

Killett-Williams v Bloomberg

2003 NY Slip Op 30217(U)

May 5, 2003

Sup Ct, NY County

Docket Number: 115516/01

Judge: Faviola Soto

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____

PART 52

0115516/2001

KILLETT-WILLIAMS, SANDRA
vs
BLOOMBERG, MICHAEL R.

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

SEQ 1

PARTIAL SUMMARY JUDGMENT

SCANNED

MAY 08 2003

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits 12

Notice of Cross-Motion — Affidavits 3, 4

Answering Affidavits — Exhibits _____

Replying Affidavits 5

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MADE IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.

MOTION/CASE IS REFERRED TO
JUSTICE

Dated: May 5, 2003

FAVIOLA SCTO
J.S.C.

J.S.C.

Check one: FINAL DISPOSITION. NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 52

-----X
SANDRA KILLETT-WILLIAMS, ZOILA ALMONTE,
LYNN KAPTILOVICH, TERESA SMALLS,
SANTIAGO CONCEPCION, MARIA CRUZ, ROSARIO
RODRIGUEZ and Others similarly situated,
COMMUNITY VOICES HEARD, and FIFTH AVENUE
COMMITTEE, INC.,

Action No. 1

Plaintiffs,

Index No. 115516/01

- against -

MICHAEL R. BLOOMBERG, as Mayor of the
City of New York, and the CITY OF
NEW YORK,

Defendants.

-----X
THE MAYOR OF THE CITY OF NEW YORK,

Action No. 2

Plaintiff,

Index No. 404900/01

- against -

THE COUNCIL OF THE CITY OF NEW YORK

Defendant.

-----X

HONORABLE FAVIOLA A.SOTO, J:

Before the court in these consolidated actions are motions and cross-motions for summary judgment. As only issues of law remain, the matters are ripe for summary judgment.

Action No. 1

Plaintiffs in Action No. 1 (the "class action") move for partial summary judgment. The individual plaintiffs are representative members of a class, pursuant to Article 9 of the CPLR, who are current and former welfare recipients who qualify for Local Law No.14, a jobs program; the other plaintiffs are

community-based organizations.

Plaintiffs seek judgment on that part of their complaint seeking a declaration that Local Law 14 is a lawful enactment that is binding on the City, and that defendants are acting in violation of their duties to execute and enforce it.

Defendants Michael R. Bloomberg, as Mayor of the City of New York and the City of New York (collectively, the "City") oppose and cross-move for summary judgment.

Action No. 2

Plaintiff the Mayor of the City of New York (the "Mayor") in Action No. 2 (the "Declaratory Action") moves for summary judgment declaring Local Law 14 invalid. Defendant the Council of the City of New York (the "Council") opposes and cross-moves for summary judgment dismissing the complaint and declaring Local Law 14 valid.

Local Law 14

Local Law 14 of the City of New York was enacted in March 2000 by the Council over the Mayor's veto. It provides for the establishment of a subsidized jobs program for welfare recipients and the unemployed. It is codified at Title 21, Chapter 5 of the Administrative Code of the City of New York (Admin. Code § 21-501 et seq.).

Local Law 14 establishes the Transitional Jobs Program ("TJP"), to be administered by an agency or department designated

by the Mayor; the agency is to arrange for 2,500 jobs to be created in local government agencies and community-based non-profit organizations every year for three years.

It provides that: the jobs are intended for persons on public assistance or persons who have been unemployed for at least six months; each participant will work for no more than one year; two-thirds of the jobs must be in government agencies; no jobs are to be with for-profit employers; the sponsoring entities are to provide TJP participants with support services, including education, job training, career counseling, and childcare. The Council planned for the first group of 2,500 participants to commence work on January 1, 2001.

The Mayor vetoed Local Law 14. The Council then enacted Local Law 14 over the veto. The Mayor did not designate an agency to administer the TJP. The Class Action and the Declaratory action then followed.

The Arguments of the Class Plaintiffs and the Council

The Class Plaintiffs and the Council argue in their papers **that once Local Law 14 was enacted, it became the duty of the Mayor to faithfully implement it, which he has not done.**

They argue that the Council properly exercised its authority under the City Charter as the legislative body of the City (NY City Charter Section 21") empowered to, as "it deems appropriate" adopt local laws 'for the preservation of the public health,

comfort, peace and prosperity of the city and its inhabitants." Id. at Section 28(a).

They also argue that, contrary to the position taken by the City and the Mayor, Local Law **14** is not preempted by the State Social Services Law ("SSL"). (The SSL is analyzed later in the decision). Moreover, they argue that as the SSL vests in a "social services district" as a whole, the Council's establishment of Local Law **14** is an appropriate subject matter for the council's legislative process, and not one reserved only to the Mayor and other executive officials.

They further argue that Local Law **14** is consistent with SSL, and that Local **14** does not abolish, curtail, or transfer any power of the Mayor or his appointees with respect to the City's management of its labor force.

They reject the Mayor's argument that Local Law **14** is addressed within other programs, such as the Job Opportunity Program ("JOP") administered by the Human Resources Administration ("HRA") of the Job Opportunity Program ("JOP"). They detail how the JOP deviates from Local Law **14's** approach in four basic elements of program design: who is eligible to participate, how participants are chosen, how individualized needs are addressed, and how program success is evaluated. They argue that these differences are not surprising, as former Mayor Giuliani and current Mayor Bloomberg did not intend for HRA to

carry out Local Law 14, and implementation of Local Law 14 was not vested in the HRA by statute.

The Arsuments of the Mavor and the City

The Mayor and the City base their motion and cross-motion for summary judgment declaring Local Law 14 invalid primarily on three grounds.

First, they argue that Local Law 14 is preempted by the state social services laws. Second, they argue that Local Law 14 is inconsistent with state law. Third, they argue that Local Law 14 impermissibly curtails the Mayor's power, and failed to comply with Municipal Home Rule Law (MHRL) §23 (2) (f), which provides that a local law that curtails any power of an elective officer shall be subject to referendum.

They further point out that the State SSL provides that the City's social services commissioner, not the City Council, is the chief executive officer of the City's social services district, and that State Law explicitly vests the power to administer the social services district in the City's Social services commissioner. The City's social services commissioner is the commissioner of the City's Human Resources Administration.

Additionally, the City asserts that the JOP is similar to TJP. Under JOP, established by the City's Human Resources Administration in 2001, persons are provided with jobs in the public and private sectors, subsidized salaries, and support

services. The Mayor and City assert that the JOP matches most, if not all, of the major requirements of Local Law 14.

Preemption

The focus of this court's inquiry is on preemption. The court, therefore, will not (and should not) enter the debate set forth in the papers regarding the respective merits of and policies behind the Council's Local Law 14 and the TJP, and the Jobs Opportunity Program administered by the HRA.

Pursuant to the home rule provisions of the New York State Constitution (NY Const.) Article IX, § 2 (c), MHRL § 10, and the New York City Charter § 28, the Council has broad powers to enact laws relating to the public welfare. **Albany Area Builders Assn. v Town of Guilderland**, 74 NY2d 372, 376 [1989]; **New York City Health**, 752 NYS2d at 669.

The Council does not have the authority, however, to exercise its legislative power in a field that the state has preempted.

Preemption occurs when a local law directly conflicts with a state law or when a local government legislates in an area for which the state has assumed full regulatory responsibility. **DJL Rest. Corp. v City of New York**, 96 NY2d 91, 95 [2001]; **Albany Area**, 74 NY2d at 377. The state's intent to preempt a particular field may be expressly stated or it may be implied. **Id.** The state may imply preemption by declaring state policy or by

enacting a comprehensive and detailed regulatory scheme in a particular area. Id.

Conflicts between state and local law do not per se invalidate the local law. *Matter of Zorn v Howe*, 276 AD2d 51, 55 (3d Dept 2000). Differences do render the local law invalid, however, when a local law permits conduct prohibited by state law, prohibits conduct specifically permitted by state law, or imposes additional restrictions on rights granted by the state. Id.

The State Social Services Law

The City and the Mayor contend that Local Law 14 is preempted by SSL, particularly Title 9-B of Article 5, SSL § 330 *et seq.*, entitled Public Assistance Employment Programs. They argue that by enacting a detailed scheme to pervasively regulate subsidized employment programs, the State Legislature demonstrated an intent to have such programs governed by State rather than Local Law. They further argue that the inconsistencies between SSL and Local Law 14 invalidate Local Law 14, and the SSL explicitly vests the power to administer the social services district in the City's social services commissioner.

SSL is a general law that applies to the entire state (NY Const., Article IX, § 3 [d] [1]; *Matter of Toia v Regan*, 40 W 2d 837, 838 [1976]). It provides detailed and comprehensive rules

and guidelines that the City, as a local social service district, must follow. SSL § 61. The State Department of Social Services administers and supervises all the local social services departments and approves or disapproves rules, regulations, and procedures made by the local departments. SSL § 20. It also distributes, reimburses, and grants funds to the local departments. Id. Each local social services district must prepare a multi-year plan and an annual implementation report for approval by the State Department of Social Services. SSL § 34-a.

Title 9-B requires that most recipients of public assistance participate in work, training or educational activities as a condition of continued receipt of assistance. SSL §§ 335, 335-a, 341. That work may include unsubsidized employment, subsidized private sector employment, subsidized public sector employment, and other kinds of work activities. SSL § 336.

The state's policy, as declared in Title 9-B, is that individuals receiving public assistance be provided with work and services to help them achieve economic independence. SSL § 331. "Such programs shall be established and operated in accordance with the provisions of this title and in compliance with federal and state law and regulations" (id.).

Title 9-B includes many lengthy specifications regarding support services, educational programs, orientation, assessments, job searches, and work activities to which local districts must

adhere (SSL §§ 332-a, 336-a, 334, 335, 335-a, 336-d, 336, 336-e, 336-f). Each social services district must submit for the approval of the State Department of Labor a detailed biennial plan for the provision of education, work, training and support services for public assistance recipients. SSL § 333.

SSL provides that local departments with innovative ideas on how to aid public assistance recipients attain self-sufficiency may apply to the state department of labor for approval of "local flexibility incentive pilot program[s]". SSL § 36-b. The State Department of Social Services is authorized to approve funding for the pilot program separate from the state aid that said social services district would otherwise receive. *Id.*

Contrary to the Council's argument, however, TJP is not one such "pilot" or "test" program.

Although local districts have a great deal of leeway in planning how to meet the needs of their areas, they must submit their assistance plans for approval to the state, which can approve, disapprove, or amend them. The requirement of state approval, together with the comprehensive nature of the social services laws, evidence the state's intention to assume control over the field and to preempt local legislation, which would thwart that control.

Furthermore, there are inconsistencies between Local Law 14 and SSL, and, because the distinctions are significant as they

relate to eligibility and compensation, Local Law 14 cannot stand.

One difference is that employees who are Title **9-B** participants must receive the same benefits as those employees who have been working for a similar length of time and doing similar work (SSL 336-e [4] [b]). Employees who are TJP participants, however, must receive the same benefits as those doing the same or comparable work (Admin. Code § 21-506 [d]). Unlike Title **9-B**, TJP makes no distinctions regarding length of employment. Another difference is that TJP participants need not be public assistance recipients or applicants (Admin. Code § 21-504), while Title **9-B** participants must be recipients or applicants (SSL § 330). Participation under Title **9-B** is mandatory under pain of losing benefits (SSL § 341), but there is no such rule for TJP.

Since state law preempts legislation in this area of social services, the court need not determine whether Local Law 14 curtails the Mayor's authority, or address other arguments raised in the papers.

The Mayor and the City seek, in addition to summary judgment declaring Local Law 14 invalid, a permanent injunction barring operation of Local Law 14, and a declaration that the City has satisfied the requirements of Local Law 14. Because the law is declared to be invalid, an injunction is not necessary. Nor, as

stated above, does this decision concern the merits of the City's assistance programs.

In conclusion, it is

ORDERED that in the Class Action, action no. 1

(1) the motion of plaintiffs Sandra Killett-Williams et al. for partial summary judgment is denied; and

(2) the cross-motion of Michael R. Bloomberg, as Mayor of the City of New York, and the City of New York, for summary judgment dismissing the complaint is granted and is otherwise denied, and the complaint is dismissed; and it is further

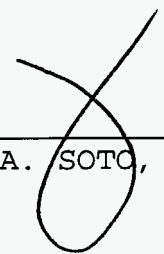
ORDERED that in the Declaratory Action, action no. 2

(1) the motion for summary judgment of The Mayor of the City of New York declaring Local Law 14 invalid is granted and is otherwise denied; and

(2) the cross motion for summary judgment of defendant the Council of the City of New York, is denied; and it is further

ORDERED, ADJUDGED, AND DECLARED that Local Law 14 is declared invalid, and the Clerk of the Court is directed to enter **judgment accordingly.**

Dated: New York, New York
May 5, 2003



FAVIOLA A. SOTO, J.S.C

Copies mailed