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April 13, 2022

VIA ECF
The Honorable Paul G. Gardephe
United States District Court Judge
United States District Court for the Southern District of New York
40 Foley Square, Room 2204
New York, NY 10007

Re: *Human Services Council of New York v. The City of New York*
21-CV-1149 (PGG)

Dear Judge Gardephe:

I represent Proposed Intervenor District Council 37, American Federation of State, County, and Municipal Employees, AFL-CIO ("DC 37") in the above-referenced matter. I write to request leave to file on the docket DC 37's Proposed Opposition to Plaintiff Human Services Council of New York's ("HSC") Motion for a Preliminary Injunction, along with DC 37's supporting declarations, in the event that DC 37's pending Motion for Permissive Intervention is granted. DC 37's Proposed Opposition is attached to this letter-motion as Exhibit A. The supporting declarations of Amy Gladstein and Rose Lovaglio-Miller are also attached to this letter motion as Exhibits B and C, respectively.

On February 18, 2022, HSC served its Motion for Preliminary Injunction on Defendant the City of New York ("City"). In subsequent correspondence, HSC and the City agreed that the City would serve its opposition to that motion on March 25, 2022, and that HSC would serve its reply on April 8, 2022.

Separately, on February 23, 2022, DC 37 moved to intervene permissively as a defendant pursuant to Federal Rule of Civil Procedure 24(b)(1)(B). ECF No. 19. In its memorandum of law in support of that motion, DC 37 committed "to participating in th[e] briefing [of HSC's request for a preliminary injunction] on the same schedule as the City." Mem. Supp. Mot. Intervene 10 (ECF No. 20). Consistent with that commitment, DC 37 served a copy of the attached Proposed Opposition on the parties on March 25, 2022, along with an undated but otherwise identical copy of this letter-motion seeking leave to file that Proposed Opposition, and the attached declarations of Amy Gladstein and Rose Lovaglio-Miller.

In the event that this Court grants DC 37's pending motion for permissive intervention, DC 37 seeks leave to file the attached Proposed Opposition on this Court's docket, as well as the two attached declarations in support of that opposition. Granting leave to do so would permit DC 37 to intervene without delaying or otherwise prejudicing the adjudication of this case.

The City has authorized me to state that it has no objection to DC 37's request for leave to file its Proposed Opposition and supporting declarations in the event that the Court grants DC 37's motion for permissive intervention. HSC, for its part, opposes this request.

Respectfully,

/s/ Richard F. Griffin, Jr.
Richard F. Griffin, Jr.

cc: All counsel of record (via ECF)

EXHIBIT A TO DC 37'S LETTER MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUMAN SERVICES COUNCIL OF NEW YORK,

Plaintiff,

v.

THE CITY OF NEW YORK,

Defendant.

Case No. 1:21-cv-11149-PGG

Judge Paul G. Gardephe

[PROPOSED] MEMORANDUM OF INTERVENOR AFSCME DISTRICT COUNCIL 37 IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Proposed Intervenor District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("DC 37") respectfully submits this memorandum in opposition to Plaintiff Human Services Council's ("HSC") motion seeking to preliminarily enjoin the operation of the New York City's Local Law 87. That ordinance merely requires certain City contractors to agree with unions representing or seeking to represent their employees to refrain from disrupting the services the City has purchased. As we explain below, that requirement is not preempted by or otherwise in conflict with federal labor law—so HSC cannot demonstrate any prospect of success on the merits of its Complaint. Nor has HSC demonstrated that it will suffer irreparable harm or meet either of the other elements of the preliminary injunction inquiry. HSC's motion therefore must be denied.

BACKGROUND

I. Union-employer continuity of service agreements. Continuity of service commitments, in the form of agreements by unions not to strike and by management not to lock out, are common in labor-management contracts. Such no-strike/no-lockout commitments, whether explicit or implicit, appear in the overwhelming majority of collective bargaining agreements. Essentially all of DC 37's collective bargaining agreements with private employers, covering some 25,000 employees, contain no-strike/no-lockout clauses, which prevent work disruptions during the life of the agreement, often in return for a commitment to arbitrate any employment-related disputes. *See* Kekacs Decl. Ex. A at Part I, ¶¶ 4-5 (ECF No. 21).

Similarly, unions and employers often enter into agreements covering aspects of conduct during a union's campaign to organize workers. Those agreements usually seek to ensure that that organizing is conducted with minimal conflict and sometimes include continuity-of-service

commitments in the form of no-strike/no-lockout provisions. *See, e.g.*, *Dana Corporation*, 356 NLRB 256, 257 (2010) (agreement between employer and union concerning organizing non-union facilities contained broad no-strike/no-lockout commitment); A. Gladstein Decl. ¶¶ 2-6 & Exs. A-E. DC 37 has entered into such continuity-of-service agreements with employers whose employees it seeks to organize, including, recently, two with human services providers in New York City. R. Lovaglio-Miller Decl. Exs. H (¶ 3), J (¶ 3). 1199SEIU United Healthcare Workers East, another union that represents employees in the human services sector in New York City, Compl. ¶ 22, has also entered into such agreements, A. Gladstein Decl. Ex. B (¶ P).

These no strike/no lockout agreements assure that business continues uninterrupted, avoiding the labor strife that might otherwise arise where workers are dissatisfied with their terms and conditions of employment. Such disruptions are likely in the human services sector in New York City and its environs, where Plaintiff concedes workers have substandard employment conditions, Compl. ¶ 21, and where workers have struck when necessary.[1]

II. The challenged ordinance. In enacting Local Law 87, the City of New York ("City") sought to ensure that, when it contracts with private entities to provide human services to its citizens—day care, foster care, home care, health services, housing and shelter assistance, and senior center operations, to name only a few examples—those essential services will be delivered without interruption. To that end, Local Law 87 conditions the award of a human services contract on executing, or negotiating toward, an agreement in which *both* the contractor

[1] The supporting declaration of Rose Lovaglio-Miller collects news coverage of a selection of recent strikes or potential strikes in the regional human services industry. *See* R. Lovaglio-Miller Decl. Ex. A (strike at City nonprofit housing organization); *id.* Ex. B (strike at City legal services organization); *id.* Ex. C (same); *id.* Ex. D (strike at City nonprofit home care agency); *id.* Ex. E (strike at New Jersey behavioral health contractor); *id.* Ex. F (threatened strike at Connecticut group homes); *id.* Ex. G (planned strike among City pre-kindergarten teachers); *id.* ¶ 9 (strike among City daycare and pre-kindergarten teachers).

and any labor union that represents or seeks to represent the contractor's employees rendering services pursuant to the City contract commit to the uninterrupted delivery of those services. Given the potential for disruptive labor conflict in the industry, *see supra* p. 1-2 & n.1, the City seeks to ensure that union-employer agreements, like the one referenced *supra* p. 2, that involve employees delivering human services under City contracts contain explicit provisions guaranteeing continuity of those services that the City has purchased.

When the City enters the market for goods and services, it requires its trading partners to abide by strict rules of conduct. Thus, for example, the City insists on certain of its contracts containing language that expressly prohibits discrimination in employment "on account of . . . race, color or creed." N.Y.C. Admin. Code § 6-108(a), (c)-(d). It demands agreements permitting City contractors to subcontract only if "not less than ten percent of the total dollar amount of the contract shall be awarded to locally based enterprises or graduate locally based enterprises," both of which are carefully defined statutory terms. *Id.*, § 6-108.1(c). And it insists that all contracts of greater than $100,000 contain a provision requiring the contractor to post a notice in its workplace, detailing how employees may report fraud and describing the rights and remedies of such whistleblowers. *Id.*, § 6-132(b).

Local Law 87 codifies one additional set of such requirements. It applies to certain contracts between City agencies and private third parties to provide "human services," defined to include certain "social services contracted for [or] by an agency on behalf of third party clients." N.Y.C. Admin. Code § 6-145(a) (defining "city service contract" and "human services"). The purpose of the ordinance is to encourage "labor peace agreements," which it defines to

> mean[] an agreement between a covered employer and a labor organization that seeks to represent employees who perform one or more classes of work to be performed pursuant to the city service contract, where such agreement . . . requires that the covered employer and the labor organization and its members agree to the

> uninterrupted delivery of services to be rendered pursuant to the city service contract and to refrain from actions intended to or having the effect of interrupting such services.

Id.[2]

To encourage agreements that will promote the uninterrupted delivery of human services, Local Law 87 provides that, 90 days after the City awards or renews such a human services contract, the contractor must

> (a) submit an attestation to the applicable contracting agency, signed by one or more labor organizations, as applicable, stating that the covered employer has entered into one or more labor peace agreements with such labor organizations, and identify: (i) the classes of covered employees covered by the labor peace agreements, (ii) the classes of covered employees not currently represented by a labor organization and that no labor organization has sought to represent, and (iii) the classes of covered employees for which labor peace agreement negotiations have not yet concluded; or
>
> (b) submit an attestation to the applicable contracting agency stating that the covered employer's covered employees are not currently represented by a labor organization and that no labor organization has sought to represent such covered employees.

Id., § 6-145(b)(1).[3] If a labor organization subsequently notifies both the contractor and contracting agency of its interest in representing the contractor's employees who render human services under the City contract, then the contractor must "submit an attestation signed by the labor organization to the applicable contracting agency no later than 90 days after the date of notice stating that it has entered into a labor peace agreement with such labor organization or that

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[2] The City pursues that same objective for services it provides directly: Under the New York City Collective Bargaining Law, any contract between a union representing municipal employees and a public employer must include a provision prohibiting "any strikes, slowdowns, work stoppages, or mass absenteeism." N.Y.C. Admin. Code § 12-312(e); *see also id.*, § 12-311(d).

[3] The ordinance defines the term "covered employee" to mean "an employee of a covered employer who directly renders human services in performance of a city service contract, except that the term 'covered employee' shall not include any building service employee." N.Y.C. Admin. Code § 6-145(a).

labor peace agreement negotiations have not yet concluded." *Id.*, § 6-145(b)(2).

III. The City's guidance concerning implementation of the ordinance. Local Law 87 provides that "[t]he mayor or the mayor's designee shall promulgate implementing rules and regulations, as appropriate and consistent with this section, and may delegate such authority to the comptroller." *Id.*, § 6-145(d)(2). No such implementing rules and regulations have yet been promulgated. The City has, however, issued guidance describing its interpretation of the effective date of Local Law 87 and of various contract terms implementing that ordinance, as well as a standard Rider to City Service Contracts. Code § 6-145 Labor Peace Agreements for Human Services Contracts; C. Millman Decl. Ex. 3 (FAQs Regarding Effective Date (Feb. 4, 2022)); M. Jackson Decl. Ex. A (Contractual Rider); R. Kane Decl. Ex. 3 (FAQs Regarding Implementation (Mar. 25, 2022) (hereinafter, "FAQs")). The guidance provided by these documents is particularly valuable in light of the extreme and implausible interpretation of the ordinance on which HSC bases much of its argument.

The gist of HSC's statutory interpretation is that the ordinance's attestation requirement "give[s] union leaders effective veto power over City contracts." Mem. Supp. Mot. Prelim. Inj. ("P.I. Mem.") at 6. That is because, in HSC's view, "[a] union leader can unilaterally decide to withhold the union's signature on an attestation without having to give any reason and without any consequence to the union." *Id.* This presumed power would permit unions to scuttle a contract, or threaten to do so, for a variety of nefarious reasons, including that "the union leader simply does not like the contractor"; "to induce the City to shift work to another contractor that the union leader favors"; to give the union leverage "to begin unionizing parts of a human services provider's workforce that do not work on City contracts"; or to prevent outsourcing of work that "the union leader believes . . . should instead be handled by City employees." *Id.* Or a

contractor may be prevented from negotiating an LPA or otherwise find itself in violation of the ordinance because the union "may never respond" to the contractor's request for negotiations; the union's employees may vote against unionization; a union may contact employees about unionization without the contractor's knowledge; or covered employees already "represented by a union . . . may be approached by another, competing union." *Id.* at 7.

All of these fanciful scenarios are precluded by the assumption, implicit in the ordinance, that the parties will act in good faith and that one party will not be penalized for another's refusal to do so. *See Dist. Lodge 26, IAM v. United Techs. Corp.*, 610 F.3d 44, 54 (2d Cir. 2010) ("There is an implied covenant of good faith and fair dealing in every contract."). And if there were any doubt on this point, the City has made the assumption of good faith explicit in its contractual Rider and its published interpretation of the contractual terms implementing Local Law 87, which bind the City.[4]

> The Rider, in the first place, explicitly spells out the good-faith assumption:
>
> > In evaluating any violation of this section or any other provision of this rider or Admin. Code § 6-145, the city shall consider any relevant conduct of a labor organization, … [and] the contractor's good faith efforts to comply with the terms of this rider and Admin. Code § 6-145 . . . . In considering whether the contractor has exercised good faith efforts in attempting to comply with obligations related to the submission of attestations in compliance with this section, the city shall consider the contractor's documented efforts to negotiate with labor organizations.
>
> Rider, § 4(D). Similarly, the City's FAQs explain that it will consider contractors' "good faith efforts in evaluating whether a Contractor or Subcontractor has complied with the requirements

[4] *See, e.g.*, *Macke Co. v. United States*, 467 F.2d 1323, 1326 (Ct. Cl. 1972) ("[S]uch official statements can and should be taken into account in ascertaining the parties' joint understanding."); *Perry & Wallis, Inc. v. United States*, 427 F.2d 722, 725 (Ct. Cl. 1970) ("A party who willingly and without protest enters into a contract with knowledge of the other party's interpretation of it is bound by such interpretation and cannot later claim that it thought something else was meant."); Restatement (Second) of Contracts §§ 220, 221 (1981).

of Local Law 87." FAQs 8. Accordingly, the City "will not find the Contractor of Subcontractor to be in breach of the contract" if it demonstrates that it "exercised good faith efforts" to secure the appropriate attestation but was nonetheless unsuccessful—for example, because of a union's refusal to sign an accurate attestation or a union's failure to respond to the contractor's attempts to initiate negotiations toward an LPA. FAQs 8.

The remaining scenarios that Plaintiff hypothesizes are equally implausible and addressed by the City's Rider and FAQs. Thus, with respect to Plaintiff's concern that the employees of a contractor would make it impossible to execute an LPA if they voted against union representation, the FAQs make clear that "Local Law 87 does not affect whether or not a covered employer is legally obligated to bargain collectively with a labor organization." *Id.* 7. The contention that a union might attempt to organize a contractor's employees without informing the contractor is equally irrelevant: The Rider and the FAQs require a union to notify a contractor in writing that the union seeks to represent the contractor's covered employees. Rider, § 4(C)(1); FAQs 6. And both documents clarify that where the contractor's employees are already covered by a collective bargaining agreement with one labor organization, an attempt by a competing union to organize those employees will not trigger the ordinance's attestation requirements. Rider, § 4(E); FAQs 7-8.

ARGUMENT

It is well established that "[a] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a *clear showing*, carries the burden of persuasion." *Sussman v. Crawford*, 488 F.3d 136, 139 (2d Cir. 2007) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). To that end, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary

relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 34 (2d Cir. 2010) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The inquiry is particularly rigorous "[w]hen, as here, the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme." *Sussman*, 488 F.3d at 140 (quoting *Wright v. Giuliani*, 230 F.3d 543, 547 (2d Cir. 2000)).

In this case, HSC has failed to establish that it meets any of these criteria, let alone all of them. We begin with the merits: Applicable caselaw clearly rebuts HSC's contention that an LPA of the sort required under the ordinance is preempted by federal labor law. That is reason enough to reject the application for a preliminary injunction. In any case, HSC also fails to establish that it or its members will suffer irreparable injury. And both the balance of equities and the public interest weigh against granting the motion.

I. Local Law 87 is not preempted by federal labor law.

HSC's sole contention with respect to the merits is that Local Law 87 is preempted by federal labor law—both Section 302 of the Labor-Management Relations Act ("LMRA") and the National Labor Relations Act ("NLRA"). Neither contention survives scrutiny.

A. There is no foundation for HSC's contention that Local Law 87 requires LPAs that violate LMRA § 302.

HSC's first contention requires little discussion. LMRA § 302, 29 U.S.C. § 186, imposes criminal penalties upon an employer that provides any "thing of value" to a union that represents or seeks to represent the employer's employees. HSC's argument that the LPAs required by Local Law 87 would constitute such a "thing of value" in violation of that provision rests entirely on a single case, *Mulhall v. Unite Here Local 355*, 667 F.3d 1211 (11th Cir. 2012), *cert.*

dismissed, 571 U.S. 83 (2013)—and Plaintiff's brief egregiously mischaracterizes the treatment of that case by both the Eleventh Circuit and the Supreme Court.

To begin with the latter, the Supreme Court initially granted certiorari in *Mulhall* to consider the Eleventh Circuit's decision (which arguably conflicted with the decisions of at least two other Circuits)[5]—but, after briefing and argument, the Court dismissed the petition as improvidently granted, recognizing that serious jurisdictional issues would likely prevent it from reaching the merits. *See* 571 U.S. at 85-86 (Breyer, J., dissenting). Far from "deci[ding] that *Mulhall* should remain governing law"—as HSC claims, P.I. Mem. at 15—the Court simply declined to pass on the lower court's decision. Like any denial of certiorari, the Court's refusal to decide the case has no precedential value. *See, e.g.*, *Teague v. Lane*, 489 U.S. 288, 296 (1989) ("As we have often stated, the denial of a writ of certiorari imports no expression of opinion upon the merits of the case." (internal quotation marks omitted)).

As to the Eleventh Circuit, that court addressed the specific facts of the *Mulhall* case, in which an employer—in apparent exchange for a union's financial support of a ballot initiative favorable to the employer's business—agreed to provide the union with certain access to the employer's employees and to remain neutral with respect to the union's effort to organize those employees. *See* 667 F.3d at 1213. Even on those facts, the Eleventh Circuit did *not* suggest that the neutrality agreement was facially invalid. Rather, that Court held that whether such an agreement violated § 302 turned on the *intentions* of the parties, remanding to the district court to evaluate those intentions. *Id.* at 1215-16. "Employers and unions may set ground rules for an organizing campaign, even if the employer and union benefit from the agreement. But innocuous

[5] *See Adcock v. Freightliner LLC*, 550 F.3d 369, 374 (4th Cir. 2008); *HERE Local 57 v. Sage Hosp. Res., LLC*, 390 F.3d 206, 219 (3d Cir. 2004).

ground rules can become illegal payments if used as valuable consideration in a scheme to corrupt a union or to extort a benefit from an employer." *Id.* at 1215.

The *Mulhall* decision thus turned on the question of whether the employer may have offered the union things of value with the intent to corrupt the union. It has no application here, where the government, through Local Law 87, *requires* its contractors to negotiate toward agreements to ensure continuity of the services for which the City contracted. There is no question of bribery where these "ground rules for an organizing campaign," *id.* at 1215, to the extent they even provide a benefit to the union, are demanded by the government. The *Mulhall* decision, in short, has no bearing on this case, and Plaintiff cites nothing else in support of its contention that the LPA collides with Section 302 and is therefore preempted.[6]

B. The NLRA does not preempt Local Law 87.

Perhaps the most striking thing about Plaintiff's merits argument on NLRA preemption is what is absent from it: While Plaintiff relies heavily on the Supreme Court's 1986 decision in *Wisconsin Department of Industry v. Gould*, 475 U.S. 282 (1986), nowhere does it even mention the Court's subsequent decision in *Building & Construction Trades Council v. Associated Builders & Contractors* ("*Boston Harbor*"), 507 U.S. 218 (1993). In that case, a unanimous

[6] Plaintiff apparently thinks it sufficient to argue that there are "serious questions" about whether the LPA violates Section 302. P.I. Mem. at 14. Although the Second Circuit has sometimes permitted a serious question going to the merits to substitute for a "likelihood of success on the merits" in the preliminary injunction analysis, it has squarely held that this more lenient standard cannot be applied in cases where, as here, a preliminary injunction would "'affect government action taken in the public interest pursuant to a statutory or regulatory scheme.'" *Sussman*, 488 F.3d at 140 (quoting *Wright v. Giuliani*, 230 F.3d 543, 547 (2d Cir. 2000)). Moreover, while the Second Circuit has not directly ruled on whether labor-management agreements of the type at issue in *Mulhall* are "things of value," that Court has found such agreements to be contracts enforceable under LMRA § 301(a), 29 U.S.C. § 185(a). *See HERE Local 217 v. J. P. Morgan Hotel*, 996 F.2d 561, 568 (2d Cir. 1993) (enforcing agreement waiving union right to picket during organizing campaign).

Court drew the critical distinction between what a state or local government may *not* do as a "regulator" of commerce and what it may instead do as a "proprietor" or "purchaser" of services. We begin by explaining why Local Law 87 falls into the latter category and is not preempted, before addressing the specific arguments Plaintiff advances in its brief.

1. As the Supreme Court held in *Boston Harbor*, a government entity acting as purchaser—not regulator—may require its contractors to execute agreements with unions to avoid service disruptions.

In *Boston Harbor*, the Supreme Court considered whether the NLRA preempted a Project Labor Agreement ("PLA") negotiated at the behest of a governmental entity to ensure that a public construction project proceed without interruption due to labor disputes.[7] The First Circuit had held the PLA requirement was preempted by the NLRA under both *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), and *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976). *Boston Harbor*, 935 F.2d 345, 360 (1st Cir. 1991) (en banc). The Supreme Court, however, unanimously reversed.

The Court distinguished its earlier holding in *Gould*—which had held preempted a statute debarring from state contracts any company with three NLRA violations in a five-year period. *See Gould*, 475 U.S. at 283-84. The *Boston Harbor* Court explained that *Gould* came to that conclusion because "*in that case*, 'debarment . . . serves plainly as a means of enforcing the NLRA,'" and that "[n]o other purpose could credibly be ascribed" to the statute other than

[7] Project Labor Agreements, common in the construction industry, are similar to LPAs in pursuing the aim of ensuring labor peace by prohibiting strikes and lockouts, but they often contain far more intrusive provisions, too. The Supreme Court, for example, affirmed a state agency's insistence on such an agreement that included requirements for "recognition of [the union] as the exclusive bargaining agent for all craft employees," for "all employees [to] be subject to union-security provisions compelling them to become union members within seven days of their employment," and for "the primary use of [the union's] hiring halls to supply the project's craft labor force," among other obligations. *Boston Harbor*, 507 U.S. at 221-22.

"deter[ring] labor law violations." *Boston Harbor*, 507 U.S. at 228 (quoting *Gould*, 475 U.S. at 287). The critical distinction was whether government was acting as "regulator" or as "purchaser." *Id.* at 229. Although in *Gould* the state had claimed to be exercising its "spending power rather than its regulatory power," 475 U.S. at 287, *Boston Harbor* explained why *Gould* had rejected that contention—and why *Gould* did not dictate the outcome of the case before it:

> The conduct at issue in *Gould* was a state agency's attempt to compel conformity with the NLRA. Because the statute at issue in *Gould* addressed employer conduct unrelated to the employer's performance of contractual obligations to the State, and because the State's reason for such conduct was to deter NLRA violations, we concluded: "Wisconsin 'simply is not functioning as a private purchaser of services,' . . . [and therefore,] for all practical purposes, Wisconsin's debarment scheme is tantamount to regulation."

507 U.S. at 228-29 (quoting *Gould*, 475 U.S. at 289) (alterations in original). Noting that a private purchaser of services could require a project labor agreement similar to the one before it, the Court concluded that, "[t]o the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a prehire agreement, a public entity *as purchaser* should be permitted to do the same." *Id.* at 231 (emphasis in original).

To be sure, the Court buttressed its analysis by recognizing the policy concerns underlying the provisions of NLRA §§ 8(e) and 8(f), which authorize private-sector employers to enter into "prehire" agreements in the construction industry. *See id.* at 230-32. But any suggestion that the Court's distinction between government actions as regulator and as purchaser applied only to that industry would be mistaken. Indeed, that is clear from *Boston Harbor*'s discussion of the prior holding of a non-construction case, *Golden State Transit Corp. v. Los Angeles*, 475 U.S. 608 (1986). In *Golden State*, the Court held that a city's attempt to condition renewal of a taxicab franchise upon the settlement of a labor dispute was preempted. But, the Court explained in *Boston Harbor*, "a very different case would have been presented had the city

of Los Angeles purchased taxi services from Golden State in order to transport city employees"—rather than "exercis[ing] . . . its regulatory power of license nonrenewal to restrict Golden State's right to use lawful economic weapons in its dispute with its union." 507 U.S. at 227. "In that situation, if the strike had produced serious interruptions in the services the city had purchased, the city would not necessarily have been pre-empted from advising Golden State that it would hire another company if the labor dispute were not resolved." *Id.* at 227-28. Consistent with *Boston Harbor*, the Second Circuit and seemingly every other court of appeals that has addressed the issue have applied the regulator/purchaser distinction in cases outside the construction industry, often involving LPAs.[8]

Here, there can be no question that the City is acting as purchaser rather than regulator in requiring that its human services contractors enter into an LPA with a labor organization that represents or seeks to represent their employees to ensure the continuity of the vital governmental services for which the City is paying, much as human services employers sometimes execute such labor peace agreements to avoid potential service disruptions, *see supra* p. 1-2.[9] Plaintiff does not question this distinction, but simply ignores it—mentioning *Boston*

[8] *See Healthcare Ass'n v. Pataki*, 471 F.3d 87, 108 (2d Cir. 2006) ("A major limitation on the labor law preemption doctrines is the principle that state conduct will not be preempted if the state's actions are proprietary, rather than regulatory."); *Airline Serv. Providers Ass'n v. Los Angeles World Airports*, 873 F.3d 1074, 1077 (9th Cir. 2017) (holding that the city "in its capacity as proprietor of LAX" could "require businesses at the airport to accept certain contractual conditions aimed at preventing service disruptions"), *cert denied*, 139 S. Ct. 2740 (2019); *Sage Hosp.*, 390 F.3d at 218 (upholding LPA governing operations of hotel because of city's proprietary interest in the success of the hotel project it had financed); *Metro. Milwaukee Ass'n of Com. v. Milwaukee Cnty.*, 431 F.3d 277, 278 (7th Cir. 2005) ("But if the state is intervening in the labor relations just of firms from which it buys services, and it is doing so in order to reduce the cost or increase the quality of those services rather than to displace the authority of the National Labor Relations Act and the National Labor Relations Board, there is no preemption.").

[9] It can be no objection that Local Law 87 applies across the board to a large number of the City's human services contracts, rather than to a single project as in *Boston Harbor*. As the

Harbor nowhere in its brief.

We now turn to the specific arguments Plaintiff does make in support of its contention that the NLRA preempts Local Law 87.

2. None of Plaintiff's arguments regarding NLRA preemption has merit.

Plaintiff advances five discrete arguments for its contention that Local Law 87 is preempted by the NLRA. All are meritless.

i. Reporting labor law violations. Plaintiff first takes aim not at the ordinance's LPA requirement, but rather at a peripheral provision that requires contract bidders to submit a certification disclosing any instances during the preceding five years in which the bidder "has been found by a court or government agency to have violated federal, state or local laws regulating labor relations," N.Y.C. Admin. Code § 6-145(c)(1)(c)—including, but certainly not limited to, violations of the NLRA. *See* FAQs 6 (outlining scope of disclosure obligation).

For support, Plaintiff relies solely on *Gould*—but that decision is readily distinguishable. In holding Wisconsin's disbarment statute preempted, *see supra* p. 11-12, the Court applied its longstanding rule that that the NLRA prevents states from "providing their own regulatory or judicial remedies for conduct prohibited . . . by the Act," concluding that the state statute was preempted because it had no purpose other than to "enforce[e] the NLRA" via "a supplemental sanction for violations" of federal labor law. *Id.* at 286-88.

Second Circuit has explained, the question whether the requirement is sufficiently "tailored" to the government's objective as proprietor or purchaser does not turn on the number of contracts to which it applies: "A contract is 'specifically tailored to one particular job' within the meaning of *Boson Harbor*, . . . if it governs the parties' behavior on the specific project or projects in the contract rather than on unrelated matters to which the state might not even be a party. . . . A contract does not become preempted simply because it covers a number of projects rather than a single one." *Bldg. Indus. Elec. Contractors Ass'n v. City of New York*, 678 F.3d 184, 189 n.2 (2d Cir. 2012) (quoting *Boston Harbor*, 507 U.S. at 232).

Here, however, Local Law 87 does not prescribe any penalties that would enforce federal labor law with supplemental sanctions. Indeed, City contractors are *already* required to submit information concerning their prior legal violations to the City, as the City's recent guidance explains, and compliance with Local Law 87 merely requires a contractor to indicate that it has submitted that information pursuant to its separate obligation. FAQs 5. Unlike the Wisconsin statute, Local Law 87 does not exclude repeat violators of federal labor law from City contracts—or, indeed, impose *any* penalty whatsoever upon a contractor that discloses prior violations of federal law. Rather, Local Law 87 requires nothing more than the compilation and submission of information about violations of the law—not limited to NLRA violations—that is already a matter of public record. The ordinance does not prescribe anything further, let alone the *per se* debarment penalty that compelled the outcome in *Gould*. Where, as here, a local statute does not sanction violations of federal labor law, *Gould* has no application. *See Filo Foods, LLC v. City of SeaTac*, 357 P.3d 1040, 1056 (Wash. 2015) (holding *Gould* inapplicable even to local minimum-wage ordinance imposing penalties for violating prohibition on retaliation for exercising rights under that ordinance because those penalties were "not a supplemental sanction appended to the NLRA"). And it should go without saying that the mere disclosure of public information is not preempted. *See Home Care Ass'n of Am. v. Newsom*, 525 F. Supp. 3d 1128, 1137-39 (E.D. Cal. 2021) (refusing to preempt even disclosure of employee lists that would affect the bargaining process), *vacated on other grounds sub nom. Home Care Ass'n of Am. v. Bonta*, 2022 WL 445522 (9th Cir. Feb. 14, 2022).

Of course, if a contractor believes that the City has used the contractor's disclosure of prior NLRA violations to disqualify it from competing for a contract, the contractor could bring an as-applied challenge to that implementation of the law. But there is no ground for Plaintiff's

attempt to invalidate Local Law 87's disclosure requirement on its face.[10]

ii. Spillover effect. Plaintiff's next argument asserts that Local Law 87 is preempted because "it will have impermissible spill-over effects on non-City contracts." P.I. Mem. at 17. The argument is premised exclusively on *Metropolitan Milwaukee Association of Commerce v. Milwaukee County*, 431 F.3d 277 (7th Cir. 2005). That decision held preempted a county ordinance that required certain contractors to execute labor peace agreements containing far more expansive provisions regulating labor relations than the LPAs at issue here, such as anti-coercion and arbitration provisions, and a requirement that employers disclose employee contact information. *See id.* at 278. That holding was based in large part on the "language of the ordinance," under which "most of the agreement itself applies to the employer's other employees—employees who may never work on a County contract—as well as to the work that is not County-related of the employees who do work part of the time on the County contracts." *Id.* at 279 (noting that "all but one of the terms that the agreement must contain apply to 'employees,' . . . rather than just to 'employees of the employer [who are] working within the appropriate bargaining unit,'" even though the ordinance distinguished between those two groups of employees). The Seventh Circuit therefore found that the county's asserted interest in uninterrupted service was "a pretext to regulate the labor relations of companies that happen,

[10] The arguments in text ought to be dispositive. But in the event the Court should disagree and believe that the disclosure requirement is potentially preempted, the provision codifying that requirement, N.Y.C. Admin. Code § 6-145(c)(1)(c), is readily severable from the remainder of the ordinance, as the City Council has instructed. *See* N.Y.C. Admin. Code § 1-105. Any preliminary injunction premised on that potential invalidity should thus enjoin only enforcement of the severable disclosure requirement—not the remainder of the ordinance—consistent with the widely endorsed rule that "[p]reliminary injunctive relief should be narrowly tailored, and should be no more burdensome than necessary to preserve a plaintiff's ability to obtain the complete permanent relief to which it is entitled." *CF 135 Flat LLC v. Triadou SPV N.A.*, 2016 WL 5945912, at *8 (S.D.N.Y. June 24, 2016) (internal quotation marks omitted).

perhaps quite incidentally, to do some County work." *Id.* at 282.

Local Law 87 is different. It expressly defines the term "covered employee" to refer to "an employee of a covered employer [*i.e.*, a human services contractor] who directly renders human services in performance of a city service contract." N.Y.C. Admin. Code § 6-145(a). The ordinance requires only LPAs (or negotiations toward an LPA) for those "covered employees." *Id.* at § 6-145(b)(1)-(2). And it limits the scope of required LPAs to a commitment to ensure "the uninterrupted delivery of services *to be rendered pursuant to the city service contract*." *Id.*, § 6-145(a) (emphasis added). Even if it turns out that some covered employees also render services that are not covered by a City contract—as Plaintiff alleges with minimal factual support—the ordinance only requires an LPA that would preclude interruption of those services the City has purchased, as City's FAQs emphasize. FAQs 3. Clearly, the purpose of Local Law 87 is to ensure uninterrupted performance of the human services for which the City has contracted; it is not, as in *Metropolitan Milwaukee*, "a pretext to regulate the labor relations of companies that happen, perhaps quite incidentally, to do some County work." 431 F.3d at 282.[11]

In this regard, Local Law 87 is on all-fours with the LPA requirement governing contractors at a government-operated airport that the Ninth Circuit upheld in *Airline Service Providers Association v. Los Angeles World Airports*, 873 F.3d 1074 (9th Cir. 2017), *cert denied*, 139 S. Ct. 2740 (2019). Distinguishing *Metropolitan Milwaukee*, the court emphasized that the requirement "repeatedly refers to operations at LAX, employees at LAX, and the LAX licensing

[11] In connection with this argument, Plaintiff also asserts that the ordinance's attestation requirement gives unions power to withhold their signatures to gain leverage to organize parts of an employer's workforce that are not covered by the law. P.I. Mem. at 18. This contention has no merit whatever for the reasons discussed elsewhere. *See supra* p. 6-7; *infra* p. 18-19.

program specifically." *Id.* at 1083 n.10.[12] The Ninth Circuit thus concluded that the requirement was not preempted. The same is true here, given Local Law 87's exclusive focus on the uninterrupted delivery of the services that the City has purchased.[13]

iii. Union veto power. Throughout its brief, Plaintiff advances the canard that the requirement that contractors submit an attestation, signed by a union representative, regarding LPAs gives unions "de facto veto power over who will obtain a City human services contract," by their refusal (or threatened refusal) to sign the attestation. P.I. Mem. at 4; *see generally id.* at 5-7. And Plaintiff trots out a parade of horribles in arguing that Local Law 87 "improperly empowers unions to control city contracting." *Id.* at 18-20. But, as already explained, *see supra* p. 6-7, the ordinance and its contract rider assume good faith on the part of the parties. That is implicit in the ordinance itself, but is explicitly stated in the Rider, which provides that in evaluating any violation of the attestation requirement "the city shall consider any relevant

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[12] *See also Northern Ill. Chapter of Assoc. Builders & Contractors v. Lavin*, 431 F.3d 1004, 1007 (7th Cir. 2006) (distinguishing *Metropolitan Milwaukee* as "prescribing how employers must handle labor relations in *all aspects* of their business," whereas in the case before it "Illinois is concerned exclusively with how subsidized renewable-fuels projects contract for labor; its condition is *project-specific*" (emphases added)); *Bldg. Indus. Elec. Contractors Ass'n v. City of New York*, 678 F.3d 184, 189 (2d Cir. 2012) (noting that "a state law or contract with *profound effects* outside of the state's market interest in the transaction would be preempted" (emphasis added)).

[13] Plaintiff goes out of its way to emphasize union involvement in drafting and promoting Local Law 87. P.I. Mem. at 5. But Plaintiff does not pursue this issue in its Argument, and for good reason: The Second Circuit has made clear that "when a court assesses whether a governmental policy has a regulatory purpose, it looks primarily to the objective purpose clear on the face of the enactment, not to allegations about individual officials' motivations in adopting the policy. We will not search for an impermissible motive where a permissible purpose is apparent." *Bldg. Indus.*, 678 F.3d at 191; *see also Lavin*, 431 F.3d at 1007 ("Federal preemption doctrine evaluates what legislation *does*, not why legislators voted for it or what political coalition led to its enactment.") (emphasis in original); *Sage Hosp.*, 390 F.3d at 216 n.7 ("We do not believe . . . that *Boston Harbor* and its progeny require a factual investigation into the particular subjective motives of the relevant government agency . . . . We see the test as objective, based on the language and probable effect of the state ordinance or specification.").

conduct of a labor organization" and "the contractor's good faith efforts to comply with the terms of this rider and Admin. Code § 6-145." Rider, § 4(D). The City's published interpretation of the contractual terms implementing Local Law 87 confirms the conclusion that its contractors are not at the mercy of a union refusing to sign an attestation or negotiate toward an LPA. *See* FAQs 8. Indeed, that interpretation specifically states that a contractor would *not* breach its contract with the City in that circumstance. *Id.*; *see also supra* p. 6-7.

In short, HSC's parade of horribles about union veto power, and its argument that the ordinance is preempted for that reason, have no merit whatsoever.

iv. Regulation of employer speech. Plaintiff's next assertion—that Local Law 87 deprives an employer of its right under the NLRA "to advocate to its workers against unionization," P.I. Mem. at 21—is equally far-fetched. The ordinance requires only that the employer accept an agreement that bars it from locking out its employees or other "actions intended to or having the effect of interrupting such services." N.Y.C. Admin. Code § 6-145(a). Nothing in the ordinance prohibits the employer from advocating to its employees that they refrain from agreeing to union representation. And nothing in the ordinance requires employers to execute any agreement that would regulate its speech. In support of its argument, Plaintiff cites two cases where a state or local law "impose[d] a targeted negative restriction on employer speech about unionization." P.I. Mem. at 22 (quoting *Chamber of Commerce v. Brown*, 554 U.S. 60, 71 (2008); *Healthcare Ass'n v. Cuomo*, 2011 WL 7983371, at *7 (N.D.N.Y. Sept. 7, 2011)). But there simply is no such "restriction" here.

As to what Local Law 87 actually says—that certain contractors must agree to refrain from conduct interrupting the provision of City services or negotiate toward such an agreement, N.Y.C. Admin. Code § 6-145(a)-(b)—it is far too late in the day to argue that an LPA constitutes

an impermissible, preempted, restriction on employer speech. *See supra* Part I.B.1. Indeed, the Second Circuit has held that even the verbal *threat* of an unlawful work stoppage "is entitled to no special protection under the First Amendment." *NLRB v. Local Union No. 3, IBEW*, 828 F.2d 936, 940 (2d Cir. 1987) (discussing employee strikes). Even if contractor First Amendment interests were implicated here, the government's interest in "improv[ing] the efficiency, efficacy, and responsiveness of service to the public" would outweigh them. *See Bd. of Cnty. Comm'rs v. Umbehr*, 518 U.S. 668, 673-74 (1996) (holding that government contractors' speech rights are subject to the balancing test first articulated in *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968)).

Unable to find any purchase in the ordinance's plain language, HSC instead resorts to the unenacted, subjective motivations of the legislators who voted for it. P.I. Mem. 21-22. But HSC fails to identify any legislative desire to suppress employer speech. Even if HSC had done so, it would not matter: "Federal preemption doctrine evaluates what legislation *does*, not why legislators voted for it or what political coalition led to its enactment." *Lavin*, 431 F.3d at 1007; *see also supra* p. 18 n.13

v. Regulation of bargaining. In support of its closing argument that the LPA requirement impermissibly regulates employers' and unions' bargaining rights, Plaintiff cites the Supreme Court's decision in *Golden State*, which found preempted a city's attempt to condition renewal of a company's taxicab franchise on the resolution of a labor dispute. But, as we discussed above, the Court reached that conclusion because the city was impermissibly acting as regulator—and the Court expressly noted, in its subsequent *Boston Harbor* decision, that the result in *Golden State* would have been different if the city had been acting as a purchaser of the taxi services rather than as regulator. *See Boston Harbor*, 507 U.S. at 227-28; *supra* p. 12-13. Plaintiff's failure—here and throughout its brief—to recognize the regulator/purchaser

distinction delineated in *Boston Harbor* and applied in subsequent decisions of the courts of appeals, is the fatal flaw in its contention that Local Law 87's LPA requirement is preempted.

II. Plaintiff has failed to establish that it or its members will suffer irreparable harm in the absence of preliminary relief.

Although the Court need go no further to deny the motion, it also bears noting that Plaintiff has failed to establish—as is its burden—that it or any of its members will suffer irreparable harm absent a preliminary injunction. A showing of irreparable harm is "the single most important prerequisite for the issuance of a preliminary injunction." *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (internal quotation marks omitted). This element is so critical that the Court need not reach any of the other requirements necessary for the grant of injunctive relief where irreparable harm has not been demonstrated. *See Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007). "To satisfy the irreparable harm requirement, [plaintiffs] must demonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *Id.* (internal quotation marks and citation omitted).

Here, Plaintiff HSC itself does not purport to contract with the City, so its assertion of irreparable injury rests on whether one or more of its member organizations will be so injured. Yet nowhere in either its brief or its supporting declarations does Plaintiff explain how its members will be injured by the requirement that they execute an LPA as a condition for obtaining City contracts, much less how any such alleged injury would be "actual and imminent." *See* P.I. Mem. at 9-11; M. Jackson Decl. ¶¶ 31-35.

Plaintiff's principal attempt at such an explanation rests on its fanciful claim that the attestation requirement gives union leaders control over the contracting process, so that a union,

by refusing (or threatening to refuse) to sign an attestation, can make it impossible for a contractor to comply with the law. But as we discussed above, that contention rests on an egregious misreading of the law. *See supra* p. 6-7, 18-19.

Other than that, Plaintiff's alleged harm derives from its unsupported claim that Local Law 87 will "prevent[] a human service provider from bidding" on a City contract. HSC Br. at 9. But HSC does not—indeed, cannot—cite any provision in the ordinance that prevents HSC's unnamed members from bidding on City business. HSC's argument instead seems to turn on the premise—alleged in the Complaint, but unstated and unsupported in HSC's moving papers—that "[m]any of HSC's members . . . have refused to sign the City's contract offers requiring their compliance with the Statute." Compl. ¶ 46. If HSC's unnamed members decline to compete for City business out of distaste for Local Law 87 or their mistaken belief that the ordinance is unlawful, then that putative injury is entirely self-inflicted; it is the contractor's own refusal to submit a bid or sign a contract that causes such an injury, not the ordinance that they ask this Court to enjoin. If HSC were correct, then virtually any allegedly distasteful bidding requirement would be grounds for finding irreparable harm. In any event, it is blackletter law that such a self-inflicted injury does not justify the extraordinary relief of a preliminary injunction. *E.g.*, 11A Wright & Miller, *Federal Practice & Procedure* § 2948.1 (3d ed. 2021).

In *Second City Music, Inc. v. City of Chicago*, 333 F.3d 846 (7th Cir. 2003), for example, the Seventh Circuit rejected an argument parallel to the one HSC asserts here. There, a used record store challenged on constitutional grounds a city ordinance requiring dealers in second-hand goods to carry a license that, among other things, required the licensee to be of good character and repute. *Id.* at 847. In the challenger's view, that licensing regime was unconstitutionally vague and implemented to discriminate against the sellers of disfavored

products in a manner that chilled protected speech. *Id.* It thus withdrew its application for a license under that allegedly unlawful regime and sought a preliminary injunction. *Id.* at 849. The Seventh Circuit, however, affirmed the denial of such an injunction, reasoning that the challenger faced no imminent threat, even though it would be forced out of business for want of a license: "Injury caused by failure to secure a readily available license is self-inflicted, and self-inflicted wounds are not irreparable injury." *Id.* at 850. Instead, the Seventh Circuit explained, "[t]he sensible way to proceed is for [plaintiff] to obtain a license and continue to operate while it builds a record [to support it claims]. . . . Any injury that [plaintiff] incurs by following a different course is of its own choosing." *Id.* at 850. The same is true here: Any unnamed HSC member that declines to seek City business on account of Local Law 87 has inflicted that injury on itself, which cannot constitute irreparable injury.

This case is thus poles apart from the facts at issue in *Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367 (8th Cir. 1991), the case on which HSC principally relies for its claim of irreparable harm. There, a would-be municipal contractor was awarded a preliminary injunction restraining a city's contract-bidding process where the city invoked an allegedly preempted[14] bid specification to hold the contractor ineligible to win the city's business. *See generally id.* at 367-69. Indeed, the city had *twice* held that would-be contractor ineligible, once when rejecting its low bid for the city's business and then again when the contractor protested that decision. *Id.* at 367-68. The Eighth Circuit thus enjoined the city's ongoing bidding process

[14] We write "alleged preempted" because that case concluded that the plaintiff had demonstrated a likelihood of prevailing on the merits on the basis of First Circuit's decision in *Boston Harbor*, which the Supreme Court unanimously reversed shortly thereafter. *See Glenwood Bridge*, 940 F.2d at 370-71 (citing *Assoc. Builders & Contractors v. Mass. Water Res. Auth.*, 935 F.2d 345 (1st Cir. 1991) (en banc), *rev'd*, 507 U.S. 218 (1993)); *supra* p. 11-13 (discussing *Boston Harbor*). *Glenwood Bridge* thus has no precedential value on the merits of the preemption issue.

to protect the plaintiff's ability to compete for the work, on which it would otherwise be "precluded from bidding." *Id.* at 372. That case has no application where, as here, a plaintiff's members are entirely eligible to compete for the City's business. *See L&M Bus Corp. v. Bd. of Educ.*, 2018 WL 1640589, at *4 (E.D.N.Y. Apr. 5, 2018) (refusing to follow *Glenwood Bridge* where "there is nothing to suggest that the [allegedly unlawful bid specification] is actively impeding the [plaintiffs] from submitting bids").

Equally significant, HSC fails to identify any specific member that—even taking its own theory at face value—would be injured because of Local Law 87. The nonspecific assertions that, for example, "an [unnamed] HSC member's charitable mission could effectively be undermined or blocked," P.I. Mem. at 9, or that "HSC's [unnamed] contractor members may be precluded from bidding" on an unidentified contract, *id.* at 10, are far afield the facts of *Glenwood Bridge*, which considered a *specific* bidder's ineligibility to compete for a *specific* contract. *See generally* 940 F.2d at 367-69. Here, by contrast, Plaintiff rests on generalized assertions and has made no attempt to identify any specific contract upon which any specific member intends to bid. That is not enough to show irreparable injury to any of its members, and thus offers yet another basis to reject HSC's bid for a preliminary injunction here.

III. The balance of equities and the public interest weigh strongly against a preliminary injunction.

New York City adopted Local Law 87 to further the public interest of ensuring the uninterrupted provision of the essential human services that it provides to its residents through private contractors. That legislative judgment is entitled to respect because "[g]overnment action taken in furtherance of a regulatory or statutory scheme . . . is presumed to be in the public interest." *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 662 (2d Cir. 2015) (internal quotation marks omitted).

That is particularly true here. LPAs safeguard essential human services from interruption in an industry that, on HSC's own account, suffers from substandard conditions. Compl. ¶ 21. As noted, labor strife has already threatened to engulf that industry in New York City itself. *See supra* p. 2. If human services are as important as HSC contends—and DC 37 agrees—then permitting the implementation of a law that seeks to minimize the likelihood of disruptive labor strife advances the public interest in the uninterrupted delivery of those essential services by means of the type of no-strike/no-lockout commitment present in many private sector agreements.

Absent any plausible threat of irreparable injury to HSC's member organizations, the balance of equities and the public interest weigh heavily against enjoining Local Law 87.

CONCLUSION

HSC's motion for a preliminary injunction should be denied.

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Dated: March 25, 2022

CERTIFICATE OF SERVICE

I certify that on March 25, 2022, I served via electronic mail a copy of Proposed Intervenor District Council 37's Proposed Memorandum in Opposition to Motion for Preliminary Injunction, the Declaration of Amy Gladstein and its exhibits, and the Declaration of Rose Lovaglio-Miller and its exhibits, on the following counsel of record:

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Dated: March 25, 2022

EXHIBIT B TO DC 37'S LETTER MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

HUMAN SERVICES COUNCIL OF NEW YORK,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.

----------X

DECLARATION OF AMY GLADSTEIN

Civil Action No. 21 Civ. 11149 (PGG)

Amy Gladstein, pursuant to 28 U.S.C. § 1746 declares under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am currently employed at 1199SEIU United Healthcare Workers East ("1199" or "Union") as the Assistant for Strategic Organizing. I have held this position since 2000. In this capacity, I am responsible for directing the work of organizing not yet union members into our union. This work includes directing campaigns conducted under the rules of the National Labor Relations Board as well as negotiating with employers for agreements that provide a way in which workers can express their support for the union under rules that include both those of the NLRB as well as private election and card count agreements. In this position, I regularly work on 1199's organizing campaigns, and am familiar with and have negotiated 1199's agreements with employers governing 1199's and the employer's conduct throughout various organizing campaigns.

2. During my tenure, 1199 has entered into multiple organizing agreements with employers including hospitals, homecare agencies, social service agencies and federally qualified health centers. Among these employers are ones with City of New York contracts. While the

provisions of these agreements vary, the intent of all of them is to ensure that the conduct of both employer and union during 1199's organizing drive will be peaceful and will not disrupt the provision of employer services.

3. Attached hereto as Exhibit A is a true and correct copy of a Memorandum of Agreement between 1199 and the League of Voluntary Hospitals and Homes ("LVH" or "League") governing the conduct of 1199 and League members during any new organizing by 1199 in specified units of hospitals that are members of the League of Voluntary Hospitals and Homes. League members total approximately 70 non-profit hospitals and nursing homes. Many of these hospitals are the recipients of contracts with the City that will require compliance with the Local Law. The League MOA and incorporated statement of "Union Organizing Rights" cover a wide range of union and employer conduct during an organizing campaign with the express purpose of balancing employees' freedom to choose to organize and choose whether or not to be represented by a union, and the need "not to disrupt patient care or otherwise interfere with the operations of the Employer." *See* Exhibit A, Part (b)(vi). Since the first use of this language, more than 150 elections at League member institutions have been held where this language has been used to regulate the campaign.

4. While most of the agreements I have experience with do not include an explicit restriction on the right of employees to strike or the Employer to lock out employees, the agreements create a basic framework for peaceful organizing that ideally make such tactics unlikely. For example, the LVH agreement provides that organizing will begin with a joint statement from the union and management informing employees of all parties' rights and responsibilities under the agreement. The parties agree to a procedure for accurately determining

employee support, so that employees' choice can be quickly known and honored. The union is granted access to on-site meeting rooms in the employer's facility, in exchange for agreeing to use such access in a manner that does not disrupt patient care and other functions of the employer. Finally, the parties agree to resolve disputes under the agreement and about the election with binding arbitration, reducing the likelihood that either party will resort to more disruptive tactics to address perceived or real missteps by the other party. In 1199's experience, such agreements are usually effective; allowing employees to exercise their rights in the workplace, without the need to resort to a strike, and without the threat of a lockout.

5. In addition to the organizing campaigns conducted under the League MOA, many of 1199's other organizing campaigns include agreements like the one described above, with employers seeking to achieve labor peace and non-disruption of patient services during a union organizing campaign. I am attaching to this declaration documents concerning several representative campaigns. In one instance, the agreement included a no-strike clause and I am attaching a copy of that agreement; in the remainder, I am attaching copies of letters mailed to employees describing those agreements governing the conduct of both union and employer. All are employers involved in the provision of health care. With or without a no-strike, no lockout provision, none of these campaigns resulted in a strike or a lockout.

6. Attached hereto as Exhibit B is a true and correct copy of Neutrality and Election Agreement between Callen-Lorde Community Health Center and 1199, along with an agreed-upon letter to be sent to affected employees. This Agreement contained an explicit no-strike provision. *See* Exhibit B, ¶P ("During the life of this Agreement, the Union will not directly or indirectly authorize, cause, encourage, assist, condone, sanction or take part in any strike

(whether it be economic, unfair labor practice, sympathy or otherwise), slowdown, walkout, sit-down, picketing, stoppage, interruption or delay of work or boycott, whether they be of a primary or secondary nature, or any other activities which interfere, directly or indirectly, with the Employer's operations for any reason.")

7. Attached hereto as Exhibit C is a true and correct copy of a March 2020 letter to the employees of Concepts of Independence, a fiscal-intermediary employer in the provision of home care and home health services through the Consumer Directed Personal Assistance Program administered by the New York State Department of Health. That letter notified the Consumer Directed Personal Assistants that 1199 and Concepts of Independence had reached an agreement under which "1199 SEIU representatives will be free to meet with Personal Assistants (PAs) to sign Union authorization cards, and if the majority of PAs sign such cards, Concepts will recognize 1199 SEIU as the exclusive bargaining representative of its Consumer Directed Personal Assistants." The letter also acknowledged the parties' desire to avoid interference with patient care during the unionization campaign.

8. Attached hereto as Exhibit D is a true and correct copy of the December 2019 letter to the employees of Elara Caring ("Elara"), a provider of home care and health services, also through the Consumer Directed Personal Assistance Program. The letter advised the impacted Elara employees of the code of conduct that Elara and 1199 had agreed would apply to the organizational campaign in the recognition of the belief that the campaign should not interfere with patient care.

9. Attached hereto as Exhibit E is a true and correct copy of the February 2022 letter to employees of Chinese-American Planning Council Home Attendant Program, Inc. ("CPCHAP"), announcing that 1199 and CPCHAP had reached an agreement "to resolve the issue of Union representation in a way that does not create conflict, disruption, or interference with consumer patient care. Under the Agreement, 1199SEIU representatives will be free to contact Personal Assistants (PAs) to sign Union authorization cards, and if a neutral arbitrator finds that the majority of PAs have signed such cards, CPCHAP will recognize 1199SEIU as your exclusive bargaining representative, and the collective bargaining agent of all CPCHAP Consumer Directed Personal Assistants."

Dated: March 25, 2022
New York, New York

Amy Gladstein
AMY GLADSTEIN

Exhibit A

Attachment A

MEMORANDUM OF AGREEMENT

Agreement between the League of Voluntary Hospitals and Homes of New York (the "League"), as agent on behalf of each of its member institutions whose names appear on Schedule A annexed hereto and made a part hereof (each of which is hereinafter designated as the "Employer"), and 1199SEIU United Healthcare Workers East (the "Union"), acting on behalf of its members who are employed by said Employers.

WHEREAS, the League and the Union are committed to working together to maintain and improve the ability of the Employers to provide quality health care through joint labor-management efforts; to insure appropriate funding and resources for health care through joint legislative work; and to insure that there is affordable health care and access to health care for the residents of the State of New York through continuing to fund initiatives, and other joint ventures; and

WHEREAS, the League and the Union recognize that labor strife will have a disruptive influence on their ability to engage in the foregoing efforts;

NOW, THEREFORE, the League and the Union agree that Article I (Recognition) and Article XXXII (Arbitration) of the collective bargaining agreement between them shall be modified as set forth in the attachment hereto.

Dated: June 1, 2009
New York, New York

1199SEIU UNITED HEALTHCARE WORKERS EAST

By: _____
George Gresham, President

LEAGUE OF VOLUNTARY HOSPITALS AND HOMES OF NEW YORK

By: _____
Bruce McIver, President

Attachment A

UNION ORGANIZING RIGHTS

Subject to the limitations set forth in subparagraph (e) below, the following shall apply when the Union seeks to organize (i) an unrepresented unit of employees of the Employer; (ii) a job classification of employees of the Employer excluded from the arbitration procedure in Exhibit F of the CBA by operation of subparagraph (f)(iii)-(v) thereof, (iii) a job classification of employees of the Employer that an Arbitrator designated pursuant to Exhibit F of the CBA has found to be properly excluded from a represented unit; or (iv) a job classification of employees of the Employer that is listed as excluded in Stipulation I between the Union and such Employer.

(a) Notice. The Union shall serve written notice on the Employer when it commences organizing at the Employer. The notice shall identify the unit(s) or job classification(s) of the Employer's employees that the Union is seeking to represent.

(b) Rules of Conduct. The rules of conduct set forth in this subparagraph (b) shall apply as follows:

(i) Duration and Applicability. These rules of conduct shall apply only with respect to the employees in the unit(s) or job classification(s) identified in the notice required by subparagraph (a) above; shall apply beginning on the date when the Union provides said notice; and shall continue only until the earliest of the following dates:

(A) if the Union has not filed a petition for an election under subparagraphs (b)(iv) and (c) below, the date when the Union notifies the Employer that it is no longer seeking to represent the unit(s) or job classification(s) identified in said notice, or the date when the sixty (60) day period for filing such a petition elapses under subparagraph (b)(iv) below;

(B) the date when the Union withdraws its petition for such an election; or

(C) the date of such an election.

(ii) Joint Statement. Within seventy-two (72) hours after the Employer's receipt of the foregoing notice from the Union, the Employer shall post a statement jointly signed by the Union and the Employer, the substance of which shall be as set forth in Exhibit A attached hereto and made a part hereof, addressed to the employees in the identified unit(s) or classification(s).

(iii) Access. As soon as practicable, but no more than four (4) working days after the Employer receives the notice required by subparagraph (a) above, the Employer shall allow access to the employee cafeteria and a suitable meeting room to be agreed upon by the Union and the Employer, for Union officers, organizers and delegates to meet with employees in the identified unit(s) or classification(s).

(A) The number of Union officers, organizers and delegates meeting in the employee cafeteria at any one time shall be limited to the extent necessary so as to not interfere with the operations of the Employer.

(B) The aforesaid meeting room shall be available to the Union's officers, organizers and delegates at reasonable times; shall be located away from patient care areas; and, to

the extent feasible, shall not be located near supervisory or management offices. Employees in the identified unit(s) or classification(s) shall be permitted access to the meeting room during their non-working time.

(C) The Union's access under this subparagraph (b)(iii) shall be suspended when another labor organization affiliated with the AFL-CIO commences organizing employees in one or more of the unit(s) or classification(s) identified in the Union's notice under subparagraph (a) above. Such suspension shall remain in effect until the other labor organization ceases its organizing, with or without a determination under Article XXI of the AFL-CIO Constitution ("Organizing Responsibility Procedures") that the Union has the exclusive right to seek to represent the employees at issue. The Union's access shall terminate if it is determined that the other labor organization has such exclusive right. There shall be no suspension of access if the Employer encouraged or supported the other labor organization to seek representation of the employees at issue.

(D) Nothing contained in this subparagraph (b)(iii) shall be deemed a waiver of any right of access for organizing purposes that may be available to the Union under the NLRA.

(iv) Petition for Election, Preclusion and Tolling. The Union shall file its petition for an election with the NLRB, with the showing of interest required by the NLRB, within sixty (60) days after serving the notice required by subparagraph (a) above.

(A) If the Union does not file its petition within the specified time period, or if the Union files a petition and then withdraws it, the Union shall be precluded for a period of one (1) year from seeking to represent any employees in the identified unit(s) or classification(s). The one (1) year period shall begin from the earliest of the following dates: if no petition has been filed, the date when the Union notifies the Employer that it is no longer seeking to represent the identified unit(s) or classification(s), or the date when the sixty (60) day filing period elapses; or the date when the Union withdraws a petition that it has filed within the sixty (60) day period.

(B) The time period for the Union to file its petition with the NLRB under this subparagraph (b)(iv) shall be tolled if another labor organization affiliated with the AFL-CIO commences organizing employees in one or more of the unit(s) or classification(s) identified in the Union's notice under subparagraph (a) above, provided that the Union has initiated a proceeding under Article XXI of the AFL-CIO Constitution ("Organizing Responsibility Procedures") to determine whether the Union or the other labor organization has the exclusive right to organize the employees at issue. Such tolling shall be effective when the AFL-CIO takes jurisdiction over the dispute between the Union and the other labor organization, and shall continue until the AFL-CIO renders a determination in such an Article XXI proceeding awarding such exclusive right to the Union. If it is determined that the other labor organization has such exclusive right, then the provisions of this Attachment A shall no longer be applicable to the Union's organizing of employees identified in the Union's notice under subparagraph (a) above. There shall be no tolling if the Union encouraged or supported the other labor organization to seek representation of the employees at issue.

(v) Employee Freedom of Choice. Employees have the right to choose whether or not to be represented by the Union in a secret ballot election, and to make that decision in an

atmosphere free of harassment, coercion, intimidation, promises or threats by either the Employer or the Union.

(vi) No Disruption or Interference. All organizational activities subject to these provisions, including but not limited to the Union's activities in the employee cafeteria and in the meeting room pursuant to subparagraph (b)(iii) above, shall be carried out in a manner so as to not disrupt patient care or otherwise interfere with the operations of the Employer.

(vii) Speech Standard.

(A) The Employer's campaign (oral and written) shall be factual, and shall not disparage either the motive or mission of the Union and the SEIU and/or their representatives (e.g., officers and organizers). The Employer shall not tell its employees to vote against representation by the Union. The Employer may convey its position fairly, may advise employees that each of them must make his/her own decision, and may provide employees with factual information to support an informed decision. Subject to the foregoing, the Employer retains the right to communicate its opinion to employees about unionization.

(B) The Union's organizing campaign (oral and written) shall be factual, and shall not disparage either the motive or mission of the Employer and, where applicable, its sponsor or parent organization, and/or their representatives (e.g., officers, managers and supervisors). The Union may convey its position fairly, and may provide employees with factual information to support an informed decision. Subject to the foregoing, the Union retains the right to communicate its opinion to employees about unionization.

(viii) Campaign Materials. Neither the Union nor the Employer shall publish, distribute or disseminate any campaign flyers, leaflets, letters, memoranda, notices, other written materials, or any audio, video or electronic media (e.g., messages for publication via the internet or on the Union's or the Employer's website) relating to the campaign without the prior approval of the other's special representative designated for resolving disputes pursuant to subparagraph (d) below. The Arbitrator's authority with respect to any dispute concerning a proposed communication shall be limited to determining whether and how the content of the proposed communication is inconsistent with these rules of conduct, and prohibiting its issuance to the extent that it is inconsistent.

(ix) Mandatory Employer Meetings and Union Contacts with Employees.

(A) The Employer shall not hold any mandatory one-on-one or group meetings with employees, a subject of which is representation by the Union. The Employer shall not initiate one-on-one conversations with employees on the subject of representation by the Union. This shall not prohibit the Employer from responding to questions concerning unionization raised by employees at a mandatory meeting called for other purposes.

(B) The Union's representatives (e.g., officers, organizers and delegates) shall not discourage employees from attending voluntary group meetings called by the Employer to discuss unionization, or otherwise interfere with the Employer's right to hold such meetings. The Union's representatives shall respect the request of any employee who does not wish to engage in a discussion or accept literature.

(x) Correction of Inaccuracies. Nothing contained in this Agreement shall be construed as limiting either the Union's or the Employer's right to correct any inaccurate statements made by the other during the period covered by these rules of conduct, provided that the corrections are made in a manner consistent with the speech standard in subparagraph (b)(vii) above.

(xi) Use of Consultants and Other Third Parties. Neither the Union nor an Employer shall use consultants or other representatives or surrogates to engage in activities inconsistent with these rules of conduct.

(xii) Employee Groups. The Employer shall not sponsor or encourage any group of employees who advocate a vote against union representation.

(c) Election Procedure. Elections pursuant to this Attachment A shall be conducted by secret ballot supervised by the National Labor Relations Board, and be governed by the Board's Rules and Regulations, Series 8, as amended, and the procedures outlined below:

(i) Any election petition filed by the Union with the NLRB shall be for a collective bargaining unit that conforms to the Board's rule on "Appropriate Units in the Health Care Industry," 29 C.F.R. § 103.30 (other than a unit of registered nurses, physicians, or guards), unless the NLRB finds a non-conforming unit to be appropriate under 29 C.F.R. § 103.30(b) or (c). However, the Union may petition for an election among employees in a job classification that is residual to an existing unit and for whom the Union does not have the right to seek representation pursuant to Exhibit F of the CBA. If a majority of the ballots cast by employees in the residual job classification is cast for representation by the Union, it is understood that said job classification shall be added to the existing bargaining unit to which it is residual.

(ii) When the Union petitions to represent employees in a job classification that is residual to an existing bargaining unit, and there are no issues of voter eligibility (i.e., questions of supervisory, managerial or confidential employee status), then the Union and Employer shall enter into a consent election agreement (under 29 C.F.R. § 102.62(a)) providing for an election within forty-two (42) days after the filing of the petition, and at a time and place to be determined by the parties and approved by the Regional Director, whose determination(s) on any pre- or post-election issue(s) shall be final.

(iii) When the Union petitions to represent a unit of employees that conforms to one of the specific bargaining units enumerated in 29 C.F.R § 103.30, and there are no issues of voter eligibility, nor any issues of unit composition (i.e., job classification) affecting ten percent (10%) or more of the employees in the petitioned-for unit, then the Union and Employer shall enter into a stipulated election agreement (under 29 C.F.R. § 102.62(b)) providing for an election within forty-two (42) days after the filing of the petition, and at a time and place to be determined by the parties and approved by the Regional Director. Employees in any disputed job classification shall vote in said election subject to challenge, with ultimate disposition of the issue deferred until after the election, provided that they do not meet or exceed the ten percent (10%) limitation referred to above. Unit composition issues decided by the Regional Director shall not be subject to review by the Board unless both parties agree, except where they involve determinative challenged ballots. The foregoing shall not affect a party's right to request review on any other issue decided by the Regional Director.

(iv) When issues exist as to the scope of the appropriate bargaining unit and/or voter eligibility and/or as to unit composition affecting ten percent (10%) or more of the employees

in the petitioned-for unit, then all such issues shall be decided by the Regional Director/Board on the basis of a record made at a hearing held prior to the conduct of any election. The Employer and Union agree to exercise best efforts to avoid such issues in the interest of expediting the resolution of questions concerning representation under this procedure and nothing herein shall preclude the Employer and Union from stipulating to an election in a non-conforming unit. In the event that a pre-election hearing is necessary to resolve unit or other issues raised by the Employer, the Employer will provide the Union with an alphabetical list of the names and last known addresses of the employees in the petitioned-for unit at the commencement of the hearing.

(d) Enforcement/Arbitrator.

(i) As soon as practicable after service of the notice required by subparagraph (a) above, the Union and the Employer shall (A) each designate a special representative responsible for compliance and dispute resolution with respect to the rules of con-duct set forth in subparagraph (b) above; and (B) select an Arbitrator from the panel established pursuant to paragraph (b) of Exhibit F of the CBA, who shall be authorized to resolve disputes in accordance with this subparagraph (d). If the Employer alleges that the Union failed to comply with the notice requirements of subparagraph (a) above, then an Arbitrator shall be selected at the time that such claim is asserted. The Union and the Employer shall equally share the costs and expenses of the Arbitrator.

(ii) Within twenty-four (24) hours after the special representatives of the Union and the Employer have been designated, they shall hold an initial conference among themselves to discuss the provisions of this Attachment A and begin identifying and seeking to resolve issues relating to their application (e.g., designation of a suitable meeting room under subparagraph (b)(iii) above).

(iii) If the Union and the Employer deem it necessary, after the foregoing meeting of the special representatives, the Arbitrator shall hold an initial conference with them to discuss the provisions of this Attachment A.

(iv) Except as set forth in this subparagraph (d), the Arbitrator shall have sole authority to hear any case and award an appropriate remedy concerning any dispute between the Union and the Employer relating to the interpretation or application of the rules of conduct set forth in subparagraph (b) above; any claim that either party breached said rules of conduct; and/or any claim that the Union failed to comply with the notice requirements of subparagraph (a) above. In addition:

(A) In cases where the Employer allegedly has discharged, disciplined or retaliated against an employee, the Arbitrator shall only have the authority to determine whether the Employer acted in reprisal for the employee's protected concerted activity in violation of the NLRA and, if the claim is found to have merit, to award a remedy available under the NLRA.

(B) In cases where it is alleged that either the Union or the Employer has violated the rules of conduct set forth in sub-paragraph (b) above to such an extent that the violation(s) affected the outcome of the election, and the Arbitrator so finds, then the party violating the rules of conduct shall join in a stipulation setting aside the results of the election and providing for a re-run election by the NLRB, provided that the objecting party has filed timely objections with the NLRB. However, if the Arbitrator does not find that the alleged violation(s) of the rules of

conduct affected the outcome of the election, then the objecting party shall withdraw its objections filed with the NLRB.

(C) In no event shall the Arbitrator have authority to compel recognition of the Union or issue a bargaining order.

(v) The Arbitrator shall have no power to add to, subtract from, or modify in any way any of the terms of this Attachment A.

(vi) Disputes between the Union and the Employer shall first be addressed by their special representatives. If the special representatives are unable to resolve the dispute, then they shall submit the issue to the Arbitrator within twenty-four (24) hours after the dispute first arose. The Arbitrator shall issue a determination within the next seventy-two (72) hours in any disagreement arising during the first thirty (30) days following service of the Union's notice pursuant to subparagraph (a) above. Thereafter, the Arbitrator shall issue a determination within twenty-four (24) hours. If necessary to meet these time limitations, the Arbitrator may direct the parties to submit their evidence and any position statements by facsimile, and may hear testimony via telephone.

The foregoing time limitations shall not apply in cases described in subparagraph (d)(iv)(A) and (B) above.

(vii) The Arbitrator's decision shall be deemed final and binding by the parties to the proceeding. Should the Union or the Employer decide to challenge the Arbitrator's decision in court, both shall comply with the decision unless and until a court issues an order staying or vacating the decision.

(e) Limitations. The provisions of subparagraphs (a) through (d) above shall not apply:

(i) with respect to a specifically identified unit or classification listed as excluded in Article I, paragraph 1 (b) of this Agreement;

(ii) with respect to any unit that would be inappropriate for collective bargaining or representation by the Union under the NLRA;

(iii) to the Employer in its conduct toward any labor organization other than the Union;

(iv) to the Employer in its conduct toward the Union and any labor organization not affiliated with the AFL-CIO when both have commenced organizing any employees of the Employer in one or more unit(s) or classification(s), in which event said provisions also shall not apply to the Union;

(v) to the Employer in its conduct toward the Union and any labor organization affiliated with the AFL-CIO when both have commenced organizing employees of the Employer in one or more unit(s) or classification(s),and:

(A) a determination is made under Article XXI of the AFL-CIO Constitution that neither the Union nor the other labor organization has exclusive organizing rights with respect to the employees at issue; or

(B) the Union is determined to have exclusive organizing rights under Article XXI of the AFL-CIO Constitution with respect to the employees at issue, but the other labor organization continues to organize such employees; or

(C) the other labor organization is determined to have exclusive organizing rights under Article XXI of the AFL-CIO Constitution with respect to the employees at issue.

(vi) at Employer locations or facilities where the Union does not already represent employees; or

(vii) following the end of the term of this Agreement, unless such provisions are extended by mutual agreement of the League and the Union.

(f) No Change to Other Provisions. Except as specifically provided otherwise, nothing contained in this Attachment A shall be deemed to modify or supersede any other provision of this Agreement.

(g) Subsequent Agreements. Nothing in this Attachment A shall preclude an Employer from agreeing with the Union to an alternate method, for determining whether a majority of the Employer's employees wish to be represented by the Union.

EXHIBIT A to Attachment A

[Employer Letterhead]

To **[Unit or Classification]** Employees of **[Employer]**:

1199SEIU is seeking to represent you **[if applicable, insert location]** for purposes of collective bargaining. **[Employer]** and 1199 have jointly prepared this letter and the accompanying information sheet in the shared belief that you should understand the nature of the relationship between **[Employer]** and 1199, your rights under the circumstances and the process that will be followed as the Union seeks to gain your support.

[Employer] is a member of the League of Voluntary Hospitals and Homes of New York, which, together with its members, is committed to working with 1199 to maintain and improve the ability of hospitals to provide quality health care through joint labor-management efforts; to ensure appropriate funding and resources for health care and access to health care for the residents of the State of New York through continuing to fund initiatives, and other joint ventures.

The League and its members, including **[Employer]**, also recognize that labor strife has a disruptive effect on these joint efforts. Accordingly, **[Employer]** and 1199 have agreed to the additional procedures and rules of conduct described in the accompanying information sheet in order to help you make an informed decision on this important issue in an atmosphere that supports your freedom of choice.

The Employer and the Union have agreed that any communications about organizing will be factual and that each of us will not disparage the other's motive, mission or representatives. The (**insert name of employer**) has agreed that it will not tell employees to vote against representation by the Union. The Employer and the Union have agreed that each of us may convey its position fairly and may provide employees with factual information to support an informed decision. Subject to the foregoing rules, the Employer and the Union retain the right to communicate their opinions about unionization to the employees.

Employees have the right to choose whether or not to be represented by the Union in a secret ballot election, and to make that decision in an atmosphere free of harassment, coercion, intimidation, promises or threats by either the Employer or the Union.

We encourage you to read the attached Rules of Conduct and information sheet as they contain important information about your rights.

Sincerely yours,

[NAME & TITLE]

[EMPLOYER]

Sincerely yours,

George Gresham, President

1199SEIU United Healthcare Workers East

EXHIBIT A to Attachment A (continued)
INFORMATION SHEET

Under federal law, whether the **[Unit or Classification]** employees shall be represented by 1199 will be determined by a secret-ballot election conducted by the National Labor Relations Board ("NLRB"), an agency of the U.S. government. Before the NLRB will conduct an election, 1199 must demonstrate that at least 30% of the employees in **[Either: (i) each of the foregoing employee groups, or (ii) the foregoing employee group]** desire union representation.

1199 is or will be asking employees to sign authorization cards as a way to demonstrate such support, and the NLRB will not conduct an election unless the Union has a sufficient number of signed cards. Prior to the election, the NLRB will determine which employees are eligible to vote; however, the majority of those who actually vote will determine the result of the election. In other words, 50% + 1 of the employees who actually cast ballots will determine whether or not 1199 shall represent all of the employees in **[Either: (i) each of the foregoing employee groups, or (ii) the foregoing employee group]**.

Each employee has the right to participate or refrain from participating in union activities, including the right to sign or not to sign union authorization cards. **[Employer]** and 1199 support the freedom of workers to join a union, as well as their right to choose not to do so. **[Employer]** and 1199 agree that, when employees are making such an important decision, it is essential that they have access to accurate and factual information about the organization that is seeking to represent them, and about what it means to be represented by a union.

Employees have the right to distribute literature concerning support for or opposition to union representation **on non-working time, in non-working areas** such as break rooms, cafeterias, parking lots, smoking areas and other places outside the hospital.

Employees have the right **on non-working time** to solicit each other in support of or opposition to the union except in patient care areas. The term "solicit" means verbal communications and includes solicitation to sign union authorization cards. The term "patient care areas" includes areas such as operating rooms, treatment rooms, patient rooms, patient lounges and immediately adjacent corridors.

Provided that it does not interfere with their work or with patient care, employees may talk about whether or not they want to be represented by a union and workplace issues including wage rates, disciplinary system, employer policies and rules and working conditions in a non-patient care area under the same terms applicable to any other private conversation between employees.

ORGANIZING RULES OF CONDUCT

Freedom of Choice. Employees have the right to choose whether or not to be represented by the Union in a secret ballot election, and to make that decision in an atmosphere free of harassment, coercion, intimidation, promises or threats by either the Employer or the Union.

Access. The Employer shall allow access to the employee cafeteria and a suitable meeting room for Union officers, organizers and delegates to meet with employees in the identified unit(s) or classification(s). The number of Union officers, organizers and delegates meeting in the employee cafeteria at any one time shall be limited to the extent necessary so as to not interfere with the operations of the Employer. Employees in the identified unit(s) or classification(s) shall be permitted access to the meeting room during their non-working time.

No Disruption or Interference. All organizational activities by the Union, including but not limited to the Union's activities in the employee cafeteria and in the meeting room shall be carried out in a manner so as to not disrupt patient care or otherwise interfere with the operations of the Employer.

Speech Standard.

(a) The Employer's campaign (oral and written) shall be factual, and shall not disparage either the motive or mission of the Union and the SEIU and/or their representatives (e.g., officers and organizers). The Employer shall not tell its employees to vote against representation by the Union. The Employer may convey its position fairly, may advise employees that each of them must make his/her own decision, and may provide employees with factual information to support an informed decision. Subject to the foregoing, the Employer retains the right to communicate its opinion to employees about unionization.

(b) The Union's organizing campaign (oral and written) shall be factual, and shall not disparage either the motive or mission of the Employer and, where applicable, its sponsor or parent organization, and/or their representatives (e.g., officers, managers and supervisors). The Union may convey its position fairly, and may provide employees with factual information to support an informed decision. Subject to the foregoing, the Union retains the right to communicate its opinion to employees about unionization.

Mandatory Employer Meetings and Union Contacts with Employees.

(a) The Employer shall not hold any mandatory one-on-one or group meetings with employees, a subject of which is representation by the Union. The Employer shall not initiate one-on-one conversations with employees on the subject of representation by the Union. However, this prohibition

- shall not apply in social settings, in cafeterias available to employees, in non-work areas and/or on non-work time and when employees are off duty,
- nor shall it prohibit the Employer from responding to questions concerning unionization raised by employees at a mandatory meeting called for other purposes.

b. The Union's representatives (e.g., officers, organizers and delegates) shall not discourage employees from attending voluntary group meetings called by the Employer to discuss unionization, or otherwise interfere with the Employer's right to hold such meetings. The Union's representatives shall respect the request of any employee who does not wish to engage in a discussion or accept literature.

Election Procedure. Elections will be conducted by secret ballot supervised by the National Labor Relations Board and governed by the Board's rules and regulations.

Side Letter to Attachment A

June 1, 2009

Mr. Bruce McIver
President
League of Voluntary Hospitals
and Homes of New York
555 West 57th Street, Suite 1530
New York, New York 10019

Dear Bruce:

This letter is delivered simultaneously with the execution of the collective bargaining agreement between 1199 and the League ("CBA"), commencing June 1, 2009 and has the same force and effect as if set forth in the CBA.

This confirms that the Employer's agreement that it will not initiate one-on-one conversations with employees on the subject of representation by the Union as provided in Subsection (b)(ix)(A) of Attachment A shall not apply

(a) in social settings;

(b) in cafeterias available to employees;

(c) in non-work areas and/or on non-work time; and

(d) when employees are off duty.

Very truly yours,

1199SEIU United Healthcare Workers East

By:_____
George Gresham, President

AGREED:

League of Voluntary Hospitals and Homes of New York

By:_____
Bruce McIver, President

Exhibit B

NEUTRALITY AND ELECTION AGREEMENT

This Neutrality and Election Agreement is made by and between: Callen-Lorde Community Health Center (hereinafter referred to as the "Employer") and 1199SEIU Healthcare Workers East (hereinafter referred to as the "Union").

A. The Employer hereby grants the Union neutrality, as defined within this Agreement, in organizing the regular full-time, part-time and per diem job titles listed in Exhibit B(hereinafter referred to as "unrepresented employees") at Employer's operations at 356 West 18th St. New York, New York 10011, 39-47 West 19th St. New York, New York 10011, and 230 West 17th St., New York, New York 10011.

B. The parties hereby establish the following procedures for the purpose of ensuring an orderly environment for the exercise by the Employer's Employees of their rights under Section 7 of the National Labor Relations Act and to avoid picketing and/or other economic action directed at the Employer in the event the Union decides to organize regular full-time, regular part-time and per diem unrepresented employees at the facility described in the preceding paragraph.

C. This Agreement shall only apply to the facilities referred to in paragraph A and shall not apply to any facility acquired or operated by any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of the Employer covered by this Agreement or successor entity, or any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Employer covered by this Agreement subsequent to the execution of this Agreement by the parties.

D. The parties mutually recognize the federal labor law guarantees Employees the right to form or select any labor organization to act as the Employees' exclusive bargaining representative for the purpose of collective bargaining with the Employer, or to refrain from such activity.

E. The Union shall provide the Employer with written notice of its intent to organize any of the unrepresented employees at the facility referred to in paragraph A and, at the same time, file a Petition for Representation with Region 2 of the National Labor Relations Board, consistent with the terms of this Agreement.

F. The Employer shall remain neutral on the question of whether said employees should choose to be represented by the Union.

G. The parties shall not engage in personal attacks or derogatory comments concerning the mission, motivation, leadership or individual representatives of their respective organizations. The Employer shall not disparage or express opinions about Union leadership, and the Union agrees that none of its communications during the organizing campaign shall disparage or present personal attacks against the Employer, or any of its senior leadership, Board Members, managers, or supervisors.

H. The Employer shall take steps to insure that its senior leadership, Board Members, managers, supervisors, and other agents shall remain neutral on the question of whether employees should support/join the union. However, the Employer's senior leadership (Jay Laudato, Andy Fliegel, Peter Meacher, Christine Smoot-Lowers, Donnie Roberts, Anita Radix, Jose Virella, Richard Clarkson), are entitled under this Agreement to answer unsolicited employee questions provided such communications do not advocate a position in the upcoming election or present inaccurate information. The Employer's senior leadership, Board Members, managers, supervisors, and other agents shall only respond to questions from any unrepresented employee about the Union or Union representation, that the Employer is neutral on the question of Union representation, that the choice of whether the employees want to be represented by a Union, and that the Employer will honor that decision, and that the Employer will bargain in good faith with the Union if selected by a majority of the members of the bargaining unit. The parties shall announce this agreement, and their respective obligations through the signing and distribution of the announcement attached hereto to as Exhibit A.

I. At the Employer's West 18th Street facility, following the Union giving written notice of its intent to organize, the Employer shall grant daily access for a period of no more than two (2) hours per day during regular lunch hours and break times. Such visits shall take place in non-work/non-patient areas for the purpose of communicating with employees during those employees' non-working hours. Such access shall be subject to prior advance notice of such visit to the Employer's Director of Human Resources or designee and on the condition that such access shall not interfere in any manner with the Employer's operations, including but not limited to patient services. Reasonable access to non-working areas within the facility shall be arranged by the Director of Human Resources or designee and is intended to mean that no more than two (2) Union representatives may be in those areas. Twice weekly, the Employer shall provide a conference room for a period of two hours based on its availability (which shall constitute that day's daily visit). The parties shall discuss access to employees at the two other sites on a more limited basis.

J. Within five (5) business days following the Employer's receipt of the Union's written notice of intent to organize, the Employer shall provide to the Union a current list of eligible employees with names, addresses, and job classifications. Eligible employees shall be those on payroll at the time the Union gives the Employer notice of its intent to organize. The parties will reach agreement on the titles to be included in each unit within five days of the filing of the petition and attach them hereto as Exhibit B. Any disagreement shall be referred to the arbitrator named below.

K. Neither the Employer nor the Union will involve external organizations (i.e., media, legislatures, regulators, healthcare providers) in any effort to damage the reputation or credibility of the other party, nor will the Union attempt to leverage Employer acquiescence through voluntary adverse reporting to any regulatory or oversight agency having jurisdiction over operations. The Union will instruct its organizers and all of its agents that they shall not make adverse reports to any regulatory or other oversight agency.

L. The Union and its representatives will not coerce or threaten any employee of the Employer in an effort to gain support. The employer and its representatives will not coerce or threaten any employee of the Employer in an effort to dissuade employees from supporting the Union.

M. As per the terms of this Agreement, the parties agree to sign an agreement to have the National Labor Relations Board conduct a Consent election consistent with all applicable provisions of the National Labor Relations Act and the NLRB's Rules and Regulations except for: the parties agree in advance to have the election conducted on Tuesday January 13, 2015.

N. The parties agree that any disputes over the interpretation of this Agreement shall be submitted to expedited arbitration before Arbitrator Jay Nadelbach according to the rules of the American Arbitration Association, unless the parties otherwise agree upon a different resolution method. The arbitrator shall have the authority to order the non-compliant party to comply with this Agreement.

O. If the Union is recognized as the exclusive collective bargaining representative for the unrepresented employees, the Employer agrees to commence collective bargaining as soon as practical after the Union's recognition and upon written request by the Union to begin negotiations.

P. During the life of this Agreement, the Union will not directly or indirectly authorize, cause, encourage, assist, condone, sanction or take part in any strike (whether it be economic, unfair labor practice, sympathy or otherwise), slowdown, walkout, sit-down, picketing, stoppage, interruption or delay of work or boycott, whether they be of a primary or secondary nature, or any other activities which interfere, directly or indirectly, with the Employer's operations for any reason.

Q. This Agreement shall not impose on the Union or the Employer any obligation in violation of any federal or State laws or regulations. Should any provision of this Agreement be deemed void, invalid, unenforceable, or illegal by a court or by other means, the validity and enforceability of any other provision of this Agreement shall not be effected. Furthermore, the parties agree to bargain in good faith with respect to new terms, if necessary, covering any matter which is deemed or declared unlawful or unenforceable.

R. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared it. Any uncertainty or ambiguity shall not be interpreted against any one party.

S. This Agreement may be executed in any number of duplicate counterpart originals, each of which will be deemed an original and all of which, taken together, shall constitute one and the same instrument.

T. This Agreement embodies the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, understandings

and agreements, both written and oral.

U. This Agreement may be modified or amended only by written consent of both parties.

V. No waiver of any term, covenant, or condition of this Agreement shall be effective unless set forth in writing and signed by the party against whom enforcement of the waiver is sought. The waiver by any party of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant, or condition of this Agreement or to be a continuing waiver or a waiver as to future events. Failure of any party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

W. This Agreement shall be in effect from the date of its execution through March 1, 2015.

AS AGREED:

Callen-Lorde Representative

12/12/14

Date

1199SEIU Healthcare Workers East Representative

12/12/14

Date

EXHIBIT A (on joint letterhead)

Dear Employees:

Callen-Lorde understands that a group employees have expressed an interest in representation by 1199/SEIU.

Because an election campaign could be long and costly, and distract Callen-Lorde from concentrating on other important issues crucial to our mission of providing quality health care, Callen-Lorde and the Union agreed to meet to see if we could find a less adversarial way to resolve the issue of union representation.

We would like to inform you that we have reached such an agreement. Under the agreement, 1199 SEIU representatives will have access to meet and speak with employees regarding the benefits of representation prior to the National Labor Relations Board conducted election. During this period of time and consistent with the parties' agreement, Callen-Lorde management representatives have agreed to limited communication with employees during this process. If a majority of employees vote in the secret ballot election to be represented by the Union, Callen-Lorde will respect the results of the election and bargain in good faith with the union.

In our discussions, we recognized that the question of whether employees should be represented by 1199/SEIU is a question that employees should answer for themselves and that the campaign regarding unionization should not interfere with patient care. To this end, 1199/SEIU has agreed not to impugn the motives or mission of the institution during the campaign. And to this end, Callen-Lorde has agreed to remain neutral with respect to the organization of the employees. The Union shall have reasonable access to Callen-Lorde staff in order to communicate with employees. No employee will be granted any benefit or suffer any detriment because an employee chooses to support or oppose representation by the Union. Callen-Lorde and 1199SEIU respect the ability of the employees to consider and answer this question and will respect the decision of the employees through the above-referenced election procedure.

We believe that this Agreement creates a fair and expeditious procedure through which employees can decide whether they wish to be represented by 1199/SEIU.

Exhibit C

CONCEPTS OF INDEPENDENCE

1199SEIU United Healthcare Workers East

, 2020

Dear :

On March 5, 2020, Concepts of Independence and 1199 SEIU United Healthcare Workers East entered into an Agreement that both parties believe will benefit Personal Assistants and Consumers.

The Union seeks to represent Consumer Directed Personal Assistants. Because a campaign could be long and costly and distract us from concentrating on other important issues crucial to our consumer directed mission, Concepts and the Union agreed to meet to see if we could find a more amicable way to resolve the issue of Union representation.

We would like to inform you that we have reached such an agreement. Under the Agreement, 1199 SEIU representatives will be free to meet with Personal Assistants (PAs) to sign Union authorization cards, and if the majority of PAs sign such cards, Concepts will recognize 1199 SEIU as the exclusive bargaining representative of its Consumer Directed Personal Assistants.

In our discussion, we recognized that the question of whether employees should be represented by 1199 SEIU is a question that employees should answer for themselves and that the campaign regarding unionization should not interfere with Consumers' choice. No employee will be granted any benefit or suffer any detriment because he or she chooses to support or oppose representation by the Union. In addition, Concepts and the Union recognized that consumer control and direction, choice and integration are essential to the Consumer Directed program and will not seek to interfere with the consumers' rights, including the right to select, train, schedule, supervise, terminate and direct their PA, subject to applicable law and regulation.

Concepts and 1199 SEIU respect the ability of you and your fellow PAs to consider and decide whether you wish to be represented by the Union and will respect the results of the card count. We believe that this Agreement creates a fair and expeditious procedure through which PAs can decide whether they wish to be represented by 1199 SEIU or not.

Sincerely,

Concepts of Independence

Anthony Caputo
Chief Executive Officer

1199 SEIU United Healthcare Workers East

Rona Shapiro
Executive Vice-President

Exhibit D

Elara Caring

1199SEIU United Healthcare Workers East

Formerly Allen Health Care Services

12.20.2019

Dear _____ Consumer Directed Personal Assistant:

On December 9, 2019, Allen Health Care Services and 1199 SEIU United Healthcare Workers East entered into an Agreement that both parties believe will benefit Allen's employees and clients.

The Union seeks to represent Consumer Directed Personal Assistants. Because a campaign could be long and costly, and distract us from concentrating on other important issues crucial to our mission of providing quality health care, Allen and the Union agreed to meet to see if we could find a less adversarial way to resolve the issue of Union representation.

We would like to inform you that we have reached such an agreement. Under the Agreement, 1199 SEIU representatives will be free to solicit employees to sign Union authorization cards, and if the majority of employees sign such cards, Allen will recognize 1199 SEIU as the exclusive bargaining representative of its Consumer Directed Personal Assistants.

In our discussion, we recognized that the question of whether employees should be represented by 1199 SEIU is a question that employees should answer for themselves and that the campaign regarding unionization should not interfere with patient care. No employee will be granted any benefit or suffer any detriment because he or she chooses to support or oppose representation by the Union.

Allen and 1199 SEIU respect the ability of you and your fellow employees to consider and decide whether you wish to be represented by the Union, and will respect the results of the card count. We believe that this Agreement creates a fair and expeditious procedure through which employees can decide whether they wish to be represented by 1199 SEIU or not.

Sincerely,

1199 SEIU United Healthcare Workers East

President

Elara Caring

Patricia Bradford

Exhibit E

PERSONAL CARE SERVICES CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAM

1199SEIU United Healthcare Workers East

[DATE]

Dear [EMPLOYEE]:

On [DATE], Chinese-American Planning Council Home Attendant Program, Inc. (CPCHAP) and 1199SEIU United Healthcare Workers East (the Union) entered into an Agreement that both parties believe will protect the rights and prerogatives of both Personal Assistants and Consumers.

At CPCHAP we believe providing an opportunity under the law for employees to decide for themselves as to whether union representation is right for them and their consumer is in line with our company's mission. As a result of recent government proposed changes to New York's Consumer Directed Personal Assistance Program, which could establish CPCHAP and all home care agencies in the CDPAP program as joint employers with consumers, without changing current consumer prerogatives as explained below, the Union seeks to represent Consumer Directed Personal Assistants only with respect to CPCHAP's part of the joint employment. Without the agreement, we felt that a campaign could be long and costly and distract all of us from concentrating on other important issues crucial to our consumer directed mission to provide the best home care possible to consumers. That is why CPCHAP and the Union entered an Agreement to resolve the issue of Union representation in a way that does not create conflict, disruption, or interference with consumer patient care.

Under the Agreement, 1199SEIU representatives will be free to contact Personal Assistants (PAs) to sign Union authorization cards, and if a neutral arbitrator finds that the majority of PAs have signed such cards, CPCHAP will recognize 1199SEIU as your exclusive bargaining representative, and the collective bargaining agent of all CPCHAP Consumer Directed Personal Assistants

In our discussion, CPCHAP and the Union recognized that under Federal Law, the question of whether employees should be represented by 1199SEIU is a question that employees must be free to answer for themselves No personal assistant will be granted any benefit or suffer any detriment, receive any favor or disfavor whatsoever by CPCHAP because he or she chooses, publicly or privately, to support or oppose representation by the Union.

CPCHAP and the Union further agreed that the campaign regarding unionization should not in any way interfere with patient care or in any way jeopardize your health and safety during this pandemic period. CPCHAP will provide the Union with your contact information, which the Union has agreed not to share with any other party. The Union will strive to contact you by postal mail, electronic mail, or telephone, and you may execute all documents electronically

In addition, CPCHAP and the Union recognized that under State Law, consumer choice and

direction remain essential to the Consumer Directed program. Accordingly, neither CPCHAP nor the Union will seek to interfere with consumer choice or any current consumer rights, including the rights of consumers to select, train, schedule, supervise, terminate and direct their PAs, subject to applicable law and regulation. Therefore, if the majority of PAs select 1199 SEIU, the Union will only represent you with respect to CPCHAP and not the consumer. In that capacity, the Union, if selected by the majority of CPCHAP personal assistants, will represent you and negotiate contracts for you only for matters over which CPCHAP exercises control, such as, salary, benefits, and related procedures and screenings. The Union will not negotiate with consumers, and not be able to get involved with matters under consumer prerogative, such as hiring, termination, scheduling, training, and supervision. Those matters will remain unchanged by unionization.

CPCHAP and 1199SEIU respect the ability of you and your fellow PAs to consider and decide whether you wish to be represented by the Union and will respect the results of the card count. We believe that this Agreement creates a fair and expeditious procedure through which PAs can decide freely for themselves whether they wish to be represented by 1199SEIU or not.

If you have any questions about this letter or any matter pertaining to unionization, please feel free to contact _____ at 1199SEIU, email/phone number or John Sullivan at CPCHAP at [redacted].

Sincerely,

EXHIBIT C TO DC 37'S LETTER MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUMAN SERVICES COUNCIL OF NEW YORK, Plaintiff, v. THE CITY OF NEW YORK, Defendant.	Case No. 1:21-cv-11149-PGG Judge Paul G. Gardephe **DECLARATION OF ROSE LOVAGLIO-MILLER IN SUPPORT OF PROPOSED INTERVENOR'S OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Rose Lovaglio-Miller, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am currently Associate Director of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("DC 37"). From September 2019 until February 2022, I served as Director of Research and Negotiations for DC 37. In that capacity, I supervised DC 37's negotiations with employers, among other matters.

2. On March 24, 2022, I visited the website of the New York Times, which included an article dated October 29, 2019, and entitled "Housing Works Is Cast in Unusual Role: Corporate Overlord" at the following URL: https://www.nytimes.com/2019/10/29/nyregion/union-housing-works-nyc.html. Attached as Exhibit A is a true and correct copy of that article.

3. On March 24, 2022, I visited the website of the Queens Daily Eagle, which included an article dated February 9, 2021 and entitled "Opinion: Staff at legal services nonprofit Mobilization for Justice plan one-day strike" at the following URL:

https://queenseagle.com/all/opinion-staff-at-legal-services-nonprofit-mobilization-for-justice-plan-one-day-strike. Attached as Exhibit B is a true and correct copy of that article.

4. On March 24, 2022, I visited the website of the Legal Services Staff Association, which contained a page entitled "2015 MFY Strike" at the following URL: https://lssa2320.org/2015-mfy-strike/. Attached as Exhibit C is a true and correct copy of the webpage.

5. On March 24, 2022, I visited the website of the People's Dispatch, which contained an article dated December 16, 2021, and entitled "Home care workers protest 24-hour work day in NYC" at the following URL: https://peoplesdispatch.org/2021/12/16/home-care-workers-protest-24-hour-work-day-in-nyc/. Attached as Exhibit D is a true and correct copy of that article.

6. On March 24, 2022, I visited the website of Insider NJ, which contained an article dated September 7, 2021, and entitled "AFSCME New Jersey holds unfair-labor-practice strike at SERV" at the following URL: https://www.insidernj.com/press-release/afscme-new-jersey-holds-unfair-labor-practice-strike-serv/. Attached as Exhibit E is a true and correct copy of that article.

7. On March 24, 2022, I visited the website of CT News Junkie, which contained an article dated September 30, 2021, and entitled "'Historic' Deal Brokered With One, But Work Stoppage, Strike Still An Option For Others" at the following URL: https://ctnewsjunkie.com/2021/09/30/historic-deal-brokered-with-one-but-work-stoppage-strike-still-an-option-for-others/. Attached as Exhibit F is a true and correct copy of that article.

8. On March 24, 2022, I visited the website of Chalkbeat New York, which contained an article dated April 26, 2019, and entitled "Some New York City pre-K teachers set

to walk off the job in scaled-back strike" at the following URL: https://ny.chalkbeat.org/2019/4/26/21108050/some-new-york-city-pre-k-teachers-set-to-walk-off-the-job-in-scaled-back-strike. Attached as Exhibit G is a true and correct copy of that article.

9. On March 24, 2022, I visited the website of National Public Radio, which contains a webpage dated June 10, 2004 and an audio recording labelled "Daycare Workers Go on Strike in New York" at the following URL: https://www.npr.org/templates/story/story.php?storyId=1953187. The audio recording describes a three-day strike involving 7,500 daycare and pre-kindergarten employees in 2004, which left roughly 50,000 children without care during the strike.

10. A true and correct copy of a written agreement between Breaking Ground Housing Development Fund Corporation and Affiliates and DC 37, executed on October 5, 2021, is attached as Exhibit H. I was involved in the negotiation of that agreement.

11. A true and correct copy of a written agreement between the Center for Urban and Community Services and DC 37, executed on February 14, 2022, is attached as Exhibit J. I was involved in the negotiation of that agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2022 in New York, New York.

Rose Lovaglio-Miller

EXHIBIT A
TO R. LOVAGLIO-MILLER DECLARATION

The New York Times https://www.nytimes.com/2019/10/29/nyregion/union-housing-works-nyc.html

Housing Works Is Cast in Unusual Role: Corporate Overlord

Workers say the nonprofit has resisted their unionization efforts. Housing Works says that it isn't anti-union, but that a union wouldn't solve workers' concerns.

By Rebecca Liebson
Oct. 29, 2019

For more than three decades, Charles King has made it his business to fight for vulnerable New Yorkers, much of that time leading Housing Works, a nonprofit organization created in 1990 to find housing for homeless people who had H.I.V.

As Housing Works grew, so did its ambition. It began to provide various social services to homeless and low-income people affected by AIDS, while maintaining its activist roots in its fights with New York City for proper funding, or in its protests of Republican members of Congress who supported rolling back the Affordable Care Act.

But now Mr. King and Housing Works find themselves in an unusual position: Over 100 employees walked off the job on Tuesday to protest the organization's resistance to their bid to form a union.

The workers say that Housing Works's stance demonstrates the organization's embrace of corporate values, and is a betrayal of its core identity.

"Any organization that calls itself a social justice organization that champions itself as a vanguard of progressive ideals, they should be supporting and allowing workers to assert their rights through a union," said Elena Rodriguez, a lawyer at Housing Works who has aided the unionization efforts. "I don't think the two are at odds."

The walkout comes nearly a year after workers began organizing with the Retail, Wholesale and Department Store Union in an effort to get Housing Works to address a number of grievances — such as heavy caseloads, high insurance premiums and restrictions on paid time off — that they say have eroded the workplace culture and made it difficult to serve their clients.

Workers said they had hoped that Housing Works, which has hosted public events featuring labor leaders and demonstrated alongside unions, would be more supportive of their efforts.

Instead, they say Housing Works has employed hardball tactics that corporations often use in resisting unionization. For instance, it has hired a lawyer who specializes in union avoidance and has refused to hand over a list of employee contact information.

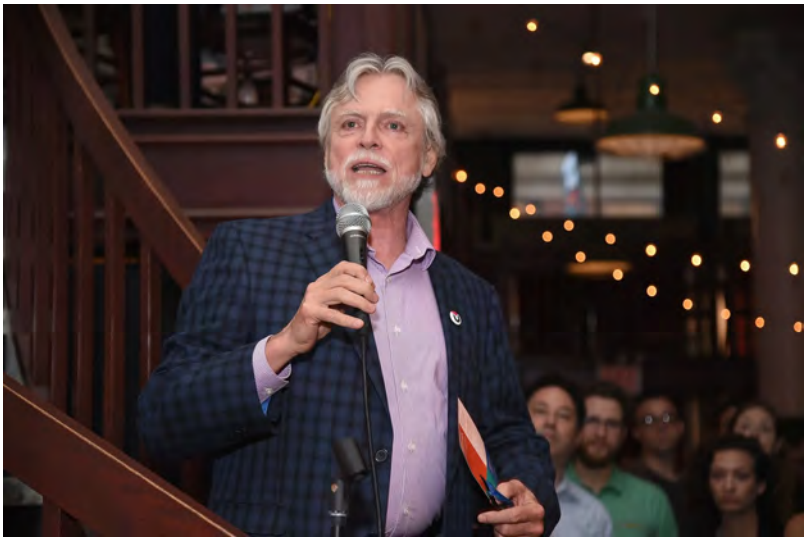
Stuart Appelbaum, president of the Retail, Wholesale and Department Store Union, said a major sticking point in the talks with Housing Works was the nonprofit's refusal to sign an agreement that would bar it from interfering in union organizing.

"Even large, for-profit entities that do not consider themselves progressive in any way agree to neutrality," he said.

Mr. Appelbaum said that his union had repeatedly tried to negotiate the terms of the agreement, but that Mr. King had not been receptive. The union also plans to file unfair labor practice charges against Housing Works, claiming it has intimidated workers before the walkout.

Mr. King says the agency has an open-door policy that gives workers access to management and encourages lower-level workers to share ideas and grievances. He said that Housing Works was not opposed in principle to signing a neutrality agreement, but that he believed that certain provisions in the agreement were biased in favor of the union.

"It's not for me to say that these employees should recognize this union as their bargaining entity," he said. "The union needs to do its job and sell itself to our employees."



Charles King, the chief executive of Housing Works, said he was not philosophically opposed to unionization, but doubted that a union would solve his workers' issues Gary Gershoff/Getty Images For Housing Works

Founded in 1990 at the height of the AIDS pandemic by Mr King and other leaders from the AIDS activist group Act Up, Housing Works set out to combat the virus by providing housing to homeless and low-income New Yorkers living with H.I.V.

Although it started as a small charity with only six employees, Housing Works has morphed into one of the largest comprehensive service providers in the nation for people with H.I.V., employing nearly 800 workers. This year, it merged with Bailey House, another service provider in New York. The organization funds its programs and advocacy work through grants and donations, as well as a sprawling retail operation that includes 13 thrift stores and one bookstore.

Mr. King acknowledges that the organization is changing, but denies that its leadership is anti-union. He says Housing Works has maintained the spirit of community through policies that encourage workers to share their ideas and concerns.

Not all of his employees agree. Ms. Rodriguez, the staff lawyer, said that landing a job there was a dream come true. But soon after she started, Ms. Rodriguez said, she noticed things that she believed contradicted the organization's progressive values. The tipping point for Ms. Rodriguez came about a year ago, after a colleague who was fired had to pack up her things in front of everyone in the office before being escorted from the building.

"It was really, really hard for us to believe that Housing Works would treat someone who was part of our staff and part of our family in such a heartless and sort of corporate way," she said.

Brian Grady, a housing coordinator, said that as a gay man, he was first attracted to Housing Works because of the legacy it earned during the AIDS pandemic. Although he enjoyed his work, Mr. Grady said the workload had begun to wear him down. For months, he was the only housing coordinator for a program with nearly 3,000 clients.

"It's difficult work," he said. "We work with people who are going through some of the worst times in their lives and are going through a lot of really unstable situations. As workers we take a lot of that home, especially when we're hearing these stories day after day with limited resources to help."

Part of the problem is high turnover. Workers said that the demanding nature of their jobs meant that people were frequently coming and going. According to Housing Works's 2019-20 strategic objective plan, its annual turnover rate is about 30 percent.

Ms. Rodriguez said the organization's high turnover rate hurt Housing Works's clients. She spoke about one client who was evicted and had to enter the shelter system because Housing Works could not find her a new home in time.

"Over the course of more than a year, I saw her shuffled to three new case managers," Ms. Rodriguez said, adding, "I can't help but think back to that client and wonder what we could have done better to assist her."

Mr. King said that he sympathized with workers' concerns, but that he doubted a union would be able to solve all of their issues.

"Housing Works already pays much higher than the average salary for community-based organizations in New York City and we already have much lower caseloads," he said. "So the likelihood that it's going to dramatically change, that is just not real in a Medicaid-funded program."

EXHIBIT B
TO R. LOVAGLIO-MILLER DECLARATION

QUEENS Daily Eagle

Opinion: Staff at legal services nonprofit Mobilization for Justice plan one-day strike

February 09, 2021

UNIONIZED STAFF AT MOB LIZATION FOR JUSTICE DISCUSSED THEIR PLAN STRIKE AT A VIRUTAL MEET NG TUESDAY. MAGE COURTESY OF STAFF

By The Unionized Staff at Mobilization for Justice

On February 9, 2021, the unionized employees of Mobilization for Justice, Inc. will go on a one-day strike in response to our employer's refusal to offer a contract reflecting basic respect and racial equity for our workers. Our shop is represented by the Legal Services Staff Association (LSSA), and includes attorneys, paralegals, organizers, and administrative professionals.

The workers at MFJ provide free legal assistance to thousands of low-income New Yorkers on a wide range of civil legal issues. We represent tenants facing eviction, homeowners facing foreclosure, students denied IEPs, refugees seeking asylum, people with disabilities facing discrimination, and many more.

After months of bargaining, MFJ management still rejects several of our key demands, including pay equity for non-attorney staff, the majority of whom are people of color and/or women. We have asked MFJ to change its policy of placing legal workers – paralegals, organizers, support staff – on entry-level salary scales when they come in with years of relevant experience, which has created a pay disparity at our organization.

Jones Day — told Black and Latina non-attorney members of the bargaining team point blank that their prior experience did not warrant placement on a higher pay scale.

That position is demoralizing to individuals, and perpetuates racist structures and policies in our workplace.

We demand that our employer give more than lip service to racial justice. They try to placate us with "Diversity, Equity, and Inclusion" conversations and Black History Month movie viewings, but what we really need is concrete action to correct inequitable wages that have persisted for years, and to recognize the value of our staff.

Our employer's efforts to divide us by pitting across-the-board raises against pay equity for legal workers will not break our unity, nor will it trick us into thinking they cannot afford to do both. The MFJ board has announced that it anticipates increased funding from the City for the Right to Counsel program, received a sizable Paycheck Protection Program loan (anticipated to be forgiven), and has plans to expand MFJ with a third office space. Despite our painstaking calculations to ensure that raises and pay parity are economically feasible, management will not acquiesce.

MFJ management has also failed to appropriately respond to our demand for increased freedom to work from home after the pandemic.

MFJ does not claim we failed to do our jobs or win cases for our clients throughout the COVID-19 crisis, but insists that we be present in our offices at least 4 days per week once they reopen. This rigid position ignores data that remote work can increase productivity and would force us back into constant commuting instead of spending more time with our families and caring for our mental health in our own spaces.

Much of our work entails helping our clients navigate rigid, oppressive systems that show them no flexibility in moments of crisis. We strive to give our clients a voice and demand that their humanity is recognized. Yet we find ourselves having to fight the same battle with our own employer, who takes the position that we can work from home 1 day per week after the pandemic, but that's it.

We care deeply about our clients, and we do not take any action that impacts them lightly. But it is precisely our commitment to our work, and to our communities and our families, that is why we fight hard for an excellent contract. We seek to ensure that MFJ retains staff who offer our clients the skill and expertise they deserve. Mobilization for Justice needs to remember that it is a nonprofit, and that the money it receives is meant for us, its workers, to enable us to meet the needs of low-income New Yorkers.

We are proud to be part of a wave of union activity across the nation, from the Hunts Point Strike in which food distribution workers fought for a $1 per hour wage increase, the unionization of the staff of The New Yorker and their subsequent 24-hour strike for pay equity, the Amazon workers in Alabama, and teachers unions all over the country. It is no accident that as the world and our workplaces change, workers are realizing how little their employers care for them, and are increasingly demanding recognition of their labor.

Law, Voices

Mobilization For Justice, Opinion, Strike

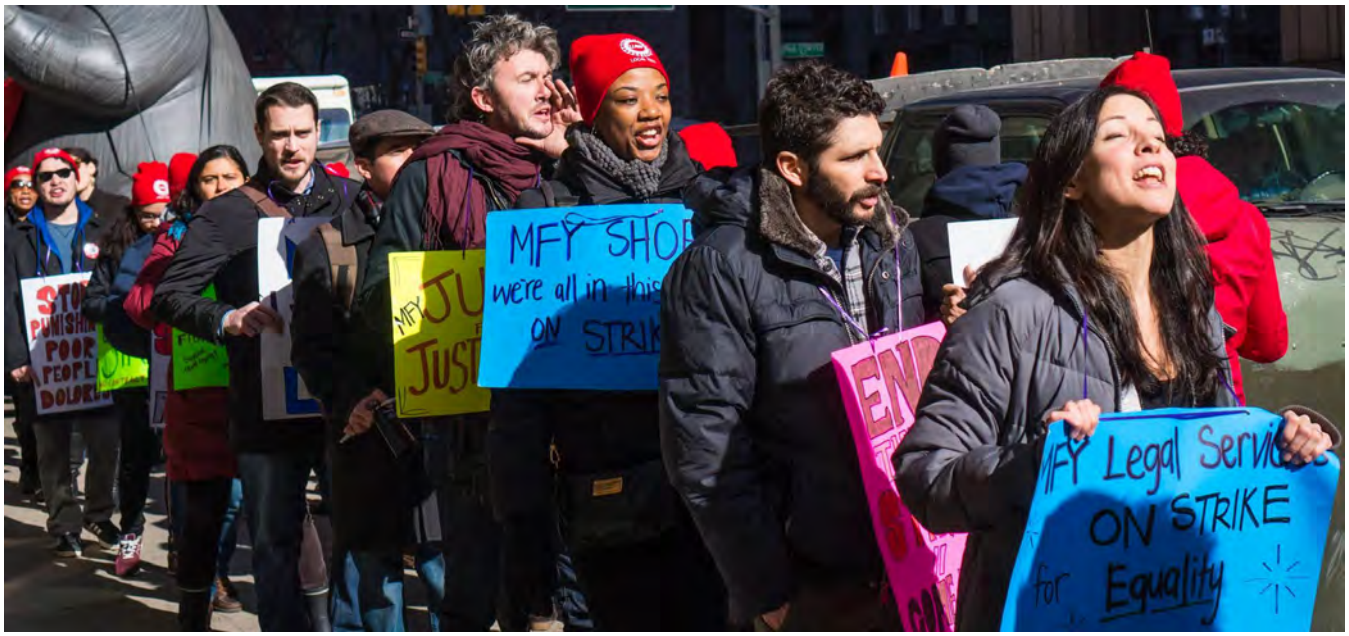
BELOVED BOARD OF ELECTIOI 'IT FELT MYSTICAL': ROOTS LEAD I

Back to Top

EXHIBIT C
TO R. LOVAGLIO-MILLER DECLARATION

LSSA 2320
Legal Services Staff Association

2015 MFY Strike



On January 30, 3015, the unionized employees of MFY Legal Services, Inc. (MFY) voted to reject management's contract offer and went on strike.

MFY's employees demanded a contract that ensured that low-income New Yorkers would be served by an experienced, knowledgeable staff. The union sought fair pay and manageable workloads for the organization's lowest-paid employees, family-

friendly policies, and other provisions to retain experienced staff and recruit new employees who reflect the diverse communities the organization serves.

“We are fighting for a contract that works for our clients, that works for our lowest paid and most vulnerable members, and that raises the working standards of legal services workers,” said Jota Borgmann, a Senior Staff Attorney in MFY’s Disability and Aging Rights Project. “Management, on the other hand, wants to lead a race to the bottom. By doing so, they refuse to acknowledge that quality work comes from retaining experienced workers and that a social justice organization must ensure justice in its own workplace.”

After a tremendous show of solidarity, and several weeks of record-breaking cold, on February 24th the union members of MFY ratified the tentative agreement reached with management late in the night of February 23rd. Our efforts during the strike won a contract that ensures our clients will be served by experienced staff, that creates a family-friendly workplace, and that respects the experience and dedication of our paralegals and administrative support staff.

https://t.co/2w7E27IBIa (follow us!),

This weekend, we are taking to the streets to keep people off the streets. Join the rally to Abolish Winter Evictio... https://t.co/GRYAGjJPDR (follow us!),

Connect with us!

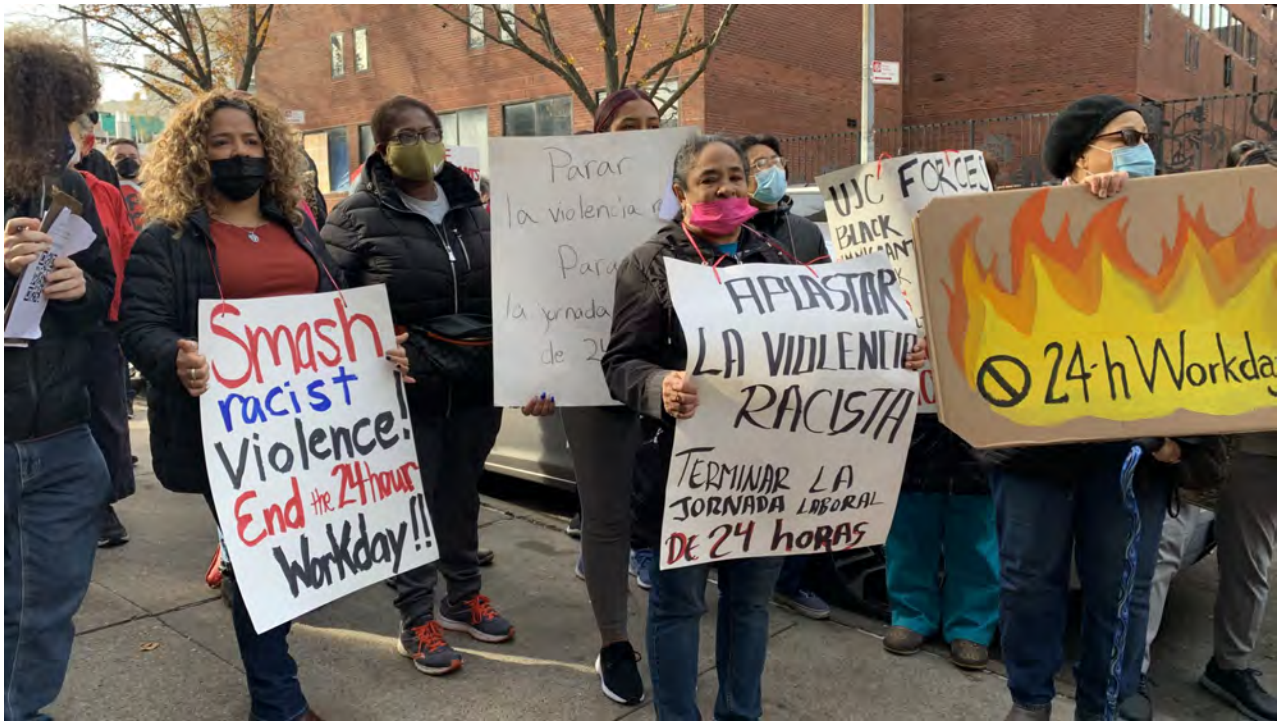
EXHIBIT D
TO R. LOVAGLIO-MILLER DECLARATION

peoples dispatch

Home care workers protest 24-hour work day in NYC

Workers rallied to demand unpaid wages from the United Jewish Council home care agency and an end to the 24-hour workday

December 16, 2021 by Monica Cruz



Home care workers and community members protest outside the United Jewish Council home care agency on December 16, 2021. Photo: Monica Cruz

Workers employed with the United Jewish Council (UJC) home care agency rallied to end the 24-hour work day and demand their stolen wages on the morning of December 16. While home care workers in New York are being forced to work 24-hour shifts for poverty wages, 11 hours worth of that pay is stolen by their employers. A coalition of worker's rights organizations including the Ain't I A Woman Campaign and the National Mobilization Against Sweatshops (NMASS) have been organizing alongside home care workers for years against these unjust labor practices.

"I am traumatized from working 24-hour shifts," said Epifania Hichez, who has worked at the UJC for 11 years. "Working 24 hours destroys your life. You lose everything, especially your health. You lose your family also."

She described how working these long hours can be deadly, "Years of 24-hour shifts killed my friend Ramona. That's why I say we must end this racist violence of 24 hours. Our lives matter."

Many workers shared the sentiment that their exploitation and long hours have roots in racist attitudes as the majority are majority Black, Latino and immigrant women.

"UJC thinks that people don't care about what happens to these home care workers but today there's such an outpouring of support from the community," Vicki, an organizer with the Ain't I A Woman Campaign, told Monica Cruz. She highlighted, "We're standing here with people of all races, workers of all trades, people who are here to say that the 24-hour work day has got to stop."

According to the organizer, "At every turn, UJC has done everything in their power to continue this violent practice. We've sent them letters that they've ignored, they've intimidated workers, and even before this action, they were tearing down our posters.

And to us this shows that they're scared because they know that the violence of the 24-hour shift is unacceptable."

In 2016, UJC home care workers filed a class-action lawsuit for unpaid wages, including 11 hours of regular and overtime pay. The NY State Court Appellate Division of the First Department ruled that the case could proceed in court, despite attempts by the UJC to block the lawsuit. In 2021, the UJC filed a motion to dismiss the lawsuit, claiming that its status as a nonprofit exempts it from paying the minimum wage and overtime pay. In September 2021, the Court denied this request.

Regardless of the back and forth in the court, the law is on the employer's side. New York State labor law currently allows home care workers to work 24 hour shifts while only being paid for 13. Organizers are advocating for a State Assembly bill that would require shifts with patients who need 24-hours of care to be split into two non-sequential 12-hour shifts. They are also supporting a bill in the State Senate that would require overtime to be voluntary.

More than one in seven low-wage workers in New York City is a home care worker. More than half rely on public assistance to get by and one in four live below the federal poverty line. This low pay is causing an understaffing crisis. It's projected that by 2025, there will be a shortage of 83,000 workers in the city.

This crisis is being seen across the country, as demands for home care services skyrocketed by 46% in 2020. The problem is likely to get worse as, by 2030, the number of Americans who are 65 years or older is projected to outnumber children for the first time in US history. Seven in ten of these elders will need long-term care at some point. Raising wages has been proven to curb turnover rates and improve care.

President Biden's Build Back Better bill would allot $150 billion to improve pay for low-wage home care workers, plus $1 billion for grants and $20 million for hospice and palliative nursing programs to benefit this essential workforce.

Howard Brandstein of Sixth Street Community Center said, "Home care workers are the ones who take care of our sick and elderly … They deserve to be paid well and not overworked so they can get the rest they need and we can get the best care for our loved ones."

Monica Cruz *is a reporter with US-based media outlet Breakthrough News.*

EXHIBIT E
TO R. LOVAGLIO-MILLER DECLARATION

AFSCME New Jersey holds unfair-labor-practice strike at SERV

insidernj.com/press-release/afscme-new-jersey-holds-unfair-labor-practice-strike-serv

September 7, 2021

September 7, 2021, 12:22 am | in

AFSCME New Jersey Council 63 brothers and sisters, joined by labor leaders and rank-and-file members from the New Jersey State AFL-CIO and affiliated unions, plus New Jersey Gov. Phil Murphy and other top state elected officials, held a one-day unfair labor practice strike on Labor Day 2021 at the SERV Mercer County office.

“It’s unthinkable that an organization like SERV that receives millions of dollars from the state of New Jersey will not treat its employees equitably with a good first contract,” New Jersey State AFL-CIO President Charles Wowkanech said. “These essential workers are caring for people who are going through difficult periods in their lives, and they deserve to be compensated fairly.”

AFSCME New Jersey represents more than 50 residential counselors and maintenance staff employed by SERV Mercer County in Ewing. New Jersey State Senate President and Ironworkers Brother Steve Sweeney, Assemblymen Wayne DeAngelo (IBEW) and Anthony

Verrelli (UBC), and state Sen. Shirley Turner joined the picket line in solidarity.

Residential counselors help clients with their behavioral health plans, monitor their medication, and provide on-site behavioral health care. They transport and accompany clients to medical appointments, shopping and other outings. They also keep accurate records of progress and implement crisis management procedures during psychiatric emergencies.

Pay rates for the same jobs are different at SERV's facilities elsewhere in New Jersey.

Negotiations with the behavioral health provider began in late July 2020 and have dragged on for over a year with little to no progress. SERV officials have given no indication that they intend to negotiate a fair contract, and they have hired Jackson Lewis, the country's largest union-busting law firm, to represent them.

EXHIBIT F
TO R. LOVAGLIO-MILLER DECLARATION

‘Historic’ Deal Brokered With One, But Work Stoppage, Strike Still An Option For Others

ctnewsjunkie.com/2021/09/30/historic-deal-brokered-with-one-but-work-stoppage-strike-still-an-option-for-others

By Lisa Backus September 30, 2021

SEIU members protest for better pay in front of the state Department of Social Services building on Farmington Avenue in Hartford, Connecticut. Credit: Shana Sureck / SEIU

A strike was averted at a string of group homes after the owners brokered a “historic” union contract that gives workers raises, more affordable health insurance and better retirement benefits during a 15-hour negotiation session, officials said.

But, members of the New England Health Care Employees Union issued strike notices Wednesday to two other companies that run group homes and will proceed with a work stoppage Tuesday at a fourth company unless progress is made in negotiations, officials said.

The strike planned for Network, Inc. was called off after the company agreed to a 17% increase for less experienced workers, bringing their pay to $17.25 an hour by July 2022. More experienced workers will get 5% increases in 2021 and 2022, according to the terms of the new contract union officials said. Network, Inc. officials did not respond to an emailed request for comment late Wednesday afternoon.

The agreement will take more than 300 group home workers out of poverty and sets the stage for other group home contracts to follow suit, Rob Baril, president of the union, said.

“We are hopeful that this becomes the settlement pattern,” Baril said.

Group home workers take care of clients with intellectual and physical disabilities who may need assistance in every aspect of their daily activities.

Workers at Network, Inc. group homes have been working without a contract since March. Under the deal the company will pick up between 70 and 90% of workers’ health care premiums and increase the employers’ pension contribution to 9.5%. The contract is retroactive to July 2021 and will expire in March of 2023.

“This is a great victory,” said Yvonne Dimmett who works four jobs at various group homes including Network, Inc. “I haven’t seen anything like this working in this field for 35 years.”

Another 300 union members who work at Whole Life, Inc. are prepared to strike on Oct. 5 unless contract negotiations with that agency moves forward, union officials said. The union’s contract with Whole Life, Inc. ran out in 2019, officials said.

The union also issued strike notices Wednesday to Sunrise Northeast and Alternative Services for a work stoppage that is slated to start on Oct. 12.

Those strikes would impact 260 union members, Baril said.

Union members have gone with raises for about 15 years, workers said. At Sunrise Northeast, “The cost of health insurance is twice of what they are making,” Baril said. “This is why workers have decided to strike.”

The union represents about 3,000 group home workers who are employed by 20 agencies throughout the state, Baril said. Most of agencies are in contract negotiations with the union, but Baril declined to comment on which contracts were likely to settle quickly.

Group home workers threatened to strike in June but that action was averted when the state promised $184 million for increased wages and benefits.

It was up to the group home owners to negotiate with the union and then apply for the state funding, Baril said. In most cases, that hasn't happened leading workers to vote in favor of striking, he said.

It's not unusual for group home workers to work multiple jobs to make ends meet, Baril said. In some cases workers are mandated to stay an extra 8 or 16 hours or they are required to work 32 hours straight, he said.

But they receive little in pay and benefits said Sherri Nash who provides direct support to group home clients. "I know what it's like to go to the pharmacy to pick up a prescription for my son and to have to walk away without that prescription," said Nash who called the contract with Network, Inc. "historic."

The union is seeking a pathway to $20 an hour to employees who provide direct care to group home occupants and $30 an hour for licensed practical nurses who provide support to group homes.

Union members also want more affordable health care, retirement benefits, better staffing and more respect for the job they do, union officials said.

More than 3,400 workers from the same union were threatening to strike at 33 nursing homes on May 14 but all of the work stoppages were averted as state officials have offered more money to workers and nursing-home owners.

"We are writing a new chapter for long-term care services in Connecticut," Baril said.

"Working together with the state and operators on the problem of poverty wages, unaffordable health care for caregivers, retirement opportunities and dignity in the workplace, we are ever closer to a full transformation of the long-term care sector."

More Health Care News & Analysis

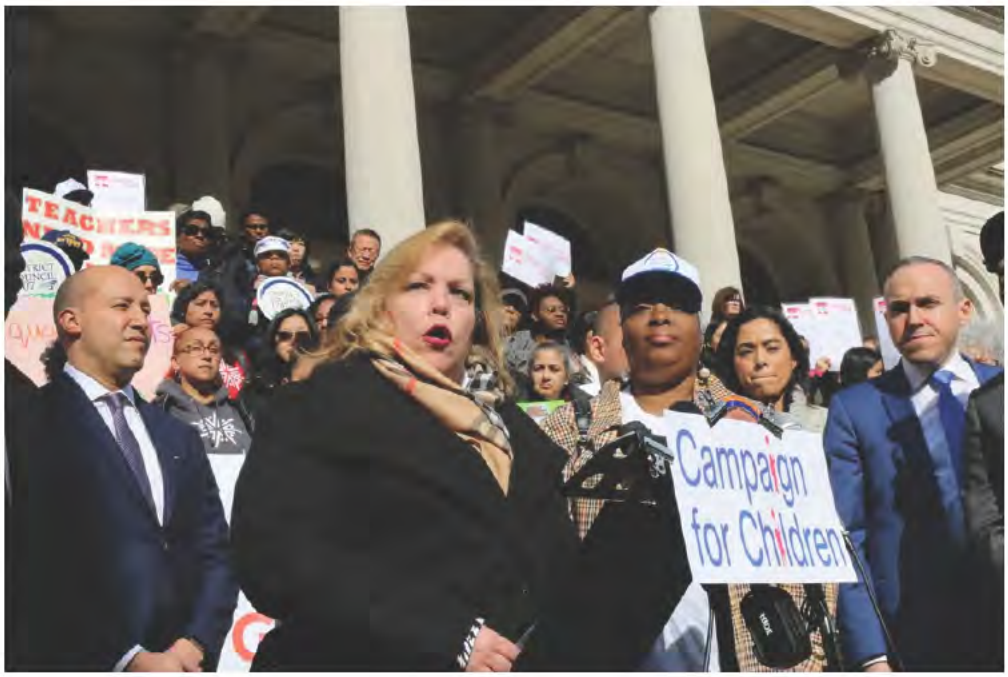
EXHIBIT G
TO R. LOVAGLIO-MILLER DECLARATION

Chalkbeat
NEW YORK

EARLY CHILDHOOD

Some New York City pre-K teachers set to walk off the job in scaled-back strike

By Christina Veiga | Apr 26, 2019, 7:06pm EDT



Kim Medina, the head of District Council 1707, speaks at a rally in March at City Hall to demand that pre-K teachers in community organizations are paid equally to education department teachers.

| Christina Veiga/Chalkbeat

Thousands of pre-K teachers in New York City are set to strike on Thursday, but the union representing educators who work in community-run centers stopped short of calling for all of its 7,500 members to walk off the job.

Teachers are expected to rally on Thursday at noon on the steps of City Hall. But the decision to dial back the size of the action raises questions about how many teachers will join and could soften the impact of the union's action.

Driving the work stoppage is a demand for higher pay. The teachers represented by District Council 1707 work in community-run centers and earn up to 60 percent less than their peers in public school classrooms.

Whatever the size, a strike threatens to tarnish Mayor Bill de Blasio's signature educational achievement — free, universal pre-K for all of the city's 4-year-olds — just as he weighs a bid for the White House. While the teachers aren't city employees, the city holds the purse strings for their pay. That's because the centers they work in, mostly nonprofits, are largely funded through city contracts.

The pay divide is especially glaring because teachers in community-run centers are often women of color, while the majority of teachers in public schools are white. Ultimately, teachers are required to earn the same credentials regardless of the setting they work in.

"My members understand that this administration only gives lip service to women of color," union leader Kim Medina said at a recent rally on the steps of City Hall.

Medina had said she hoped to work out the union's differences with the city to avert a work stoppage. De Blasio suggested a day ago there was "real dialogue happening" and said there was "a good chance" of coming to an agreement.

But on Friday, the union tweeted that its members would strike — if only some of them.

The problem: Some members are covered by a labor agreement that prohibits a work stoppage. That agreement covers most members of Local 205.

The local's bargaining agreement runs through 2020, but teachers are hoping for a raise now because the city is in the midst of "re-bidding" its early childhood education contracts — and because the mayor and council are currently negotiating next year's budget. Advocates say it's the perfect moment to build in extra funding for pay parity.

A union spokesman said DC 1707 had hoped that the Day Care Council of New York would reopen its labor agreement to renegotiate pay. Reopening the contract, the union believes, would afford their members protection from being penalized for walking out.

But the Day Care Council, which represents the boards of nonprofit providers, refused.

"We cannot enable disruption of essential child care services for families and their providers," Nilesh Patel, an attorney for the council, wrote in an email.

The contract governing Local 95, whose members work in centers funded mostly through federal Head Start dollars, is expired. Those members — who number about 3,000, according to the union — are being encouraged to walk off the job.

A partial strike is surprising, given that members of both locals voted last month to approve a work stoppage. Still, it's possible many teachers governed by the no-strike clause will leave their classrooms anyways. Many have tacit backing from their employers, who say the salary gap makes it hard to hold onto teachers who could make tens of thousands of dollars more working in city classrooms.

"They're not necessarily taking a position on the action because it's an action that's coming from the workers," said Gregory Brender, co-director of policy and advocacy at United Neighborhood Houses, which represents childcare providers. "But the goal of salary parity is something that they strongly" support.

Alan van Capelle, head of the nonprofit Educational Alliance, which enrolls hundreds of students in its preschools, recently told Chalkbeat that he plans on paying his teachers for the day they'll miss while demonstrating.

“I absolutely support the right of our teachers to go out on strike to achieve what I truly believe is rightly theirs,” van Capelle said. “I’m sick and tired of our agency and our talented staff doing the work, and not getting adequately compensated.”

Even non-unionized teachers are planning to join the action.

Alice Mulligan, who runs a pre-K center in Brooklyn where teachers aren’t unionized, has launched a grassroots effort to organize schools like hers. She recently told Chalkbeat that she is encouraging her staff to walk out, and she expects other operators to do the same.

“I really feel like this is our chance,” she said. “This is our moment now, and I think it’s going to require a full, focused effort. And we’re up for the fight.”

EXHIBIT H
TO R. LOVAGLIO-MILLER DECLARATION

VOLUNTARY RECOGNITION AGREEMENT

This voluntary recognition ("Agreement") is between **District Council 37,** AFSCME, AFL-CIO, its affiliates, assigns and successors ("Union") and **Breaking Ground Housing Development Fund Corporation and Affiliates** (collectively, "Breaking Ground", its assigns and successors (the "Employer")), (together the "Parties"). The Parties enter into this Agreement as a demonstration of good faith to create a respectful atmosphere which does not negatively impact the morale, or the vital human services provided by the covered employees to the city of New York and its citizens.

1. **Coverage:** This Agreement shall apply with respect to employees in the following job titles: 311 Dispatcher, Case Manager, Engineer, Harm Reduction Specialist, Housekeeper, Housing Advocate, Housing and Reporting Specialist, Housing Specialist, Maintenance Worker, Office Manager, Outreach Case Manager, Painter, Porter, Rent Administrator, Residential Aide.

   The following employees are excluded from this Agreement: All other employees including Superintendent, Facilities Maintenance Supervisor, Maintenance Supervisor, Street Medicine Team Liaison, Confidential, Management, and Supervisors; and employees of the Employer who are represented by the Hotel Trades Council as of September 30, 2021.

2. **Term**: This Agreement shall remain in effect until the parties execute a collective bargaining agreement with a recognition clause that is consistent with this Agreement.

3. **No-Strike/No-Lockout:** During the term of this Agreement, the Union shall not promote, organize, instigate, encourage or support any work stoppage, strike, or other activity disruptive of the Employer's operations or the provision of services. The Employer shall not engage in any lockout, partial or otherwise.

4. **Union Access to Employees:** The Union shall be entitled to designate representatives per location, who shall be entitled to access the Employer's property for the purpose of communicating with Employees included in Paragraph 1 above, during non-work hours, which shall include periods immediately before or after work hours and during meals or other breaks in non-work areas and/or during such other periods as the parties may mutually agree upon in non-work areas. The Union shall not interfere with the normal operation of Employer's business. Within five business days of executing this Agreement, the Employer shall provide the Union, in electronic format, a list of all Employees names, titles, shifts, worksite address, residential addresses, emails and work and personal telephone numbers.

5. **Neutrality and Non-Disparagement:** While this Agreement is in effect, the Parties shall maintain an atmosphere of decorum and respect in their dealings and communications with and about each other, and shall not disparage the other in written or oral communications. The parties acknowledge that the Employer currently utilizes temporary employees, including but not limited to employees hired through third-party employment agencies. However, the Employer agrees that use of temporary employees, will not be utilized to supplant permanent employees in titles represented by the Union or to erode the bargaining unit. The Employer agrees to remain neutral regarding the question of Union representation of any of its unorganized non-managerial, non-supervisory and non-confidential employees. The Employer agrees that it shall direct its officers, managers, supervisors and agents that they shall not comment or communicate, directly or

indirectly regarding approval or disapproval as to union membership or representation. Likewise, the Employer shall not provide assistance to any individual or group who may wish to pursue an anti-union or pro-union campaign nor shall the Employer engage or otherwise employ a consultant or agent whose charge is to design and/or implement a campaign to dissuade employees from selecting the Union as their collective bargaining representative. The Parties shall not retaliate, discipline, threaten, coerce or discharge any Employee for exercising any federal or state rights, excepting those prohibited by Section 3 hereto. Within three business days of the execution of this agreement, the parties shall provide a joint communication to that effect to the Employees.

6. **Recognition:** The parties agree to designate a mutually agreed upon Arbitrator to conduct a review of the Employees' authorization cards and/or petitions and membership information submitted by the Union in support of the Union's claim to represent a majority of the Employees. The Arbitrator shall conduct a count by checking the cards and/or petitions against the list of Employees and by comparing the Employees' names and signatures appearing on the cards and/or petitions to the names and signatures appearing on the employment documents supplied to the Arbitrator by the Employer. At the conclusion of the count, the Arbitrator shall inform the parties of the results of his count and shall certify in writing that either the Union has or has not been selected by a majority of eligible Employees as their collective bargaining representative. Both the Employer and the Union agree to abide by the determinations made by the Arbitrator regarding any challenges either to the validity of the cards and/or petitions, and/or to the majority status of the Union. If that review establishes that a majority of such Employees has joined the Union or designated the Union as their collective bargaining representative, the Employer will recognize the Union as such representative of such Employees. Any issues or disputes relating to this section shall be submitted to the Arbitrator for resolution. The parties shall equally share the cost of resolving any such disputes.

7. **Agreement not to Organize:** The Union agrees that it shall not, directly or indirectly, seek to or actually organize, represent or admit to membership the job classifications currently employed at Breaking Ground Headquarters ("Headquarters") located at 505 8th Avenue, New York, NY and Asset Management ("Asset Management") located at 520 8th Avenue, New York, NY . In the event that employees in classifications covered by Paragraph 1 above are employed at either of those locations, those employees will be represented by the Union. The term "organize" shall include, but shall not be limited to, encouraging or inducing employees employed in the job classifications at Headquarters and Asset Management referenced above, to organize or to engage in other activities protected by Section 7 of the National Labor Relations Act.

b. The Union shall not induce, encourage, solicit or assist any other labor organization, worker advocacy group or other entity to attempt to organize employees in the job classifications at Headquarters and Asset Management referenced above or to engage in any of the other conduct described in Section 7(a) above.

c. The Employer represents that the classifications covered in Paragraph 1 above are not employed at Headquarters or Asset Management and the Union hereby disclaims any interest in representing any of the job classifications at Headquarters and Asset Management referenced above and it shall not assist any Breaking Ground employees to organize or obtain

representation by the Union or any other labor organization. In the event that the Union should be approached by any employee at Headquarters or Asset Management regarding representation, the Union may state only that it cannot, represent or admit to membership any employee at Headquarters and Asset Management. The Union further agrees that it shall not refer the employee to any other labor organization.

d. The parties agree that this paragraph shall survive and remain in effect for a period of five (5) years from the date of signing of this agreement.

e. This Agreement shall be binding upon the Union's officers, officials, other agents, affiliates, attorneys and successors.

f. The Union agrees that the restrictions on its activities set forth in this Agreement are reasonable and supported by valuable consideration.

g. The Union expressly agrees that this Agreement may be introduced into evidence in any NLRB or Court proceeding to establish the existence of the Union's waiver of the right to represent employees at Headquarters or Asset Management.

8. **Good Faith Bargaining:** Should the Union obtain recognition, the Parties shall negotiate in good faith for the purpose of reaching agreement over the Employees' terms and conditions of employment including but not limited to under what, if any, circumstances temporary employees shall be employed through third-party agencies. The *status quo* shall be maintained regarding mandatory subjects of bargaining for the Employees covered by this voluntary recognition Agreement until the Parties have executed a collective bargaining agreement.

9. **Dispute Resolution:**

In the event that a dispute arises concerning a breach of this Agreement, the matter will be resolved through final and binding expedited arbitration as follows:

a. The initiating party shall notify the other in writing of the claimed violation.

b. The initiating party shall contact Arbitrators _____ to determine their availability. The Arbitrator with the first availability will be engaged to arbitrate the dispute. Should none of the Arbitrators be available within sixty (60) calendar days to hear the dispute, the parties shall select an Arbitrator who is a member of the National Academy of Arbitrators in accordance with the Labor Arbitration Rules of the American Arbitration Association ("AAA") who can hear and determine the case on an expedited basis. The parties agree that a transcript of the hearing will be prepared.

c. Following the close of the hearing, the parties shall have seven (7) days to file briefs.

d. Within seven (7) days following the submission of briefs, the Arbitrator shall issue a decision in writing with a brief explanation of the basis therefor. The Arbitrator's ruling shall be final and binding on the parties.

e. The parties may mutually agree to extend any time limits set forth in this procedure.

f. The Arbitrator's jurisdiction shall be limited to determining whether a party has breached the provisions of this Agreement and, in the event of a breach, to provide a remedy therefor. Subject to Paragraph 10 below, the Arbitrator shall have no jurisdiction or authority to alter, amend, limit or expand any party's rights or obligations under this Agreement. No party shall defend against an alleged breach on the grounds that any portion of this Agreement is illegal or that the complained of conduct was privileged or protected by statute or common law.

g. The Arbitrator shall have the authority to remedy any violation of this Agreement by issuing a cease and desist order, and by awarding damages. The parties agree that the Arbitrator shall award a minimum of $5,000 damages for each day of violation of this Agreement. The Arbitrator shall further order reasonable attorney's fees and costs to the prevailing party.

h. The Arbitrator's decision may be enforced in any court of competent jurisdiction. The court shall order that the non-prevailing party in an action brought to enforce an Arbitrator's decision pay the prevailing party's reasonable attorneys' fees and costs.

10. In the event that any part of this Agreement is found to be unlawful or overbroad by the NLRB or a Court, it will not affect the validity of the remaining provisions, and the unlawful provision shall be changed and interpreted by the NLRB or the Court so as to best accomplish the objectives of the provision within the limits of applicable law. Should the NLRB or the Court refuse to take such action, then the parties shall promptly revise the provision to eliminate the illegality or overbreadth. Should the parties be unable to reach agreement on the revision to the provision, they will submit said dispute to expedited interest arbitration.

11. **Savings Clause:** In the event any portion or provision of this agreement is determined by a Court of Law or other judicial or quasi-judicial adjudicative body to be void or unenforceable, all other provisions of this agreement shall survive and remain in effect to the maximum extent.

12. Withdrawal of Representation Petition: Upon execution of this agreement, the Union agrees to withdraw, withdraw with prejudice, the representation petition 02-RC-282729 currently pending with the National Labor Relations Board.

By affixing their signatures below, the representatives of the Parties warrant they have authority to bind their respective organizations and hereby bind the Parties to the terms set forth herein.

Dated: 10/5/21

For the Union: Patrick Gallagher, title: Asst. General Counsel, DC-37

For the Employer: [signature], title: Pres & CEO

EXHIBIT J
TO R. LOVAGLIO-MILLER DECLARATION

LABOR PEACE AND VOLUNTARY RECOGNITION AGREEMENT

This Labor Peace and Voluntary Recognition Agreement ("Agreement") is between **District Council 37,** AFSCME, AFL-CIO, its affiliates, assigns and successors ("Union") and **Center for Urban Community Services** ("CUCS" or "Employer"), (together the "Parties"). The Parties enter into this Agreement as a demonstration of good faith to create a respectful atmosphere which does not negatively impact the morale, or the vital human services provided by the covered employees to the city of New York and its citizens.

1. **Coverage:** This Agreement shall apply with respect to employees employed as Administrative Assistant, Data Entry Assistant, non-program Special Assistant, Case Manager in all levels, HRC Consultant, MOC Housing Analyst, Office Manager in all levels, Peer Specialist, ACT Registered Nurse, Social Worker in all levels, Special Assistant, SSI Specialist or Therapeutic Activities Specialist ("Employees").

   The following employees are excluded from this Agreement:

   Per Diem employees, Confidential Employees, Managers and Supervisors; and all employees assigned to the Administrative, Fiscal, Quality Assurance, Human Resources, IT, Executive Office and PPOH departments. The Parties acknowledge that the exclusion of the Per Diem Employees only applies to this Agreement and to no other future communications, negotiations, bargaining, or agreements of any kind between the Parties, including but not limited to any "Recognition" clause in any future collective bargaining agreement.

2. **Term:** This Agreement shall remain in effect until the parties execute a collective bargaining agreement with a recognition clause that is consistent with this Agreement.

3. **No-Strike/No-Lockout:** During the term of this Agreement, the Union shall not promote, organize, instigate, encourage or support any work stoppage, strike, or other activity disruptive of the Employer's operations or the provision of services. The Employer shall not engage in any lockout, partial or otherwise.

4. **Union Access to Employees:** The Union shall be entitled to designate representatives for each of the Employer's locations who shall be entitled to access the Employer's property for the purpose of communicating with Employees subject to the following terms. Notifications of visits by such representatives shall be made to the location's Program Director no less than 2 business days in advance. Visits shall take place during employees' non work time and shall be limited to non-work spaces including but not limited to conference rooms. Notifications of visits shall provide the name and contact information for the Union representative. The Parties understand and agree that the Employer maintains satellite operations at the following locations: Bronx VA Hospital, Brooklyn VA Hospital, Manhattan VA Hospital, Workforce 1 on Fordham Road and on Rikers Island. The parties acknowledge that CUCS does not own or control the satellite locations and will use best efforts to facilitate access to employees at such locations. The Union shall not interfere with the normal operation of Employer's business. Within five days of executing this Agreement, the Employer shall provide the Union, in electronic format, a list of all Employees names, titles, worksite address, residential addresses,

personal email and personal telephone numbers to the extent the Employer maintains this information.

5. **Neutrality and Non-Disparagement:** While this Agreement is in effect, the Parties shall maintain an atmosphere of decorum and respect in their dealings and communications with and about each other and shall not disparage the other in written or oral communications. The Parties acknowledge that the Employer currently utilizes Per Diem Employees. The Employer agrees to remain neutral regarding the question of Union representation of any of its unorganized non-managerial, non-supervisory and non-confidential employees. Likewise, the Employer shall not provide assistance to any individual or group who may wish to pursue an anti-union or pro-union campaign nor shall the Employer engage or otherwise employ a consultant or agent whose charge is to design and/or implement a campaign to dissuade employees from selecting the Union as their collective bargaining representative. The Parties shall not retaliate, discipline, threaten, coerce or discharge any Employee for exercising any federal or state rights, excepting those prohibited by Section 3 hereto. The Parties shall issue a joint communication agreed upon by the Parties regarding this Agreement. The Parties shall issue the communication via email to Employees no sooner than 72 hours following execution of this Agreement.

6. **Recognition:** The parties agree to designate a mutually agreed upon Arbitrator to conduct a count by checking the cards and/or petitions against the list of Employees and by comparing the Employees' names and signatures appearing on the cards and/or petitions to the names and signatures appearing on the employment documents supplied to the Arbitrator by the Employer. The list of Employees shall include Employees employed as of the payroll period preceding the filing of the Petition in 2-RC-289636. At the conclusion of the count, the Arbitrator shall inform the parties of the results of the count and shall certify in writing that either the Union has or has not been selected by a majority of eligible Employees as their collective bargaining representative. Both the Employer and the Union agree to abide by the determinations made by the Arbitrator regarding any challenges either to the validity of the cards and/or petitions, and/or to the majority status of the Union. If that review establishes that a majority of such Employees has joined the Union or designated the Union as their collective bargaining representative, the Employer will recognize the Union as such representative of such Employees. Any issues or disputes relating to this section shall be submitted to the Arbitrators designated in Paragraph 8 hereto for resolution. The Parties shall equally share the cost of resolving any such disputes.

7. **Good Faith Bargaining:** Should the Union obtain recognition the Parties shall negotiate in good faith for the purpose of reaching agreement over the Employees' terms and conditions of employment. The Parties shall comply with the National Labor Relations Act.

8. **Dispute Resolution:**

In the event that a dispute arises concerning a breach of paragraphs 3, 4, 5 and 6 of this Agreement, the matter will be resolved through final and binding expedited arbitration as follows:

a. The initiating party shall notify the other in writing of the claimed violation.

b. The initiating party shall contact Arbitrators Robin Gise and Lisa Charles to determine their availability. The Arbitrator with the first availability will be engaged to arbitrate the dispute. The Arbitrator's jurisdiction shall be limited to determining whether a party has breached the provisions of this Agreement and, in the event of a breach, to provide a remedy therefor. Subject to Paragraph 9 below, the Arbitrator shall have no jurisdiction or authority to alter, amend, limit or expand any party's rights or obligations under this Agreement. No party shall defend against an alleged breach on the grounds that any portion of this Agreement is illegal or that the complained of conduct was privileged or protected by statute or common law.

9. In the event that any part of this Agreement is found to be unlawful or overbroad by the NLRB or a Court, it will not affect the validity of the remaining provisions, and the unlawful provision shall be changed and interpreted by the NLRB or the Court so as to best accomplish the objectives of the provision within the limits of applicable law. Should the NLRB or the Court refuse to take such action, then the parties shall promptly revise the provision to eliminate the illegality or overbreadth. Should the parties be unable to reach agreement on the revision to the provision, they will submit said dispute to expedited interest arbitration.

10. **Labor Peace Agreement:** This Agreement shall constitute a Labor Peace Agreement as contemplated by Local Law 87 of 2021 codified in New York Administrative Code Section 6-145. The Union shall promptly, upon receipt of a request from CUCS execute any attestations in connection with Local Law 87. CUCS shall certify to New York City that the Parties have entered into a Labor Peace Agreement.

11. **Savings Clause:** In the event any portion or provision of this agreement is determined by a Court of Law or other judicial or quasi-judicial adjudicative body to be void or unenforceable, all other provisions of this agreement shall survive and remain in effect to the maximum extent.

12. Withdrawal of Representation Petition: Upon execution of this agreement, the Union agrees to withdraw, withdraw with prejudice, the representation petition 02-RC- currently pending with the National Labor Relations Board.

By affixing their signatures below, the representatives of the Parties warrant they have authority to bind their respective organizations and hereby bind the Parties to the terms set forth herein.

Dated: February 14, 2022

For the Union: _____, title: Assistant General Cousel
Patrick Gallagher

For the Employer: _____, title: CEO + President