# Miami's living-wage law applied to airline's cargo handlers, 11th Circuit rules

**By Melissa J. Sachs, Esq., Senior Legal Writer, Westlaw Journals**

An air carrier that leased a warehouse at the Miami International Airport and performed cargo-handling services for other airlines was required to comply with Miami-Dade County's living-wage ordinance, a federal appeals court has ruled.

***Amerijet International Inc. v. Miami-Dade County, Fla., No. 14–11401, 2015 WL 5515343 (11th Cir. Sept. 21, 2015).***

Amerijet International did not prove the federal Airline Deregulation Act, 49 U.S.C. § 41713(b)(1), preempted the living-wage ordinance for the cargo-handling services it performed for other airlines, the 11th U.S. Circuit Court of Appeals said.

The U.S. Supreme Court has interpreted the deregulation law to preempt claims related to rates, routes or services, the 11th Circuit opinion said, citing *Northwest Inc. v. Ginsberg*, 134 S. Ct. 1422 (2014).

The 11th Circuit has defined "services" as those elements of air travel in which carriers compete for consumers, the opinion said, citing *Branche v. Airtran Airways Inc.*, 342 F.3d 1248 (11th Cir. 2003).

"While it is a very well-reasoned decision, the presumption of federal preemption in the airline industry is very strong and therefore the decision could have gone the other way," Mark A. Hanley of Bradley Arant Boult Cummings said.

Cargo-handling services that Amerijet performed for other airlines did not qualify under the act's preemption provision because they did not constitute airline-consumer or airline-end-user services, the three-judge panel decided.

Amerijet also did not show the law violated the U.S. Constitution's "dormant Commerce Clause," which bars states from placing an undue burden on interstate commerce, or the Equal Protection Clause, as there was nothing discriminatory in how the county applied the living-wage ordinance, the opinion said.

The panel affirmed the trial court's grant of summary judgment to the county.

## AIR VS. GROUND OPERATIONS?

**Mark A. Hanle**y, a labor and employment attorney at **Bradley Arant Boult Cummings** in Tampa, Fla., who was not involved with the case, found the ruling somewhat surprising.

"While it is a very well-reasoned decision, the presumption of federal preemption in the airline industry is very strong and therefore the decision could have gone the other way," Hanley said.

**Harold M. Goldner**, an employment attorney at **Kraut Harris PC** in Blue Bell, Pa., also not involved with the litigation, pointed out that the facts of the case involve the ground operation of airlines.

"States and localities have generally been permitted to impose wage-and-hour laws more expansive than federal wage-and-hour laws," Goldner said, adding that the federal Fair Labor Standards Act specifically permits this, although the law was not at issue in this case.

"So nothing particularly earth-shattering here," Goldner said.

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## MIAMI-DADE'S LIVING-WAGE LAW

According to the *per curiam* opinion, Miami-Dade County enacted its living-wage ordinance in 1999. The law requires contractors within the county to pay workers a living wage set higher than state or federal minimum rates, the opinion said.

It applies to entities at Miami International Airport that perform covered services, including loading and unloading baggage and cargo, the opinion said. Covered entities must maintain certain employment records for three years and submit semiannual payroll reports.

## AMERIJET INVESTIGATION

In 2005 Amerijet, a small all-cargo airline, started to perform cargo-handling services for other airlines, the opinion said. Five years later, it leased warehouse space at Miami

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International Airport for these services, and the contract required Amerijet to comply with all local ordinances.

In June 2010 the county began to investigate Amerijet for possible violations of the living-wage ordinance, the opinion said. During the investigation, the county told Amerijet the ordinance covered cargo-handling services performed for other airlines,.

Amerijet disputed that the ordinance applied to air carriers. Nevertheless, it outsourced its services for other airlines and laid off its in-warehouse cargo handlers in 2011, saying it could not afford to pay them the living wage, the opinion said.

The former employees sued Amerijet for back pay and penalties in state court.

Amerijet settled that suit then sued the county for declaratory and injunctive relief, arguing the Airline Deregulation Act and other federal laws preempted the local ordinance.

The U.S. District Court for the Southern District of Florida disagreed with Amerijet, tossing the suit on summary judgment.

The air carrier appealed, and the 11th Circuit upheld the lower court's decision in an opinion issued Sept. 21.

The federal law may preempt the living-wage law's application to cargo-handling services Amerijet performed for its own customers but not for other airlines, the 11th Circuit said.

"We note, as well, that the county interpreted the [ordinance] in this manner prior to initiating the enforcement proceeding against Amerijet and before Amerijet filed the instant action," the appeals panel added.

While Goldner did not find anything remarkable about the panel's ultimate decision, he did find Amerijet's position a bit extraordinary on the question of whether the living-wage law applied to the air carrier's cargo-handling services for other airlines.

"It was chutzpah for the [company] to 'assume' it was exempt and forge ahead. There's a general counsel somewhere who miscalculated badly," Goldner said. WJ

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**Related Court Document:**
Opinion: 2015 WL 5515343

***See Document Section C (P. 41) for the opinion.***

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