

Preemption of Worker-Retention and Labor Peace Agreements At Airports

A Brief Summary Of Select Issues and Practical Approaches

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Preemption of Worker-Retention and Labor Peace Agreements At Airports

11-01 Coverage

- ✈ Introduction/Overview
- ✈ Federal Labor Protection Laws, Preemption and Proprietary Rights Exception
- ✈ Labor Harmony Agreements and Worker Retention Programs
- ✈ Applicability to Airports.
- ✈ The Airport Sponsor – Sources of Risk and Potential Claims
- ✈ Appendix A, B and C

Cover all today??



Preemption of Worker-Retention and Labor Peace Agreements At Airports

Brief Overview of Topic and Coverage Of Session

- ✈ Increase in initiatives to have airports require “labor peace” or “labor harmony” as part of contracts with on-airport businesses
- ✈ Concessions operations largest focus
- ✈ National initiatives by SEIU and UNITE Here
- ✈ Things may not always be what they appear.
- ✈ The need for a well-informed senior staff, board, council, etc.
- ✈ Legal foundation
- ✈ Real-world examples
- ✈ Practical implications

Understanding The
Context Is The Key



Going to move quickly

What are “labor harmony” agreements?

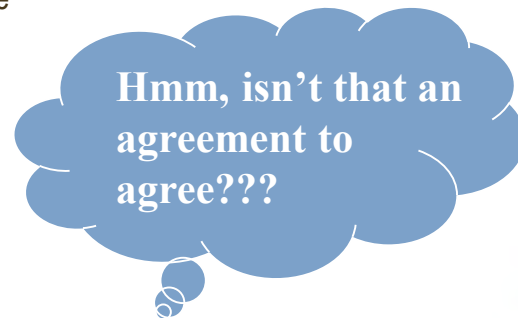
Labor-harmony agreements, also known as *labor peace agreements*, are agreements that local governments require private employers to enter into with unions to bid on public contracts or subcontracts.¹¹⁷ Thus, they are usually prerequisites to the private employer doing business with the municipality or on municipal property.

The ostensible purpose of such agreements is to provide local governments as proprietors with assurance that there will be no labor disputes that disrupt the public goods or services provided through the private employer, although more often than not, there are more complicated political factors at play.

* * *

although local governments cannot mandate any specific terms to be included in the agreements between the private employers and the unions, the fact that an agreement must be negotiated in the first place provides unions with significant leverage in seeking concessions from employers.

AND I
QUOTE



Why This Topic Is Relevant & To Whom This May Be Of Importance

Why Is This An Issue ?

- ✈ Push by multiple labor organizations to penetrate airports
- ✈ Certain tools used to expedite organization efforts
- ✈ Tools implemented via contractual provisions in agreements between businesses and airport – an “agreement to agree”
- ✈ Advocacy/Pressure applied to elected officials and/or senior airport personnel
- ✈ Fraught with legal and business risk

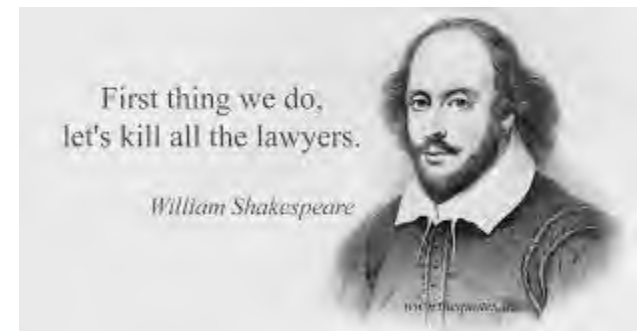
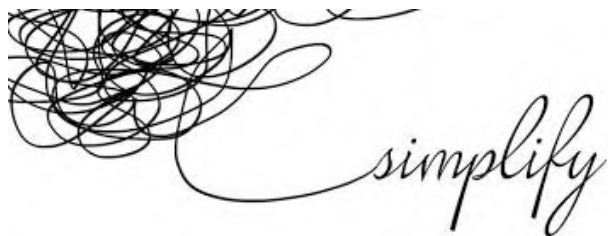


Who Should Be Concerned?

- ✈ Elected officials often do not fully appreciate legal and practical risks
- ✈ Airport executives face similar challenges but are also tasked with running airport, maintaining business relationships with on-airport businesses and airlines.

Obligatory Legal Baseline Coverage

- ✈ Railway Labor Act (RLA)
- ✈ National Labor Relations Act (NLRA)



Union Organizing – The (Very) Basics

- ✈ Focus upon NLRA
- ✈ Appropriate Unit
- ✈ Showing of Interest
- ✈ Petition for Election
- ✈ Elections
- ✈ Individual Employee Rights
- ✈ Employer Rights



SEIU

UNITEHERE!

Yes!



No!

Union Organizing – The (Very) Basics (continued)

- ✈ Card Check
- ✈ Neutrality
- ✈ Relationship to Labor Harmony
- ✈ Showing of Interest
- ✈ Petition for Election
- ✈ Elections



UNITE**HERE!**



SEIU

Yes!

No!

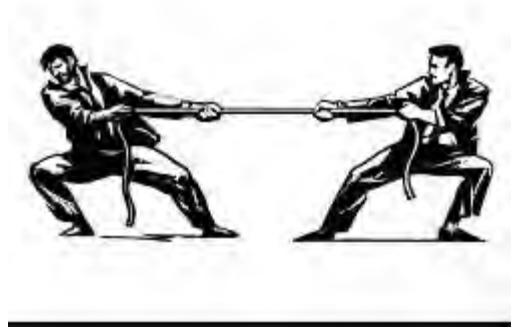
How Airports Become A Focal Point

- ✈ Concessions Models
- ✈ Challenges Faced
- ✈ Airport ownership/operation
- ✈ Use of Contractual Provisions



The Core Legal Issue – Preemption

- ✈ Labor Harmony
- ✈ Implementation – Practical Reality
- ✈ Employee Rights
 - Conflict?
- ✈ Does requirement have adverse impact upon federally-protected rights?
- ✈ Proprietor Rights & Its Limits



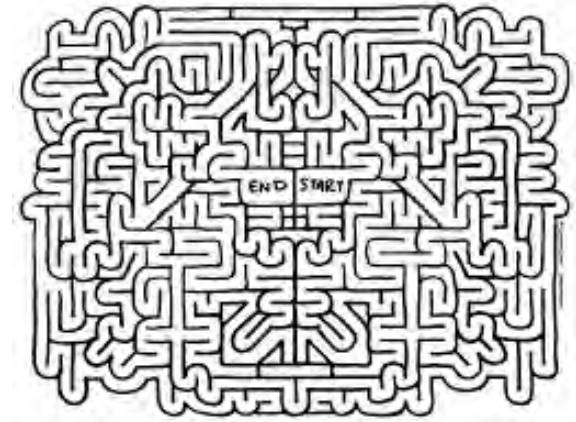
Book vs. Practical Definition

This “reading between the lines” is often a source of confusion between elected officials and airport management personnel. The fact that in most, if not all, cases where labor-harmony agreements are implemented, several common items are included in the final agreements between the private employers and the unions demonstrates how the requirements work and, ultimately, come under fire from both employers and employees.

Two of the most important terms that unions seek in order to establish conditions advantageous to unionization are known as “neutrality” and “card-check” provisions.

Handling Issues

- ✈ Proactive Education
- ✈ Responding to Inquiries
- ✈ Contractor Concerns
- ✈ Negotiating Parameters
- ✈ Implementation
 - Tricky, complex and an art



Easy Reference Materials Within The Digest

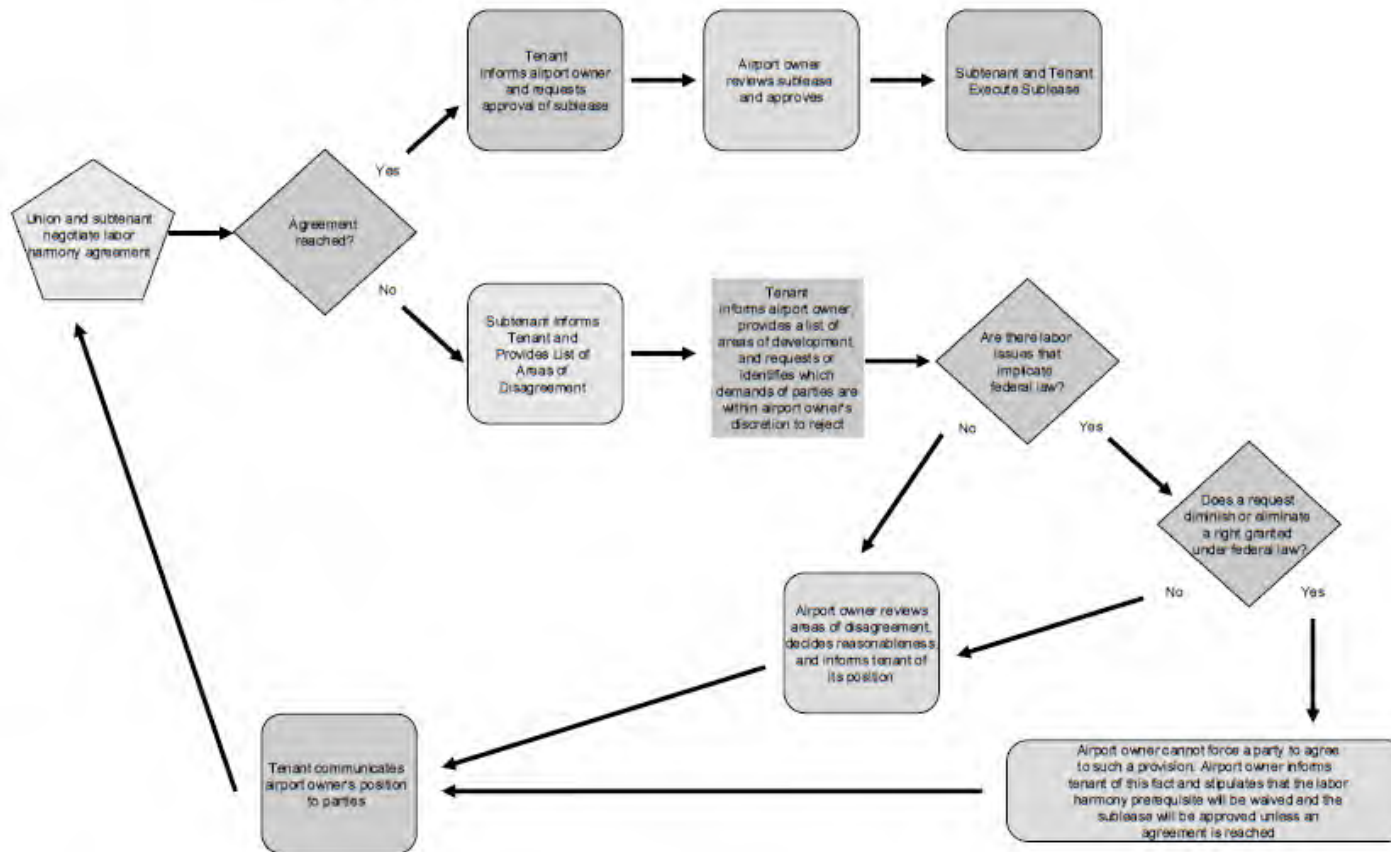


What's Allowed, What Should The Airport Do, What Can't The Airport Do? Appendix A

Airport Involvement in Labor-Harmony Issues	Required	Permitted	Prohibited
Require businesses not contracting with the airport to unionize or enter into labor-harmony agreements			X
Require as a licensing or regulatory matter that its contractors or their subcontractors unionize or enter into labor-harmony agreements			X
Require as a market participant (e.g., investor, owner, purchaser, or financier) that businesses with which it deals negotiate in good faith with unions in order to avoid labor-related disruptions		X	
Require as a market participant (e.g., investor, owner, purchaser, or financier) that businesses with which it deals require their subcontractors to negotiate in good faith with unions in order to avoid labor-related disruptions		X	
Require that certain provisions, such as card check or neutrality, be included in any agreement between a contractor or subcontractor and a union			X
Require its contractors or their subcontractors to forego their right to determine the unionization of their employees through a secret-ballot election pursuant to NLRB or NMB procedures			X
Restrict an employer's freedom of speech with respect to its views regarding unionization			X
Forego airport-based actions that would diminish federal labor rights of both employers and employees	X		
Impose supplemental sanctions or penalties for violations of federal labor law			X

Implementation of a Labor Harmony Provision – Appendix B

Appendix B - Flowchart of Labor Harmony Implementation



Potential Claims –

Appendix C

APPENDIX C—SUMMARY CHART OF POTENTIAL CAUSES OF ACTION AGAINST AIRPORT SPONSORS IN LABOR PREEMPTION ARENA.

Cause of Action	Party Bringing Action			
	On-airport businesses	On-airport employees	Unions	Airport industry groups
Declaratory judgment asserting preemption	X			X
Governmental interference with employer/employee rights under 42 U.S.C. 1983	X	X	X	X
Generally applicable aviation statutes (e.g., ADA, FAA)	X	X	X	X

FOR ADDITIONAL INFORMATION

AIRPORT COOPERATIVE RESEARCH PROGRAM
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PREEMPTION OF WORKER-RETENTION AND LABOR-PEACE AGREEMENTS AT AIRPORTS

This digest was prepared under ACRP Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. Under Topic 07-02, this digest was prepared by Eric T. Smith, Kaplan Kirsch & Rockwell, LLP, Washington, DC.

Background

There are over 4,000 airports in the country and most of these airports are owned by governments. A 2003 survey conducted by Airports Council International-North America concluded that city ownership accounts for 35 percent, followed by regional airports at 25 percent, single county at 17 percent, and multi-jurisdictional at 9 percent. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Research reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal problems encountered during airport development and operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cutting-edge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRB's legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

Foreword

Airports are centers of economic activity and places where a great number of jobs exist. Wherever synergies of economic development, airports often become the focus of groups

seeking to have an impact on the local economy and the persons who work at the airport. These groups include elected officials, the media, social activists, and labor unions. Airports are increasingly being asked, for a variety of reasons, to become involved in matters that historically were reserved for private employers to address with their own employees. Among the matters airports are becoming involved in are, potentially, setting minimum wage rates, establishing safety/training baselines, and securing "labor harmony" or "labor peace" agreements at the subject airports.

These agreements generally require that, as a condition of operating an airport property, an organization must become signatory to some form of an agreement with a labor organization. These matters are usually injected into the conduct of on-airport business by the sponsor, including certain contractual language in the agreements between the sponsor and the business. The implications of involving the airport in such matters may be dramatic, far-reaching, and fraught with legal ramifications. This is especially true with respect to labor-harmony or labor-peace agreements.

This digest is intended to serve as an overview of issues related to labor-harmony or labor-peace agreements for airport management personnel and other interested personnel, including airport authority board members or elected officials.

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Thank
you

