UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NEW YORK STATE VEGETABLE GROWERS ASSOCIATION, INC., and NORTHEAST DAIRY PRODUCERS ASSOCIATION, INC.,

Plaintiffs,

v.

GOVERNOR ANDREW CUOMO, *in his official capacity as Governor of New York*, LETITIA JAMES, *in her official capacity as Attorney General of New York*, and ROBERTA REARDON, *in her official capacity as Commissioner of the New York Department of Labor*,

Defendants.

19-CV-1720
DECISION & ORDER

On December 30, 2019, the plaintiffs, the New York State Vegetable Growers Association, Inc., and the Northeast Dairy Producers Association, Inc., filed a complaint in this Court. Docket Item 1. They alleged that the Farm Laborers Fair Labor Practices Act, 2019 N.Y. Sess. Laws ch. 105, violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and also was preempted by the National Labor Relations Act, 29 U.S.C. §§ 151-169. *Id.*

That same day, the plaintiffs moved for a temporary restraining order (TRO) and preliminary injunction, Docket Item 2, and this Court heard argument from both sides, Docket Item 6. The Court partially granted the TRO, Docket Item 7, which has remained in place under an agreement between the parties, *see* Docket Item 11 and 13. After Governor Andrew Cuomo enacted a bill amending the Farm Laborers Fair Labor

Practices Act in April 2020, the plaintiffs amended their complaint in May 2020. *See* Docket Item 16. The defendants responded in opposition to the renewed motion for a preliminary injunction, Docket Item 17; the plaintiffs replied; Docket Item 20; and the defendants sur-replied, Docket Item 25. This Court heard argument from both sides on July 10, 2020. *See* Docket Item 30.

For the reasons that follow, the Court DENIES the plaintiffs' motion for a preliminary injunction.

BACKGROUND

I. THE FARM LABORERS FAIR LABOR PRACTICES ACT

On July 17, 2019, the New York State Legislature enacted the Farm Laborers Fair Labor Practices Act ("FLFLPA") to extend wage, hour, and labor-relations protections to agricultural workers. *See* 2019 N.Y. Sess. Laws ch. 105. On April 3, 2020, the Legislature amended the FLFLPA. 2020 N.Y. Sess. Laws ch. 58 (S. 7508-B).

As amended, the FLFLPA affords certain labor protections to "farm laborers." A "farm laborer" is "any individual engaged or permitted by an employer to work on a farm," except "[m]embers of an agricultural employer's immediate family who are related to the third degree of consanguinity or affinity . . . [,] work on [the] farm out of familial obligations[,] and are not paid wages, or other compensation[,] based on their hours or days of work." *Id.* Part II, §§ 1, 2 (codified at N.Y. Lab. Law §§ 2(18), 701(3)(c) (2020)).[1]

[1] The FLFLPA originally provided that "'[f]arm laborers' shall mean any individual engaged or permitted by an employer to work on a farm, *except the parent, spouse, child, or other member of the employer's immediate family*." 2019 N.Y. Sess. Laws ch. 105, § 3 (emphasis added).

The FLFLPA extends wage and hour protections to farm laborers. Employers must provide farm laborers "at least twenty-four consecutive hours of rest in each and every calendar week" and cannot require them "to work more than sixty hours in any calendar week" unless they are compensated at an overtime rate of "at least one and one-half times the laborer's regular rate of pay." 2019 N.Y. Sess. Laws ch. 105, §§ 4, 6 (codified at N.Y. Lab. Law § 161(1) and N.Y. Labor Laws § 163-a). The day-of-rest requirement does not apply to the "[f]oreman in charge." N.Y. Lab. Law § 161(2)(a). To ensure compliance with these provisions, employers must sign written work agreements specifying the terms and conditions of farm laborers' employment. *See* N.Y. Lab. Law §§ 195, 671(7), 673-a; 12 NYCRR § 190-6.1. The Department of Labor provides a standard form, "LS 309," for this purpose. *See* N.Y. Dep't of Labor, Div. of Lab. Standards, *Pay Notice and Acknowledgement for Farm Worker*s (June 2020), https://labor.ny.gov/formsdocs/wp/LS309.pdf.

The FLFLPA also extends labor-relations protections under the State Employment Relations Act to farm laborers. "Employees," including farm laborers, "shall have the right of self-organization[;] to form, join, or assist labor organizations[;] to bargain collectively through representatives of their own choosing[;] and to engage in concerted activities . . . ." N.Y. Lab. Law § 703. These organizing protections are, however, subject to certain limitations. For example, "[n]otwithstanding any other provision of law, for farm laborers the term 'concerted activities' shall not include a right to strike or other concerted stoppage of work or slowdown." 2019 N.Y. Sess. Laws ch. 105, § 18 (codified at N.Y. Lab. Law § 703); *see also* 2019 N.Y. Sess. Laws ch. 105, § 19 (codified at N.Y. Lab. Law § 704-b(1)) ("It shall be an unfair labor practice for a farm

laborer or an employee organization representing farm laborers to strike any agricultural employer."). The rights of "supervisory employees" similarly are circumscribed. If "a majority" of employees choose to engage in "collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment," the Public Employment Relations Board (the "PERB") "shall determine whether any supervisory employee shall be excluded from any negotiating unit that includes rank-and-file farm laborers; provided, however, that nothing in this subdivision shall be construed to limit or prohibit any supervisory employee from organizing a separate negotiating unit." 2020 N.Y. Sess. Laws ch. 58, § 3 (codified at N.Y. Lab. Law § 705(1)(b)).

Employers who violate certain provisions of the FLFLPA face criminal and civil penalties. Under New York Labor Law § 680(2), "[a]ny employer . . . who pays or agrees to pay to any employee less than the wage applicable under this article shall be guilty of a misdemeanor . . . punish[able] by a fine of [fifty to five hundred dollars,] by imprisonment of [ten to ninety] days[,] or by both such fine and imprisonment." Similarly, under New York Labor Law § 680(3), "[a]ny employer . . . who fails to keep the records required under this article"—including LS 309—"shall be guilty of a misdemeanor . . . punish[able] by a fine of [fifty dollars to five hundred dollars]."

Under New York Labor Law § 681, an employee "paid . . . less than the wage to which he is entitled . . . may recover in a civil action the amount of any such underpayments, together with costs and . . . reasonable attorney's fees," as well as liquidated damages of twenty-five percent "if such underpayment was willful." The PERB also may investigate and "take . . . affirmative or other action," including the award of backpay and the reinstatement of wrongfully terminated employees, to rectify

"unfair labor practice[s]." 29 U.S.C. § 706(3). Sections 704(1)-(3) specify certain such "unfair labor practices":

> It shall be an unfair labor practice for an employer . . . [t]o spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of employees or their representatives . . . [or] dominate or interfere with the formation, existence, or administration of any [union] . . . by participating or assisting in, supervising, controlling or dominating (1) the initiation or creation of any such [union], or (2) the meetings, management, operation, elections, formulation or amendment of constitution, rules or policies, of any such [union].

N.Y. Lab. Law § 704(1)-(3). The FLFLPA also added language specific to farm laborers: "It shall be an unfair labor practice for an agricultural employer to . . . discourage union organization or to discourage an employee from participating in a union organizing drive, engaging in protected concerted activity, or otherwise exercising the rights guaranteed under this article." 2019 N.Y. Sess. Laws ch. 105, § 19 (codified at N.Y. Lab. Law § 704-b(2)(c)).

II. NATIONAL LABOR RELATIONS ACT

In addition to the state labor protections discussed above, protections also exist under federal law. The National Labor Relations Act ("NLRA") guarantees the rights of "employees" to bargain collectively over wages, hours, and other terms and conditions of employment. *See* 29 U.S.C. § 157. But "agricultural laborers" are not "employees." *Id.* § 152(3). Neither are "supervisors." *Id.* §§ 152(3), (11); *see also* 29 U.S.C. § 164(a) ("Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.").

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