

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

PENNSYLVANIA RESTAURANT &
LODGING ASSOCIATION, STORMS
RESTAURANT & CATERING LLC d/b/a
STORMS RESTAURANT,
LAWRENCEVILLE BREWERY INC. d/b/a
THE CHURCH BREW WORKS, 1215
INCORPORATED, d/b/a RITA'S ITALIAN
ICE, DIRT DOCTORS CLEANING
SERVICE LLC, and MODERN CAFÉ INC.,

Plaintiffs,

v.

CITY OF PITTSBURGH,

Defendant

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 32BJ,

Intervening Defendant.

No. GD 15-016442

OPINION AND ORDER OF COURT

Honorable Joseph M. James

Copies Sent To:

Steven J. Del Sole, Esquire
John F. Doherty, Esquire
Michael J. Healey, Esquire

FILED
15 DEC 21 PM 1:24
DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

PENNSYLVANIA RESTAURANT &
LODGING ASSOCIATION, STORMS
RESTAURANT & CATERING LLC d/b/a
STORMS RESTAURANT,
LAWRENCEVILLE BREWERY INC. d/b/a
THE CHURCH BREW WORKS, 1215
INCORPORATED, d/b/a RITA'S ITALIAN
ICE, DIRT DOCTORS CLEANING
SERVICE LLC, and MODERN CAFÉ
INC.,

Plaintiffs,

v.

CITY OF PITTSBURGH,

Defendant

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 32BJ,

Intervening Defendant.

No. GD 15-016442

OPINION

James, J.

December 21, 2015

Plaintiffs commenced this action by Complaint filed September 21, 2015 and filed a Motion for Preliminary Injunctive relief on October 13, 2015. This Court granted the Petition to Intervene of the Service Employees Union on October 8, 2015. The parties agreed to a sixty day stay of the application and enforcement of the subject ordinance. The City and the Union filed Answers to the Complaint and on November 10, 2015 all

parties to this Declaratory Judgment action filed Motions for Judgment on the Pleadings. All parties agree that the pleadings are closed and the sole issue before the Court is whether the City has the authority to pass and enforce the Paid Sick Leave Ordinance.

On August 3, 2015, the Pittsburgh City Council passed the ordinance known as the Paid Sick Leave Ordinance. It was signed into law by Mayor Peduto on August 13, 2015. The Ordinance applies to almost all employers doing business in the City.

The Ordinance requires employers to provide a minimum of one hour of paid sick leave for employees for every thirty-five hours they work. Employers of fifteen or more employees must permit the accrual of up to forty hours of paid sick time per calendar year. Employees of fewer than fifteen employees are required to permit the accrual of up to twenty-four hours of paid sick time per calendar year.

A motion for judgment on the pleadings should be granted where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. Swartz v. Swartz, 689 A.2d 302, 303 (Pa. Super. 1997). There are no disputed issues of fact and the sole issue presented is whether the City of Pittsburgh had the authority to pass the ordinance in question.

The City of Pittsburgh is a home rule charter municipality created pursuant to the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2901 et seq. Pursuant to the limitations of power set forth in 53 Pa. C.S. § 2962(f), the Plaintiff claims that the City of Pittsburgh is without authority to enact the Ordinance. 53 Pa. C.S. § 2962(f) states:

(f) REGULATION OF BUSINESS AND EMPLOYMENT - a municipality which adopts a home rule charter shall not

determine duties, responsibilities or requirements placed upon businesses, occupations and employers ... except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities.

The City was not empowered to adopt the Ordinance by the Disease Prevention and Control Law. 35 P.S. § 521.16(c) states:

Municipalities which have boards or departments of health or county departments of health may enact ordinances or issue rules and regulations relating to disease prevention and control, which are not less strict than the provisions of this act or the rules and regulations issued thereunder by the board. Local ordinances, rules or regulations relating to disease prevention and control, which are in effect or the effective date of this act, shall not be deemed to be repealed, unless they are less strict than the provisions of this act or the regulations issued thereunder by the board.

In this case, the City has neither a board nor a department of health. Therefore, it is not empowered to enact an ordinance or issue rules and regulations relating to disease prevention and control.

The Ordinance also cited to provisions of the Second Class City Code, 53 P.S. § 23101 and 23145. However, it does not apply to the City which is a home rule municipality. "Once a political subdivision adopts a home rule charter, it is no longer a city of the second class, a county of the third class, a borough or a township of the first or second class, but a "home rule municipality" and its "code" is the Home Rule Charter and Optional Plans Law." Danzilli v. Lomeo, 944 A.2d 813, 815 n. 6 (Pa. Cmwlth. 2008).

The Supreme Court of Pennsylvania addressed a similar issue in Building Owners & Managers Assoc. of Pittsburgh v. City of Pittsburgh, 985 A.2d 711 (Pa. 2009). In that case, they upheld decisions of the Court of Common Pleas and the Commonwealth Court invalidating an ordinance pursuant to HRCL 2962(f). Specifically, the Supreme Court held that the City of Pittsburgh exceeded its authority and violated the Home Rule Charter when it passed the "Protection of Displaced Contract Workers Ordinance." That Ordinance required employers with new service contracts to keep the employees of the prior contractor for at least 180 days. The Supreme Court stated:

Based on the plain language of [HRCL Section 2962(f)] and our review of prior case law, we hold that the Commonwealth Court correctly ruled the Ordinance invalid. [HRCL] Section 2962(f) prohibits home rule municipalities, like Pittsburgh, from regulating businesses by determining their "duties, responsibilities or requirements." Pittsburgh's ordinance nonetheless purports to prohibit a new contractor from firing or releasing any employees from a prior contract or during a 180-day transition period. This is plainly a "requirement" placed upon the new contractor.

The Commonwealth Court's decision to invalidate the ordinance pursuant to [HRCL] Section 2962(f) fits squarely with that court's previous decision in *Smaller Mfrs. Council v. Council of Pittsburgh*, 85 Pa. Cmwlth. 533, 485 A.2d 73 (1984). In *Smaller*, Pittsburgh passed Ordinance 21, which attempted to regulate plant workers in the Pittsburgh area. *Id.* at 74. Under Ordinance 21, the plant owners and operators were required to notify the Bureau of Business Security when they were planning on closing, relocating outside city limits, or reducing operations where the reduction would affect more than 15% of employees. *Id.* The trial court held Ordinance 21 was invalid under Section 302(d) of the Home Rule and Optional Plans Law, a substantially similar prior version of HRCL Section 2962(f) and held that Pittsburgh lacked the authority to pass the ordinance. *Id.*

We therefore reject [the Union's] position and hold that HRCL Section 2962(f) prohibits the placement of affirmative

duties on employers, such as those imposed by the Ordinance herein. Because the ordinance imposes an affirmative duty upon contractors by requiring them to keep employees of prior contractors for a transitional period, the ordinance reaches beyond the powers granted to the City of Pittsburgh as a home rule municipality in direct violation of HRCL Section 2962(f).

A municipality “has no power to enact ordinances except as authorized by the legislature, and that any ordinance not in conformity with its enabling statute is void.” Albright v. City of Shamokin, 419 A.2d 1176, 1178 (Pa. Super. 1980). There are limitations on the City's authority to enact any ordinance determining any duty, responsibility or requirement of a business or private employer. The Paid Sick Leave Ordinance purports to do this. The Ordinance places affirmative duties on businesses, occupations and employers in violation of the HRCL.

The Home Rule Charter and Optional Plans Law limits the power of the City to those expressly provided by statutes enacted by the Legislature. Absent that statutory authority, the City cannot enact this type of Ordinance. For these reasons the Plaintiffs' motion for judgment on the pleadings is granted.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

PENNSYLVANIA RESTAURANT &
LODGING ASSOCIATION, STORMS
RESTAURANT & CATERING LLC d/b/a
STORMS RESTAURANT,
LAWRENCEVILLE BREWERY INC. d/b/a
THE CHURCH BREW WORKS, 1215
INCORPORATED, d/b/a RITA'S ITALIAN
ICE, DIRT DOCTORS CLEANING
SERVICE LLC, and MODERN CAFÉ
INC.,

Plaintiffs,

v.

CITY OF PITTSBURGH,

Defendant

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 32BJ,

Intervening Defendant.

No. GD 15-016442

ORDER OF COURT

AND NOW, this 21st day of December, 2015, based upon the foregoing
Opinion, the Plaintiffs' Motion for Judgment on the Pleadings is granted; the Defendants'
Motions for Judgment on the Pleadings is dismissed and it is Ordered that the Paid Sick
Leave Ordinance is invalid and unenforceable.

By the Court,

Joseph M. James J.