

LABOR PEACE AGREEMENTS

— Local Government As Union Advocate —

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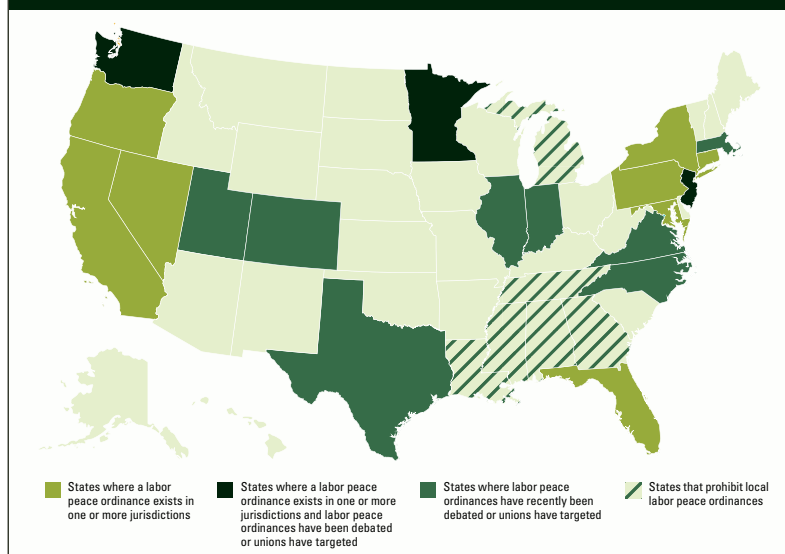


ABSTRACT

A labor peace agreement is an arrangement between a union and an employer under which one or both sides agree to waive certain rights under federal law with regard to union organizing and related activity. While these agreements can be negotiated voluntarily, some state and local governments have attempted to impose them on employers by passing labor peace ordinances. Under these policies, a private sector employer must secure a labor peace agreement with a union as a condition of doing business at a facility or project in which a government entity asserts a “proprietary interest.”

Labor peace ordinances come in many different forms, but they all have one essential purpose: to apply economic pressure on employers to compel them to grant organizing concessions to unions. These concessions can include card check (an employer recognizes a union based on signed cards rather than by the results of a secret ballot election), neutrality (an employer refrains from expressing negative opinions about a union and intervening in an organizing campaign), and workplace access (an employer allows outside union organizers into the workplace). In exchange, unions typically must promise not to strike, picket or otherwise disrupt an employer’s operations—at least for a time. This is a price most unions will readily pay to ease substantially the path to recognition.

LABOR PEACE ORDINANCES IN THE UNITED STATES



Labor peace ordinances have been passed in multiple jurisdictions nationwide and typically cover hotels, restaurants, casinos, other hospitality facilities, and airports. Initially limited to San Francisco, California, labor peace agreements have spread rapidly and now exist in at least 11 states. However, six states have taken steps to block labor peace ordinances and have passed legislation prohibiting local governments from implementing them. While other states may take up similar legislation, it is clear that unions will continue to push additional states and municipalities to adopt labor peace ordinances. For example, UNITE-HERE, the union that represents hotel and hospitality workers, including those in airport concessions, has listed more than a dozen airports in which it would like to see labor peace agreements including Chicago O’Hare, Dallas/Fort Worth, Denver, Detroit, Minneapolis, Charlotte, Houston, Boston, Washington Dulles, Salt Lake City, San Diego, Austin, Washington Reagan, Chicago Midway, and Sacramento.¹

¹ UNITE-HERE! Airport Group, <http://www.airportgroup.info/AirportL+MHubsreport.pdf>.

INTRODUCTION

Traditionally, the federal government has played the central role in establishing the rules relating to union organizing. The National Labor Relations Act (NLRA) of 1935, also known as the Wagner Act, is the seminal piece of legislation in this area. The NLRA established the National Labor Relations Board, created a right to engage in concerted activity, set the thresholds for organizing, and described the remedies for violations. Other laws, such as the Davis-Bacon Act and the Service Contract Act, sought to guarantee wage levels on federal projects and contracts such that unionized labor would not be undercut by non-union competitors.

Of course, unions have not had it all their way with regard to federal legislation. The Taft-Hartley Act of 1947 and the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959 limited the scope of the NLRA, required reporting of union finances, and allowed states to pass right-to-work legislation, under which workers need not pay union dues or agency fees as a condition of employment.

At the time the LMRDA was passed, organized labor was living in something of a golden age. Membership was running at roughly 32 percent of the nation's workforce, American manufacturing dominated the globe, and international economic competition was minimal.² However, this state of affairs was not to last, and although it may have been scarcely noticed at the time, unions had already begun a downward membership spiral that continues to this day.

By the late 1970s, union membership had dropped to less than 25 percent of the workforce, enough of a decline to get the attention of leadership.³ Thus began the first of several attempts by organized labor to reset the playing field through federal legislation. In 1978, a labor law reform bill that would have toughened penalties on employers for violations of the NLRA and shortened the time period for certification elections fell just two votes short of overcoming a filibuster in the US Senate.⁴ Sixteen years later, striker replacement legislation stalled during President Clinton's first term.⁵ In 2009, unions failed utterly in their campaign to pass the Employee Free Choice Act and were unable to convince either chamber of Congress to even hold a vote in the 111th Congress.⁶

² Gerald Mayer, *Union Membership Trends in the United States*, Cornell University ILR School, (August 31, 2004), 23.

³ *Ibid.*, 22.

⁴ Taylor E. Dark III, "Prospects for Labor Law Reform," *Perspectives on Work* (Summer 2008/Winter 2009).

⁵ Cesar Chavez Workplace Fairness Act, H.R. 5, 103rd Cong. (1993).

<http://thomas.loc.gov/cgi-bin/bdquery/z?d103:HR00005>; and A Bill to Amend the National Labor Relations Act and the Railway Labor Act to Prevent Discrimination Based on Participation in Labor Disputes, S. 55, 103rd Cong. (1993). <http://thomas.loc.gov/cgi-bin/bdquery/z?d103:SN00055>.

⁶ Richard D. Kahlenberg and Moshe Z. Marvit, *Why Labor Organizing Should Be a Civil Right*, 2012. The Employee Free Choice Act would have allowed certifications via card check, established binding arbitration for first contracts, and increased employer penalties.



However, it is not just at the federal level that unions have sought to reverse their decline by reshaping the terrain on which they operate. State and local governments have also received their share of attention. This has paid significant dividends when it comes to organizing public sector workers, who are exempt from coverage under the NLRA, but organization of private sector workers can also be influenced by state and local policies.

The NLRA has broad preemption authority, meaning that state and local governments have to tread carefully when seeking to impact private sector union organizing. One method by which state or local governments can steer clear of preemption is by acting as a “market participant.” This simply means that these entities are pursuing their own economic interests, rather than directly regulating labor policy. This concept was spelled out in a 1993 Supreme Court case, *Building Trades Council v. Associated Builders and Contractors* (commonly referred to as “*Boston Harbor*”).⁷ In this case, the Court ruled that the Massachusetts Water Resources Authority could require private sector firms bidding on work to clean up Boston Harbor to adhere to a union-supported project labor agreement. In the Court’s words:

In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction.⁸

Although the issue in question in *Boston Harbor* was a project labor agreement, state and local governments have used the “market participant” theory to justify another type of intervention with regard to private sector employers: the labor peace agreement.

LABOR PEACE AGREEMENTS

Labor peace agreements are distinct from project labor agreements, although the term “labor peace agreement” is often used to describe both. Project labor agreements, which are specifically referenced in the NLRA, apply to construction projects and customarily require all bidders to agree in advance to use union labor, follow specific work rules, and pay into union benefit funds. They are the subject of often fierce debate, but are beyond the scope of this paper.

Labor peace agreements arise when a local government asserts a “proprietary interest” in a particular facility or development project, usually as the result of financial assistance to a private sector employer, and requires firms doing business at this location to sign a specific agreement with a labor union.

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⁷ *Building & C. Trades Council v. Assoc. Bldrs.*, 507 U.S. 218 (1993).

⁸ *Ibid.*, at 231–232.

sector employer. The government entity then requires firms doing business at this location to sign a labor peace agreement with a labor union.⁹ The theory is that these agreements are desirable because they ensure that labor disruptions such as strikes, pickets, or protests will not disturb the local government's financial interest.

Under these measures, in return for financial assistance in the form of grants, loans, contracts, or rent, or as part of a procurement policy,¹⁰ the governmental entity requires that employers sign a labor peace agreement with any union that requests it, thereby protecting the government's proprietary interest by minimizing the probability of labor disruptions.¹¹

Labor peace ordinances most often cover hotels, restaurants, casinos, other hospitality facilities, and airports, although any facility that receives public funding or some other assistance from a nonfederal government entity is a potential target. The key is the ability of a government entity to assert a proprietary interest. A typical example of how this proprietary interest is defined is found in the city of Baltimore's labor peace ordinance, which lists five specific circumstances, any one of which would trigger said interest. These include:

- The city receives ongoing revenue through a lease of real property owned by the city.
- The city receives ongoing revenues from the project that will be used to repay loans provided by the city.
- Ongoing revenues from the project will be used to pay debt service on bonds provided by the city.
- The city has underwritten or guaranteed loans for the project.
- The city has a significant ongoing economic and nonregulatory interest that is at risk in the project's financial success.¹²

Their fundamental purpose is to compel an employer to grant organizing concessions to a union, concessions they otherwise would be unlikely to make.

Labor peace ordinances can cover a number of different topics, but their fundamental purpose is to compel an employer to grant organizing concessions to a union, concessions they otherwise would be unlikely to make. This can include recognizing the union by card check instead of a secret ballot election

(under the NLRA, employers can insist on secret ballots), remaining neutral (under the NLRA employers may publicly oppose unionization), giving outside union organizers access to the workplace

⁹ As a result, labor peace agreements can also be called proprietary interest protection agreements (PIPAs).

¹⁰ The use of labor peace agreements as part of procurement policy was struck down by the Seventh Circuit in *Metropolitan Milwaukee Association of Commerce v. Milwaukee County*, 431 F.3d 277 (2005).

¹¹ Ruth Milkman and Daisy Rooks, "California Union Membership, A Turn-of-the-Century Portrait," in *The State of California Labor 2003* (Berkeley, Calif.: University of California Press), <http://irle.ucla.edu/publications/documents/StateofCALabor2003.pdf>.

¹² Baltimore City Code, Art. 11, §13-6(b).



(which an employer can legally prohibit under the NLRA), and providing workers' personal contact information to the union (under current law, only home addresses must be provided).

Although labor peace agreements vary considerably, in most cases employers must grant workplace access, provide employee information (names, job titles, contact information, etc.) early in the organizing campaign, and refrain from making disparaging statements about the union. Some, but not all, of these agreements also require that employers assent to card check recognition and neutrality.¹³

In exchange for organizing concessions, unions typically must agree to forswear strikes, pickets, and other disruptions at the workplace. However, as discussed below, these restrictions can be limited in duration and most unions would readily relinquish these tactics to ease substantially the path to recognition.

LABOR PEACE AGREEMENTS IN PRACTICE

San Francisco has long been known for its left-of-center politics, so it should come as no surprise that it pioneered the use of labor peace ordinances. As far back as 1980, the San Francisco Redevelopment Agency required the Marriott corporation to sign a labor peace agreement to develop a property on city-owned land.¹⁴ This agreement included both card check recognition and a neutrality provision.

In 1998, San Francisco passed a labor peace ordinance applicable to hotel and restaurant projects in which the city asserted a proprietary interest. In this case, proprietary interest was defined as a situation in which the city received significant ongoing revenue (such as rent) under a lease, the city received ongoing payments to cover debt service on bonds or loans, or the city agreed to underwrite or guarantee the development of a hotel or restaurant project.¹⁵ Under the terms of the ordinance, any covered hotel or restaurant project is required to sign a card check agreement with any union that requests one. This is specifically referenced in the statute, which states that an employer “shall ... Enter into a card check agreement” with a labor organization that is seeking to represent its employees.¹⁶

Under the terms of the San Francisco ordinance, any covered hotel or restaurant project is required to sign a card check agreement with any union that requests one.

San Francisco's restaurant and hotel labor peace ordinance impacts a range of employers, including, for example, “any person, corporation, association, general or limited partnership, limited liability

¹³ Milkman and Rooks, “California Union Membership.”

¹⁴ *Ibid.*

¹⁵ San Francisco Administrative Code, Ch. 23, Art. VI, §23.51(10).

¹⁶ *Ibid.*, at §23.52(b).

company, [or] joint venture.” It extends to hotels and restaurants located in a mixed-use development in which the city asserts a proprietary interest even if those hotels or restaurants are not directly part of any financial support provided by the city.

A hotel or restaurant project, as defined herein, includes a mixed-use development project in which the City has a proprietary interest which contains a hotel or restaurant, regardless of whether the City’s proprietary interest is in the hotel or restaurant portion of such mixed-use development or the mixed-use development project as a whole.¹⁷

The ordinance also applies to subcontractors at covered properties. In fact, it states that a labor peace agreement “shall be a material and mandatory term of such subcontract” and includes specific labor peace language that must be used in a subcontract.¹⁸ In addition to subcontractors who are actually managing or operating a hotel or restaurant, the provision also covers a subcontractor who merely provides “a service essential to the operation of such hotel or restaurant,” although what constitutes “essential” is left undefined.¹⁹

Interestingly, the language in the ordinance describing the “risks” the city hopes to ameliorate through labor peace agreements provides ammunition to critics of these policies who argue that they are akin to old-fashioned protection rackets. Specifically, the only entity referred to in the ordinance that would pose a threat to “labor peace” is the union itself.

One of those risks is the possibility of labor/management conflict arising out of labor organizing campaigns. ... A major potential source of labor/management conflict that threatens the economic interests of the City as a participant in development projects is the possibility of economic action taken by labor unions against employers in those developments when labor unions seek to organize their workers over employer opposition to unionization. ... That conflict potentially can result in construction delays, work stoppages, picketing, strikes and more recently, in consumer boycotts or other forms of “corporate campaigns” that can generate negative publicity and reduced revenues that threaten the interests not only of the immediate “target” of such tactics, i.e., the employer, but of other investors in the development, and also the City’s special interests identified herein.²⁰

Yet, rather than addressing the specifically identified danger directly, San Francisco’s labor peace ordinance rewards the potential threat of harmful behavior by forcing the *employer* to make concessions and surrender its rights established by federal law. While the union also gives up rights,

¹⁷ *Ibid.*, at §23.51(7).

¹⁸ *Ibid.*, at §23.52(b).

¹⁹ *Ibid.*

²⁰ *Ibid.*, at §23.50(2) & (4).



such as the right to picket, boycott, or strike, such rights are of little consequence in exchange for significant organizing concessions. This is especially true in San Francisco, as the union only gives up those rights during the initial organizing campaign—it is free to strike, picket, and boycott once collective bargaining has commenced.²¹

A similar labor peace ordinance is in effect at the San Francisco airport. In that ordinance, the Airport Commission states that it is “essential for the protection of the Airport Commission’s proprietary and financial interests,” to have “Employers/Contractors and Labor Organizations agree to enter into and abide by Labor Peace/Card Check Agreements[.]”²²

Employers and subcontractors covered by the ordinance include those who provide services that are “integral to the operations of the airport,” as well as those who “sell goods or services in public areas of the airport.”²³ Specific services mentioned in the ordinance include, but are not limited to:

[J]anitorial and maintenance, security, baggage and passenger screening, wheelchair assistance, baggage handling, parking lot services, shuttle vans, rental cars, ticketing agents, gate attendants, aircraft maintenance workers, ramp service workers, electricians, plumbers, airline sales personnel, baggage claim services, cart driving services, refueling personnel and clerical services.²⁴

However, the airport’s labor peace ordinance goes further than the City’s. It includes a “model card check agreement” to be used by all covered employers. Its terms include not just card check certification, but also the provision of an expanded *Excelsior* list, referral privileges, and union access. This means that an employer must provide the union with a complete list of names, addresses, and phone numbers of its workers, allow the union to refer its own preferred applicants for employment, and allow union organizers to enter the workplace for the purposes of discussing unionization as soon as the employer begins seeking to hire workers.²⁵ Thus, a workplace could be thoroughly infiltrated by a union even before it opens for business.

Under San Francisco Airport’s labor peace ordinance, an employer must provide the union with a complete list of names, addresses, and phone numbers of its workers.

²¹ *Ibid.*, at §23.51(1)(c).

²² Rules and Regulations, San Francisco Airport, Rule 12.1, November 2009. Note that this includes an exemption for employers covered by the Railway Labor Act.

²³ *Ibid.*

²⁴ *Ibid.*, at Rule 12.2(b). The original labor peace agreement passed in 2000 was far broader, and included any employer doing business at the airport, even if they were servicing third parties rather than contracting with the government. The broader provisions of the ordinance were struck down in 2001 (*Aeroground, Inc. v. City and County of San Francisco*, 170 F. Supp. 2d 950 (N.D. Cal. 2001)).

²⁵ Rules and Regulations, San Francisco Airport, Rule 12, *Model Card Check Agreement*, November 2009.

OTHER LABOR PEACE ORDINANCES

Many other localities have passed labor peace ordinances. However, not all of them are as explicit as San Francisco's in requiring provisions like card check or union access. For example, Washington, DC, has a labor peace ordinance that applies to "real property developments," in particular, hotels.²⁶ Signed by the mayor in 2003, the ordinance states in its findings section that:

The District must make prudent management decisions, similar to any private business entity, to ensure efficient management of its business concerns and to maximize benefits and minimize risks. One risk is the possibility of labor-management conflict.²⁷

Purportedly to reduce the risk of such conflict, Washington, DC's, ordinance requires District contracts related to a hotel project to include a labor peace agreement signed by an employer and any union that represents, or reasonably might represent, workers at that hotel project. At first blush, this ordinance would seem to favor employers since the only specific stipulations included in the ordinance are those restricting union behavior. The ordinance states that the agreement must include terms that prohibit "the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with the employer's operations[.]"²⁸

An employer seeking a District of Columbia contract related to a covered project must get a union to sign a labor peace agreement to ensure approval of the contract. This gives a union tremendous leverage to seek concessions from an employer.

There is, of course, a subtle catch from an employer's perspective. An employer seeking a District contract related to a covered project *must* get a union to sign a labor peace agreement to ensure approval of the contract. This gives a union tremendous leverage to seek concessions from an employer. And as the District's ordinance directly states, *other* provisions

(perhaps card check, neutrality, or access provisions) can also be included in a labor peace agreement: "The employer and labor organization may incorporate additional provisions in the labor peace agreement to protect the District's proprietary interest."²⁹ To paraphrase *The Godfather*, the District government has empowered unions to make an offer an employer can't refuse. These types of labor peace ordinances are seen more frequently than those in San Francisco, as they enable a government entity to deny that they are *requiring* an employer to waive their rights.

²⁶ Hotel Development Projects Labor Peace Agreement Act of 2002, D.C. Law 14-266 (2003), codified at D.C. Code §32-851, *et seq.*

²⁷ *Ibid.*

²⁸ *Ibid.*, at §32-853.

²⁹ *Ibid.*



Several years ahead of Washington, DC, the city of Pittsburgh, Pennsylvania, passed a labor peace ordinance also covering hotels. Like the District's, this ordinance may seem, at first glance, to be slanted against unions since it requires a commitment by a union not to picket, strike, boycott, or engage in work stoppages or other economic interference.³⁰ Reading further, however, one finds that the Pittsburgh ordinance explicitly states that an employer (which includes subcontractors) "shall be or become signatory to valid collective bargaining agreements" with any labor organization seeking to represent its employees "as a condition precedent to its contract with the City of Pittsburgh."³¹

Pittsburgh's ordinance explicitly states that an employer "shall be or become signatory to valid collective bargaining agreements" with any labor organization seeking to represent its employees "as a condition precedent to its contract with the City of Pittsburgh."

This language goes far beyond what is seen in any other labor peace ordinance identified in this paper. Even under San Francisco's two ordinances, a union still needs to campaign for worker support, although that campaign is heavily tilted toward the union and support can be expressed by signed cards (which may or may not be gathered legitimately) rather than a secret ballot. The Pittsburgh ordinance removes from the union even that relatively minor burden. It would also seem contrary to a bedrock principle of labor law—that workers should have full and informed freedom of choice on the question of unionization.

However, the Pittsburgh ordinance did grant one concession to businesses. It allows an employer to ignore the ordinance if a union places conditions on its no-strike pledge that the City Council finds, after a hearing, to be "arbitrary or capricious."³² This may limit a union's temptation to demand too much at the bargaining table for fear of forfeiting the easiest of all organizing wins—a government-mandated union contract.

STATE GOVERNMENT APPROACHES

In contrast to local governments, the state of New York has its own labor peace law covering hotels and convention centers. The law applies to a hotel or convention center in which a state agency asserts a proprietary interest so long as the facility employs more than 15 people.³³ The law requires a labor peace agreement under which unions agree to "refrain from engaging in labor activity that will disrupt the hotel's operations, including strikes, boycotts, work stoppages, corporate campaigns, picketing or other economic action against the covered project."³⁴ The law also requires that the labor peace

³⁰ Home Rule Charter of the City of Pittsburgh, Title I, Art. VII, Ch. 161, §161.30.1 (1999).

³¹ *Ibid.*

³² *Ibid.*

³³ Contracts of Public Authorities, N.Y. State Code, Public Authorities, Title IV, Art. IX, §2879-b(1)(c).

³⁴ *Ibid.*, at §2879-b(1)(d).

agreement be signed with a union “that represents hotel employees in the state” and last for five years.³⁵

Maryland has also passed a statewide labor peace law. In the section of the state code dealing with video lottery terminals, one finds that to apply for a license to operate a terminal, an applicant must have “entered into a labor peace agreement with each labor union that is actively engaged in representing or attempting to represent video lottery and hospitality industry workers in the state.”³⁶ The agreement must stipulate that the union will refrain from “picketing, work stoppages, boycotts and any other economic interference” within the first five years after the license is granted and must also apply to any operations at a video lottery facility that are conducted by a lessee or tenant.³⁷

Prince George’s County provides an example of this law in practice. The National Harbor development, a substantial complex just down the river from Washington, DC, will include a casino with video lottery terminals. In its request for proposals, the state Video Lottery Facility Location Commission noted the requirement to include a labor peace agreement in any application to operate the casino.³⁸

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While New York and Maryland appear to be the only jurisdictions with a *state* law imposing labor peace agreements, they are by no means the only states to address the issue. New Jersey, for example, has considered legislation that would allow government entities in the state to impose labor peace agreements on any project in which they can assert a proprietary interest.³⁹ The state of Washington has considered legislation that would require labor peace agreements for certain

airports.⁴⁰ Illinois also recently debated a bill that would apply labor peace agreements to casinos, and legislation was previously introduced to require such agreements at Chicago’s airports.⁴¹ Finally, as part of the 2013 omnibus tax bill (House File 677), the Minnesota legislature included a labor peace provision that would apply to hospitality workers at publicly funded projects. However, that provision was later deleted during Senate debate.⁴²

³⁵ *Ibid.*, at §2879-b(2).

³⁶ Md. State Code §9-1A-07 (c)7 (v).

³⁷ *Ibid.*

³⁸ *Baltimore Business Journal* (February 6, 2013).

³⁹ N.J. Assembly, Bill A1416, 215th Legislature (2012).

⁴⁰ Wash. State Legislature, H.B. 1832, 2011–2012 Session.

⁴¹ Ill. Legislature, S.B. 744, 97th General Assembly. The legislation was vetoed by Gov. Pat Quinn on March 4, 2013.

⁴² Minn. State Legislature, Omnibus Tax Bill, H.F. 677, 88th Legislature.



STATE PREEMPTION

Other states, however, have taken a different approach and passed statewide preemption bills that prohibit individual municipalities from approving labor peace ordinances.

The first state to ban labor peace agreements was Louisiana, which in 2001 approved a law prohibiting any government entity in the state from passing “any law, ordinance, or regulation” that interferes with employer rights under federal labor law, or “impos[ing] any contractual, zoning, permitting, licensing, or other condition [restricting] employers’ or employees’ full freedom to act under the federal labor laws.”⁴³

Louisiana’s law seems particularly directed toward the type of labor peace ordinances enacted in San Francisco. For example, the specific freedoms to act covered by the law include an “employer’s or employee’s right to express views on unionization;” an “employer’s right to demand, and an employee’s right to participate in, a secret ballot election;” an “employer’s right to not release employee information;” an “employee’s right to maintain the confidentiality of his or her employee information;” and an “employer’s right to restrict access to its property or business[.]”⁴⁴

Louisiana, Georgia, and Tennessee have passed legislation prohibiting local governments from imposing labor peace ordinances.

In March 2013, the Georgia legislature passed its own ban on labor peace agreements, House Bill (HB) 361. The law covers all government entities in the state including “cities, municipalities, counties, and any public body, agency, board, commission or other governmental, quasi-governmental, or quasi-public body.”⁴⁵ HB 361 seems intended to prohibit labor peace ordinances that include explicit requirements for card check or collective bargaining agreements, like those in San Francisco and Pittsburgh, as well as ordinances with less explicit requirements, like that found in Washington, DC. For example, in addition to language dealing with issues like card check, union access, and disclosure of employee information, it prohibits requiring an employer to “accept or otherwise agree to any provisions that are mandatory or non-mandatory subjects of collective bargaining under federal labor laws.”⁴⁶

⁴³ La. Revised Statutes, §23:984(b).

⁴⁴ *Ibid.* at §23:984(d).

⁴⁵ Ga. Legislature, H.B. 361, 2013–2014 Regular Session, March 28, 2013. <http://www.legis.ga.gov/legislation/en-US/display/20132014/HB/361>.

⁴⁶ *Ibid.*

Legislation similar to HB 361 passed in Tennessee in April 2013. Since then, Michigan, Alabama and Mississippi have also passed statewide preemption bills.⁴⁷

OTHER LIMITS ON LABOR PEACE AGREEMENTS

Aside from state preemption laws, there are other limits on labor peace agreements. For example, the labor peace ordinance in Washington, DC, notes, as do most such ordinances, that a proprietary interest is *not* established simply by the fact that the city collects general tax revenue from a business or has authority over zoning, permits, and licenses.⁴⁸

In addition, an attempt by Milwaukee County to impose a labor peace ordinance on private sector firms contracting to provide transportation and other services for elderly and disabled county residents was struck down as being an attempt to regulate labor policy rather than an exercise in market participation. The Court of Appeals for the Seventh Circuit found that a local government's "spending power may not be used as a pretext for regulating labor relations."⁴⁹ In particular, the Court found that since contractors performed work for unrelated private sector entities as well as the county, Milwaukee County's ordinance attempted to regulate behavior governed by the NLRA, and as such was preempted. Depending on the content of a labor peace ordinance, other federal preemption challenges may apply.⁵⁰

⁴⁷ MI HB 4052 (2015), AL HB 174 (2016), MS SB 2797 (2014).

⁴⁸ D.C. Law 14-266, codified at §32-852(a)(5).

⁴⁹ *Metropolitan Milwaukee Association of Commerce v. Milwaukee County*, 431 F.3d 277.

⁵⁰ *See Chamber of Commerce of the United States of America v. Brown*, 554 U.S. 60 (2008).



GEOGRAPHIC DISTRIBUTION OF LABOR PEACE AGREEMENTS

Labor peace agreements exist in most regions of the country, typically, although not always, in states with a larger than average union presence. The following list includes state laws, ordinances in the largest cities as measured by population, ordinances covering specific airports, and those in individual municipalities, where known. While many labor peace ordinances have been identified, there are almost certainly others in existence.

LOCATION	ORDINANCE/LAW	APPLICATION
New York State	New York State Code, Public Authorities, Article IX, Title IV, Contracts of Public Authorities	Hotels and Convention Centers.
New York City	Executive Order 19	Retail or food service establishments at covered development projects.
NY/NJ Port Authority Airports (Newark, JFK, LaGuardia)	See Port Authority Press Release # 86-2007	Food, retail, news/gifts, duty-free concessions.
State of Maryland	Maryland State Code §9-1A-07 (c)7 (v)	Video lottery and hospitality workers.
Baltimore, MD	Baltimore City Code, Article 11, Section 13	Hotels.
Prince George's County, MD	Prince George's County Code, Subtitle 10A, Subdivision 13	Real property developments, including services provided at such developments, such as construction, janitorial, security, building and grounds maintenance, warehousing and distribution, mechanics and truck services, hotel (and any restaurant connected thereto), and grocery sales.
Washington, DC	D.C. Law 14-266, § 7, 50 DCR 412, 2003	Hotels.
Los Angeles, CA	LA Administrative Code, Division 7, Chapter III, Article IV	Hotels.

LOCATION	ORDINANCE/LAW	APPLICATION
Los Angeles, CA, Airport	Board of Aviation Commissioners Resolution 23437	Concessionaires contracting with Los Angeles World Airports.
San Jose, CA	San Jose Code of Ordinances, Title 25, Chapter 25.11	Airport contracts.
San Francisco, CA	San Francisco Administrative Code, Chapter 23, Article IV	Hotels and restaurants.
San Francisco, CA	Rules and Regulations, San Francisco Airport, Rule 12, November 2009	Airport contracts.
Seaside, CA	Seaside Code of Ordinances, Title 5, Chapter 5.74	Hospitality operations such as hotels, including restaurants, bars, clubs, and food and beverage operations that are located within the hotel or hotel complex.
Santa Monica, CA	RFP for development of the Bergamont Station Arts Center	Hotels, if any hotel project is part of the development.
Santa Monica, CA	Downtown Leasing and Licensing Guidelines, Section V, adopted 7/8/03; Leasing Guidelines for Santa Monica Pier	<p>Downtown Leasing Guidelines require labor peace agreements as part of new or substantially amended leasehold agreements covering businesses engaged in "visitor-serving commercial activities."</p> <p>Leasing guidelines for the Pier require labor peace agreements for "businesses having five or more full or part-time employees and engaged in restaurant or visitor-serving entertainment activities such as arcades, amusement parks and nightclubs."</p> <p>Both leasing guidelines state that a tenant can be considered in default of a lease if they engage in "prohibited practices," which include "harassment, intimidation, 'captive audience' anti-union meetings or illegal terminations of workers in retaliation for organizing."</p>



LOCATION	ORDINANCE/LAW	APPLICATION
Portland, OR	Portland Metro requirement	Portland Metro, an elected regional government body for the Portland Metro Area required a labor peace agreement for a hotel development near the Oregon Convention Center.
Las Vegas, NV	Las Vegas Code of Ordinances, Title IV, Chapter 4.36	Gaming hospitality operations.
Miami-Dade County, FL	County Commission Resolution R-148-07	Concessions at Miami International Airport.
Miami-Dade County, FL	County Commission Resolution R-318-09	Food and beverage concession workers at Florida Marlins Stadium.
Broward County, FL	Finance and Administration Services Department Regulations	Ft. Lauderdale Airport, janitorial and concessions.
Minneapolis, MN	Minneapolis Code of Ordinances, Title 16, Chapter 422.190	Hotels and restaurants.
St. Paul, MN	St. Paul Code of Ordinances, Part II, Title XVIII, Section 185.04	Violation of an existing labor peace agreement by a contractor is grounds for debarment.
Hartford, CT	Hartford Code of Ordinances, Part II, Chapter 2, Article XII, Section 2-766	"Subsidized" development projects.
Pittsburgh, PA	Home Rule Charter of the City of Pittsburgh, Title I, Article VII, Chapter 161.30.1	Hotels, restaurants, bars, clubs, cafeterias, and food and beverage operations.
Seattle/King County, WA	MOU with ArenaCo	Development of new sports arena; construction, food & beverage, hotel, operations, janitorial and staging and audiovisual employees.
Snohomish County, WA	Ordinance 09-011 (SCC 4.25.010)	Contracts with providers of home care services, chemical dependency or mental health treatment, and therapeutic court service. Efforts by the county to enforce the agreements "must be consistent with the County's proprietary interest in preventing or mitigating disruptions in Services caused by labor unrest."

CONCLUSION

For several decades, unions have sought to reconfigure to their advantage the rules under which they organize. In addition to attempts to amend federal law, they have also turned their attention to state and local government policies.

The NLRA has broad preemption authority; however, labor peace ordinances are one method by which state and local governments have tried to give unions an organizing advantage without implicating federal law. Although varied in nature, all labor peace ordinances have one underlying purpose—to pressure employers into granting organizing concessions that are highly prized by unions.

Labor peace ordinances have been identified in various jurisdictions in 11 states. By contrast, six states have passed labor peace preemption bills. As awareness of labor peace ordinances and their pervasiveness increases, additional states are likely to follow in their footsteps.



U.S. CHAMBER OF COMMERCE
Workforce Freedom Initiative

1615 H Street, NW | Washington, DC 20062