

**FILO FOODS, LLC**

**MEMO IN OPPOSITION TO NOVEMBER 25, 2014**  
**REGARDING QUALITY JOBS, SERVICE CONTINUITY & EMPLOYMENT CONTINUITY**

**For the following reasons, please vote against the Motion because:**

- The 2005 U.S. District Court Flying Eagle Espresso Order found that “None of the defendants [Port of Seattle and Unite HERE Local 8] disputes that requiring FEE to unionize as a condition of the renewal of their lease at SeaTac is legally impermissible.” Page 15
- Similarly, this 2014 Commission motion requires food and beverage concessionaires to recognize and be legally obligated to negotiate with Unite HERE Local 8 as a condition to submitting a bid for a lease at SeaTac Airport, which is legally impermissible.
- HERE has been lobbying the Port for these requirements, as well as demanding that the Port reduce the number of leases for small business and increase the number of leases for large corporations, such as the multinational Host.

**The Port’s Labor Policies, in Response to Union Threats & Disruptions**

- In 1997, in response to local labor union threats & disruptions, the Port adopted a labor harmony policy.
- In 2000, the US District Court permanently enjoined the Port’s conduct in adopting a policy that forced involuntary unionization, preempted under the Machinist’s doctrine of NLRA and violated 42 U.S.C. § 1983 by depriving City Ice of federally protected rights under the color of state law. *CityIce v. Port of Seattle* (C99-1647BJR). The Port was ordered to pay CityIce a total of \$275,000.00 as CityIce’s reasonable attorneys’ fees and costs associated with the action.
- In 2003, a concessionaire tenant, FEE, received communications from Port officials that she would be required to join the union and must submit a labor harmony plan (approved by the union) before her sublease would be renewed. She was **encouraged** to meet with HERE Local 8 to assist with her plan. Every other DBE that submitted a labor harmony agreement had their lease renewed.
- In 2005, the U.S. District Court determined that this agreement between the unions and the Port of Seattle, requiring third party businesses to join the union and submit a Labor Harmony Plan (approved by the union) impermissibly forced concessionaire to unionize as a condition of receiving a lease renewal at the airport. *Flying Eagle Espresso, Inc. v. Host Int’l, Inc.*, (W.D. Wn. Sept. 21, 2005).
- 2014, despite its history, **POS expectations to “document good faith discussions with labor organizations” with Unite HERE impermissibly forces concessionaires to unionize as a condition to submitting a bid.**

**Port Sued Twice & Fined for Enforcing Involuntary Unionization**

- Specifically, the *CityIce* and *Flying EagleEspresso* courts prohibited the Port from engaging in “any conduct that interferes, either by the Port’s actions or inactions, with the exercise of the federally protected rights of ... third parties using Port facilities to assign work to their own employees ...” *Id.*

**Preemption under Federal Labor Law**

- Forced participation in unfair labor practices: employers lose their right to express views in opposition to unionization, employees lose their right to vote in a secret ballot election conducted by the National Labor Relations Board (NLRB), employees lose their right to self-organization.
- **Preemption under Sections 7 & 8 of the NLRA.**



- Federal labor law forbids the Port from regulating conduct that Congress intended "to be controlled by the free play of economic forces." *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 140, 96 S.Ct. 2548 (1976).
- Encourages the collective-bargaining processes, thus it is preempted under federal law. *Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 755, 105 S.Ct. 2380, 85 L.Ed.2d 728.

**Federal law prohibits restrictions on ACDBE's ability to make business decisions. 49 CFR Part 26.**

- ACDBEs can't be subject to formal or informal restrictions limiting their discretionary authority. *Id.*
- Preventing ACDBEs from arranging their initial workforce and limiting their employment decisions puts their eligibility as an ACDBE at risk.

**Forced Involuntary Recognition of Labor Union is an Antitrust Violation**

- Basis of a federal antitrust suit against the Port, because it has a potential for restraining competition in the business market in ways that would not follow naturally from elimination of competition over wages and working conditions. *FTC v. Phoebe Putney Health System, Inc.*, 133 S. Ct. 1003 (2013).
- Port lacks authority to use its powers anticompetitively: such as engaging in top-down organizing campaigns and excluding parties as tenants who refuse to participate, then the Port's anticompetitive conduct may be an antitrust violation. *Id.*
- The Port's minimal participation and limited supervision of the forced labor negotiations renders the Port ineligible for state-action immunity from an anti-trust claim. *Id.* at 1010-1011.

**Port of Seattle's Breaking its Promise to ACDBEs**

- Since 2011, the Port Commission publicly committed to make ACDBEs whole, because of their higher buildout costs and their fringe locations, which prevented them from earning comparable high profits as big business in locations with lower buildout costs and high foot traffic.
- Street pricing requirement further restrains the DBEs ability to competitively bid on concessions opportunities, since the increased costs cannot be countered by increased pricing.

**Misuse of Commission Authority to interfere with Federal Rights .**

- Section 1983 provides a federal remedy for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, including violations of federal statutory as well as constitutional rights. See *Felder v. Casey*, 487 U.S. 131, 139, 108 S.Ct. 2302, 2307, 101 L.Ed.2d 123 (1988).
- Concessionaires have a right to operate free from ... activities or conspiracies aimed at conditioning eligibility to operate at the Airport on involuntary unionization and a Section 1983 action provides protection from that interference. *Flying Eagle Espresso v. Host International, et al.* 2005 WL 2318827, U.S. District Ct., WD Washington (Sept. 2005)
- The Port increases its risk of a Section 1983 action against it, if the proposed directive is enacted.

**CONCLUSION**

**For these reasons, we respectfully submit that if the Commission passes this motion, then it will be in violation of federal law and will subject itself and the Port to litigation similar to *CityIce* and *Flying Eagle Espresso***



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**Table Comparing Proposed Quality Jobs Proposal**

POS Commission Meeting November 25, 2014 / Agenda Item 6a

<p><b>City of SeaTac Ordinance Setting Minimum Employment Standards for Hospitality &amp; Transportation Industry Employers</b></p>	<p><b>Proposed ADR Quality Jobs Motion 11/25/2014</b></p>	<p><b>Host Jobs represented by Unite HERE Local 8</b></p>
<p><i>Awaiting WA Supreme Court ruling whether it applies at SeaTac Airport</i></p>	<p><i>Per Agenda Item 6a</i></p>	<p><i>Per Agenda Item 6f</i></p>
<p><b>Sponsored by and drafted by Unite Here Local 8 &amp; SEIU</b></p>	<p><b>POS Strategy &amp; Objectives:</b> The Commission has expressed intent that Airport Dining and Retail employment represent “Quality Jobs.”</p> <p><b>Heavily lobbied for by Unite HERE Local 8</b></p> <p><i>(Not applicable to Host, because POS offering Host a new lease through 2023)</i></p>	<p><b>POS Strategy &amp; Objectives:</b> Phasing plan, new lease &amp; concession agreement with Host, supports the Port’s Century Agenda goal: “advance the region as a leading tourism destination &amp; business gateway” by providing an extraordinary customer experience at the Airport. The project also supports the Aviation Division’s strategic goals to operate a world-class airport &amp; grow non-aeronautical revenues.</p>
<p><b>Opt-Out provision: not applicable if enter into a union contract, at SeaTac Airport, with Unite HERE Local 8.</b></p>	<p><b>Union Recognition &amp; Negotiation Requirement of Unite HERE Local 8:</b> documented good faith discussions with labor organizations representing incumbent employees regarding the mitigation of impacts on airport operations or revenue due to labor disputes.</p>	<p>Supports the continuity of approximately 250 employees with Host, <b>represented by Unite HERE Local 8.</b></p>
<p><b>Living Wage For Hospitality Workers and Transportation Workers</b></p> <ul style="list-style-type: none"> <li>• <b>\$15.00/hour or more</b></li> <li>• <b>If enter into union contract with Unite HERE, NOT guaranteed</b></li> </ul>	<p><b>Requires The King–County Self-Sufficiency Standard</b></p> <p>King (City of Seattle): 2000 hour year</p> <ul style="list-style-type: none"> <li>• one adult / \$22,199 = <b>\$11.10/hour</b></li> <li>• One adult &amp; one preschooler / \$48,455 = <b>\$24.23</b></li> <li>• One adult One preschooler&amp;one school age / \$60,680 = <b>\$30.34</b></li> </ul>	<p><b>Actual Starting Wages in 2015</b> range from:</p> <ul style="list-style-type: none"> <li>• <b>\$9.44</b> for tipped servers to</li> <li>• <b>\$13.91</b> for a cook.</li> </ul>
	<p><b>Required Paid Time Off &amp; expected to provide additional benefits: i.e. health care, pension/retirement contributions, educational cost reimbursement,</b></p>	

