Local 399, AFL-CIO et al,

Plaintiff(s),

v.

Village of Lincolnshire, Illinois, et al.,

Defendant(s).

Case No. 16 C 2395
Judge Matthew F. Kennelly

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

.

Defendant(s) shall recover costs from plaintiff(s).

☒ other:

(1) Judgment is entered in favor of Plaintiff Operating Engineers Local 150 and against Defendants on Counts 1, 2, and 3 of the Complaint.

(2) Judgment is entered in favor of Plaintiffs Operating Engineers Local 399, General Laborers' District Council of Chicago, and the Chicago Regional Council of Carpenters and against Defendants on Counts 1 and 3.

(3) As to Plaintiffs Operating Engineers Local 399, General Laborers' District Council of Chicago, and the Chicago Regional Council of Carpenters, Count 2 is dismissed for lack of standing.

(4) Section 4 of Village of Lincolnshire Ordinance Number 15-3389-116 is preempted by the National Labor Relations Act, as amended, and is therefore declared void and unenforceable.

(5) Section 5 of Village of Lincolnshire Ordinance Number 15-3389-116 is preempted by the National Labor Relations Act, as amended, and Section 302 of the Labor Management Relations Act and is therefore declared void and unenforceable.

(6) Defendants, their successors, and their representatives are permanently enjoined from taking any action to enforce Sections 4 and 5 of Lincolnshire Ordinance Number 15-3389-116.

(7) The Plaintiffs' claim under 42 U.S.C. § 1983 is dismissed as lacking merit.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☐ decided by Judge Matthew F. Kennelly on a motion for summary judgment.

Date: 1/18/2017

Thomas G. Bruton, Clerk of Court

Pamela J. Geringer, Deputy Clerk

ORDINANCE NO. 15-3389-116

VILLAGE OF LINCOLNSHIRE, ILLINOIS

AN ORDINANCE ON ECONOMIC DEVELOPMENT AND WORKER EMPOWERMENT BY REGULATION OF INVOLUNTARY PAYROLL DEDUCTIONS FOR PRIVATE SECTOR WORKERS IN THE VILLAGE OF LINCOLNSHIRE

WHEREAS, the Village of Lincolnshire, Lake County, Illinois (the "Village"), is a municipal corporation and Home Rule unit by referendum pursuant to the provisions of Article VII, Section 6 of the 1970 Constitution of the State of Illinois, and as such may exercise any power or perform any function pertaining to its government and affairs, the powers and functions of which shall be construed liberally; and

WHEREAS, Mayor and Council of the Village of Lincolnshire find that fostering a commercially competitive environment to maintain a stable, diverse tax base in the Village and the promotion of job growth for the Village's residents pertain to the government and affairs of the Village of Lincolnshire; and

WHEREAS, it is the intent of this Ordinance to protect individual choice and worker freedoms such that in the Village of Lincolnshire, no employee covered by the National Labor Relations Act ("NLRA") shall be compelled to join or pay dues to a union, or refrain from joining a union, as a condition of employment; and provide certain penalties for violation of those employment rights; and

WHEREAS, the Village of Lincolnshire and its residents compete for employment opportunities and business development with other municipalities and states whose citizens benefit from similar worker freedom legislation; and

WHEREAS, as of September, 2015 the State of Illinois has 200,000 fewer Illinoisans working compared to before the Great Recession, the worst employment recovery of any state in the U.S., necessitating local policy solutions that will attract businesses, manufacturers and investors and thus provide more plentiful opportunities for the residents of Illinois and Lincolnshire; and

WHEREAS, a recent poll of CNBC's Global Council of CFOs revealed that two-thirds of CFOs polled consider a Right-to-Work law to be either "important" or "very important" when they decide where to invest and locate new facilities; and

WHEREAS, the NLRA authorizes the State of Illinois and Home Rule units of government to prohibit compulsory union membership and dues payments for employees choosing not to join a union; and

WHEREAS, Article VII, Section 6(i) of the Illinois Constitution provides that:

> (i) Home rule units may exercise and perform <u>concurrently</u> with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive;

WHEREAS, with respect to the regulation of compulsory union dues payments for employees governed by the NLRA, the General Assembly has neither specifically limited the concurrent exercise of authority by Home Rule units, nor declared the State's exercise to be exclusive; and

WHEREAS, the Village of Lincolnshire will not be represented by the Ancel Glink law firm on this issue and will be represented by the Liberty Justice Center on a pro bono basis; and

WHEREAS, the Mayor and Council of the Village of Lincolnshire hereby find and determine that it is in the best interest of the public health safety and welfare of the residents of the Village of Lincolnshire to promote and encourage direct labor commerce by giving employees the freedom to choose employment without restraint or coercion regarding the payment of mandatory dues, fees or other payments to a labor organization as a condition of that employment.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Village of Lincolnshire, Lake County, Illinois, in the exercise of its Home Rule authority as follows:

SECTION 1: **RECITALS**

The foregoing recitals are incorporated into, and made a part of, this Ordinance as if fully set forth in this section 1.

SECTION 2: **DEFINITIONS**

The terms "employee," "employer," "labor organization," and "person" as used in this Ordinance shall have the same meanings as defined by the NLRA.

SECTION 3: **AUTHORITY**

This Ordinance is enacted pursuant to the City's Home Rule authority under Article VII, Section 6 of the Constitution of the State of Illinois.

SECTION 4: **GUARANTEE OF EMPLOYEE RIGHTS**

No person covered by the NLRA shall be required as a condition of employment or continuation of employment with a private-sector employer:

(A) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
(B) to become or remain a member of a labor organization;
(C) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;
(D) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or
(E) to be recommended, approved, referred, or cleared for employment by or through a labor organization.

SECTION 5: **VOLUNTARY DEDUCTIONS PROTECTED.**

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 to be held for, transferred to, or paid over to a labor organization, 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 by giving written notice of such revocation to the employer.

SECTION 6: **IMPLIED AGREEMENTS PROHIBITED.**

Any agreement, understanding, or practice, written or oral, implied or expressed, between any labor organization and employer that violates the rights of employees as guaranteed by provisions of this Ordinance is hereby declared to be unlawful, null and void, and of no legal effect.

SECTION 7: **COERCION AND INTIMIDATION PROHIBITED.**

It shall be unlawful for any person, labor organization, or officer, agent or member thereof, by any threatened or actual intimidation of an employee or prospective employee, or an employee's or prospective employee's parents, spouse, children, grand-children, or any other persons in the employee's or prospective employee's home, or by any damage or threatened damage to an employee's or prospective employee's property, to compel or attempt to compel such employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or otherwise forfeit any rights as guaranteed by provisions of this Ordinance. It shall also be unlawful to cause or attempt to cause an employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employees.

SECTION 8: **PENALTIES.**

Any person who violates this Ordinance shall be guilty of a Class A misdemeanor, punishable by fine or imprisonment as set forth in section 5-4.5-55 of the Illinois Unified Code of Corrections, 730 ILCS 5/5-4.5-55.

SECTION 9: **CIVIL REMEDIES.**

Any individual harmed as a result of any violation or threatened violation of the provisions of this Ordinance shall have a civil cause of action to enjoin further violations, and to recover the actual damages sustained, together with the cost of the lawsuit, including a reasonable attorney's fee. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this Ordinance.

To the extent that the law applicable to the forum in which any civil enforcement proceeding is brought under this section 9 provides that a Home Rule unit is not authorized to legislate an award of attorneys fees via an ordinance, then the attorney's fees provision of this section shall be of no force and effect in such forum.

SECTION 10: **PROSPECTIVE APPLICATION.**

The provisions of this Ordinance shall apply to all collective bargaining agreements and employment agreements entered into after the effective date of this ordinance by employers, employees and/or labor organizations covering non-governmental

employees within this Village, and shall apply to any renewal or extension of any existing collective bargaining agreements and employment agreements covering non-governmental employees within this Village made after the effective date of this Ordinance.

SECTION 11: **SEVERABILITY.**

If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect, and shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 12: **CONFLICTING VILLAGE COUNCIL ACTIONS.**

The specific terms of this Ordinance shall supersede any portion of the Lincolnshire Municipal Code or any ordinance, resolution or motion of the Village Council adopted prior to and the terms of which conflict with this Ordinance.

SECTION 14: **HEADINGS.**

The headings of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance.

SECTION 15: **PUBLICATION IN PAMPHLET FORM.**

The Village Clerk is directed to publish this Ordinance in pamphlet form.

SECTION 16: **EFFECTIVE DATE.**

This Ordinance shall be in full force and effect upon its passage, approval and publication, in the manner provided by law.

Passed this 14th day of December, 2015.

Approved this 14th day of December, 2015.

Elizabeth J. Brandt
Mayor

ATTEST:

Barbara Mastandrea
Village Clerk

AYES: Feldman, Hancock, Leider, McDonough, Servi
NAYS: Grujanac
ABSENT: None

Published in pamphlet form: December 14, 2015