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April 13, 2022

VIA ECF

The Honorable Paul G. Gardephe  
United States District Court Judge  
United States District Court, Southern District of New York  
40 Foley Square, Rm. 2204  
New York, NY 10007

Re: Human Services Council v. City of New York, 21-CV-11149 (PGG)

Dear Judge Gardephe:

We represent plaintiff Human Services Counsel of New York (“HSC”), and write in opposition to the letter motion of proposed intervenor District Council 37 (“DC37”) for leave to submit opposition papers to HSC’s preliminary injunction motion. DC37 has not been granted the status of a party, and the Court should not retroactively accept DC37’s opposition papers.

DC37 has nothing relevant to add to this case (*see* HSC’s March 25, 2022 Memorandum of Law in Opposition to the Motion of District Council 37 for Permissive Intervention, ECF No. 37 at 24-25), and its proposed filing of more than 100 pages of materials underscores the point. DC37’s proposed opposition brief is virtually identical in substance to the City’s opposition brief. They both address the same topics, cite the same principal cases, and rely on the same March 25 FAQs relied on by the City. It’s pure duplication.

DC37 also proposes to file two declarations that would confuse matters by injecting factual issues irrelevant to the preliminary injunction analysis. The declarations attach cherry-picked agreements, newspaper articles, and union press releases, all regarding matters unrelated to Local Law 87 or its passage. In the event the Court accepts DC37’s proposed declarations, we ask that the Court also consider the attached proposed reply declaration of Michelle Jackson, which provides factual background showing that matters raised by DC37 are mere distractions.

Respectfully,



Claude M. Millman

Enclosure

cc: All counsel (via ECF)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
HUMAN SERVICES COUNCIL OF NEW YORK : : 21-cv-11149-PGG  
Plaintiff, :  
versus :  
The CITY OF NEW YORK, :  
Defendant. :  
-----X

**DECLARATION OF MICHELLE JACKSON**  
**IN REPLY TO THE OPPOSITION OF DC37**  
**TO THE MOTION OF HSC FOR PRELIMINARY RELIEF**

MICHELLE JACKSON, declares under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Executive Director of the Human Services Council of New York (“HSC”). I am also an attorney admitted to practice law in the State of New York, and I submit this reply declaration in connection with HSC’s motion to preliminarily enjoin the enforcement of Local Law 87. I have submitted two prior declarations in support of HSC’s motion for preliminary relief. This third declaration is submitted in response to District Council 37 (“DC37”), which is seeking to intervene in this action, and has asked the Court to consider – retroactively – DC37’s papers in opposition to HSC’s motion for preliminary relief. In this declaration, I am providing factual

background information to assist the Court in understanding why DC37's factual assertions are mere distractions from the issues before the Court on HSC's motion for a preliminary injunction.

DC37's Declarations Are of No Value to the Court

2. DC37's declarations are essentially vehicles for the submission of documents.

They are not a fair sampling of documents. They are cherry-picked.

3. Moreover, the exhibits to the declarations have nothing to do with Local Law 87.

In its submissions in this case, HSC addressed, among other things: (i) Whether a private purchaser of services such as day care, home care, etc., would ever impose requirements on an organizational service provider that are similar to those that the City has sought to impose on HSC's members through Local Law 87. (The answer is "No.") (ii) Whether the "thumb on the scale" that the City is imposing on HSC's members, through Local Law 87, will affect the relationships between those nonprofits and labor union leaders (and the City). (The answer is "Yes, those relationships will be disrupted.") The exhibits to DC37's declarations shed no light on these kinds of issues.

4. While DC37 presents declarations attaching union-employer agreements, newspaper articles, and union press releases, it presents no proof that any of this information was considered by the City Council or the Mayor in enacting Local Law 87. I attended the principal City Council hearing regarding Local Law 87. The text of the Law and its legislative history show that Local Law 87 was passed at the request of DC37 for the purpose of expanding the union's power over City contracting, union organizing, and negotiations with the City regarding the City's own labor issues. Much of this was confirmed, upon the Law's enactment, by DC37, the City Council Speaker, and the Mayor, with the latter stating that the Law would ensure that New York City is a "union town." Even if DC37's materials showed that the City Council **should have been**

concerned about service continuity, and **should have** enacted Local Law 87, primarily to address that concern, nothing in DC37's declarations or exhibits suggest that the Council or the Mayor were motivated by that issue.

5. To the extent any factual development is needed in this matter, it would be far more relevant for DC37 (and the City) to produce to HSC (and, ultimately, the Court) information about DC37's role in the enactment of Local Law 87. DC37 reported to State and City lobbying regulators that it lobbied the City for Local Law 87's passage, and publicly stated that it participated in the drafting of the Law. To the extent any information from DC37 is placed before the Court, details about DC37's legislative lobbying would be more useful to the Court's understanding (if any more is needed) as to why the City enacted the Law. The communications between DC37 and the individuals who, at the time, were the Council Speaker, the Mayor, the Council Members, and the Commissioner of the Office of Labor Relations (who collectively bargains with DC37 regarding City employees) would likely confirm what is apparent from the text of Local Law 87 and the public admissions of the union and City: the Law was enacted to empower unions.

DC37's Selection of Union-Employer Agreements

6. The declaration of Amy Gladstein ("Gladstein Declaration" or "Gladstein Decl.") submitted by DC37 contains little unique substance and primarily serves as a conduit for the submission of agreements that Local 1199 SEIU negotiated with various employers. At best, those exhibits indicate that, when a large percentage of employees of some organizations support the organizing efforts of Local 1199, every once in a while, Local 1199 accepts "no strike" provisions in its agreements. DC37 has not presented any "neutrality" agreement entered into by a human

services provider with a union that does not represent a substantial number of the provider's employees, in circumstances where a funder threatened to withdraw funding from the provider if the provider could not produce such an employer-union agreement.

7. Some of the documents attached to the Gladstein Declaration show why Local Law 87 presents great concerns for the human services providers that would be subject to the Law. For example, the documents show that employers that entered into agreements with unions used their rights under the NLRA to place limits on the union leaders' demands on issues such as "workplace access." The employers were able to negotiate limitations because there was no governmental regulator, such as the City, favoring the union over the employer. Local Law 87 and the City's March 2022 "FAQs" create a predicament for nonprofits. They do not know if they can insist on similar limitations without being deemed in breach of the Law if the unions, empowered by the City, reject them.

DC37's Selection of Newspaper Articles and Union Press Releases

8. The declaration of Rose Lovaglio-Miller ("Lovaglio-Miller Declaration" or "Lovaglio-Miller Decl.") submitted by DC37 contains even less substance. It simply attaches newspaper articles and union press releases. Apparently, Ms. Lovaglio-Miller seeks to prove that, every once in a while, there are disputes between unions and employers in the human services sector. My prior declarations, however, focused on a different, and more relevant point: service disruption. I made the point that, prior to the passage of Local Law 87, the City was not suffering from disruptions in the human service delivery for which the City contracted on account of labor disputes occurring during union organizing campaigns (*i.e.*, prior to the employees' endorsement of a union). None of the articles or press releases attached by Ms. Lovaglio-Miller suggest

otherwise. Indeed, many of them indicate that, when employees unionize, unions sometimes threaten to strike, even after a collective bargaining agreement is reached. This is consistent with Ms. Gladstein’s admission that “most of the agreements I have experience with do not include an explicit restriction on the right to strike.” (Gladstein Decl. ¶ 4.)

9. Many of the articles support points that I have previously made. For example, Gladstein exhibit G states that a union was urging the City to support wage increases for workers employed at nonprofits because “the city holds the purse strings for their pay.”

DC37’s Suggestion that the Unions Have Agreed to Act in Good Faith

10. DC37 makes the incorrect assertion that a union seeking to organize workers at a nonprofit under Local Law 87 has an obligation to deal with the nonprofit employer in “good faith” because a “duty of good faith and fair dealing” is implied in every contract. This contention depends on a misunderstanding of the facts. Under Local Law 87, if a union leader – of any union – informs the nonprofit that the leader wants to organize the nonprofit’s workers, the nonprofit must obtain the union leader’s signature on an “attestation” – regardless of whether the union represents any of the nonprofits’ employees, and regardless of whether the union and the nonprofit have entered into any agreement. Accordingly, in this factual scenario, the union is not party to a contract that could give rise to a “duty of good faith and fair dealing.” One of the many problems with Local Law 87 is that it does not require that a union leader act in “good faith.”

I declare under penalty of perjury that the statements above are true and correct.

Dated: New York, New York  
April 13, 2022

*/s Michelle Jackson*  
MICHELLE JACKSON