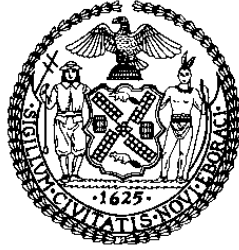


Committee on Civil Service and Labor
Nuzhat Chowdhury, *Legislative Counsel*
Thomas Nath, *Policy Analyst*
Nevin Singh, *Financial Analyst*



The Council of the City of New York

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

Jeffrey Baker, *Legislative Director*
Andrea Vazquez, *Deputy Director for Human Services*

COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. I. Daneek Miller, *Chair*

July 29, 2021

PROPOSED INT. NO. 2252-A:

The Speaker (Council Member Johnson) and Council Members Rosenthal, Riley, Ayala, Ampy-Samuel, Rose, Moya, Gibson, Treyger, Kallos, Grodenchik, Brannan, Van Bramer, Brooks-Powers, Gennaro, Dinowitz, Cornegy, Reynoso, Chin, Rivera, Salamanca, Cumbo, Koslowitz, Louis, Rodriguez, Vallone, Powers, Miller and Rosenthal

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to requiring city human services contractors to enter into labor peace agreements

ADMINISTRATIVE CODE:

Amends Chapter 1 of Title 6 by adding new section 6-145

INTRODUCTION

On July 29, 2021, the Committee on Civil Service and Labor, chaired by Council Member I. Daneek Miller, will hold a vote on Proposed Introduction No. 2252-A, sponsored by Speaker Corey Johnson, which relates to requiring city human services contractors to enter into labor peace agreements.

The Committee previously held a hearing on the legislation on May 5, 2021. At the hearing, the Committee heard testimony from the Mayor's Office of Policy and Planning, the New York City Economic Develop Corporation, labor unions, human services organizations, city service contractors, and other interested stakeholders and parties.

BACKGROUND

The Need for Labor Peace Agreements

The COVID-19 pandemic and subsequent economic downturn has reinforced the importance of job and income security for workers. While unions and collective bargaining play essential roles in ensuring these rights for workers, union membership has been in steady decline since the 1970s, and has been exacerbated by the pandemic.¹ 2020 marked the third year in a row that union membership fell in New York City to a rate of 22%.² Recent reports of union-busting and interfering with workers' attempts to organize present further obstacles to labor rights in the coming years.³

¹ *New York Times Data Points*, "The Shrinking American Union", Feb. 7, 2015, available at: <https://www.nytimes.com/2015/02/08/business/the-shrinking-american-labor-union.html>

² Madore James T., "Union Membership Falls In New York City For The Third Year," *Newsday*, Jan. 26, 2021, available at: <https://www.newsday.com/business/coronavirus/union-membership-labor-jobs-employment-1.50131887>

³ Streitfield, David, "How Amazon Crushes Unions," *NYTimes*, Mar. 16, 2021, Available at: <https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html>

Over the past several decades, unions have increasingly turned to legislation in order to protect their ability to organize and empower workers.⁴ A key form of this legislation occurs in the form of mandatory labor peace agreements.⁵ Labor peace agreements can vary widely, but generally involve concessions made by both employers and labor organizers to reach a consensus wherein workers can unionize freely so long as they abide by certain guidelines.⁶ While the United States has no federally mandated labor peace agreements, multiple municipalities, including New York City, have some form of law or ordinance requiring labor peace agreements in a given industry or sector.⁷

Labor Peace Agreements

Generally speaking, a labor peace agreement (LPA) is an arrangement between a labor union and an employer in which both sides agree to waive certain rights under federal law with regard to union organizing and related activity.⁸ During such agreements, employers agree to “maintain a neutral posture” at union efforts to organize employee, meaning they agree to not hinder or disrupt the organizing process, while the union in turn agrees to not go on strike or otherwise stop work.⁹ LPAs can be helpful to workers and unions in the unionization process, but likewise can benefit employers by ensuring work will continue regardless of labor negotiations.¹⁰

⁴ *Labor Peace Agreements*, U.S. Chamber of Commerce, 2016, available at <https://www.uschamber.com/sites/default/files/documents/files/laborpeaceagreements.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See David Wirtz, *Certain Large New York City Employers Must Enter Labor Peace Agreements*, *SHRM*, Aug. 15, 2015, available at <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/nyc-labor-peace-agreements.aspx>.

¹⁰ See *Union Organizing in the Cannabis Industry: What Every Cannabis Employer Should Know about Labor Peace Agreements*, *FisherPhillips*, May 29, 2020, available at [https://www.fisherphillips.com/news-insights/union-organizing-in-the-cannabis-industry-what-every-cannabis-employer-should-know-about-labor-peace-agreements.html#:~:text=A%20labor%20peace%20agreement%20\(LPA,strike%20or%20otherwise%20stop%20work..](https://www.fisherphillips.com/news-insights/union-organizing-in-the-cannabis-industry-what-every-cannabis-employer-should-know-about-labor-peace-agreements.html#:~:text=A%20labor%20peace%20agreement%20(LPA,strike%20or%20otherwise%20stop%20work..)

Although many LPAs are negotiated voluntarily between unions and employers, often state and local governments will pass local ordinances to ensure LPAs as a condition of doing business at a facility or a project in which the government holds a “proprietary interest.”¹¹ In other words, the government entity will require those doing business at a government location or those conducting business with the government while receiving financial assistance from it—including by receiving grants, loans, contracts, or as a part of a procurement policy—to sign an LPA with a union.¹²

Often, the local laws specifically address what concessions employers are to make to unions; this can include recognizing the union by card check instead of a secret ballot election, remaining neutral to unionization, giving outside union organizers access to the workplace, and providing workers’ personal contact information to the union.¹³ These concessions are often actions that employers are not otherwise required to take or honor under the National Labor Relations Act (NLRA).¹⁴ In return for employers’ agreement to allow the above, unions are required by LPAs to agree that they will not strike, picket, or otherwise disrupt the workplace.¹⁵ The overall purpose of these labor peace ordinances is for the government to encourage employers to allow their workers to organize, while also ensuring that there will be minimal or no labor disruptions during that time.¹⁶

State and Local Labor Peace Ordinances

¹¹ *Labor Peace Agreements*, U.S. Chamber of Commerce, 2016, available at <https://www.uschamber.com/sites/default/files/documents/files/laborpeaceagreements.pdf>.

¹² *Id.* at 6.

¹³ *Id.* at 3 and 4.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 5.

Such labor peace ordinances have been passed in multiple jurisdictions nationwide and typically involve hotels, restaurants, casinos, other hospitality facilities, and airports, although “any facility that receives public funding or some other assistance from a nonfederal government entity” can be the subject of such a law.¹⁷ San Francisco, for example, has had LPAs as far back as 1980, when the San Francisco Redevelopment Agency required the Marriott corporation to sign an LPA to develop property on city-owned land.¹⁸ The agreement included both a card check recognition and a neutrality provision.¹⁹

In 1998, San Francisco passed another labor peace ordinance, this one applicable to any hotel and restaurant project in which the city asserted a proprietary interest.²⁰ In this case, “proprietary interest” included any situation in which the city “received significant ongoing revenue (such as rent) under a lease . . . ongoing payments to cover debt service . . . or the city agreed to underwrite or guarantee the development of a hotel or restaurant project” and any covered hotel or restaurant project was required to sign a card check agreement with any union that requested one.²¹ San Francisco additionally has labor peace ordinances covering airports contacts.²² Labor peace ordinances can be found in jurisdictions all over the country; they have, for example, also been enacted in Washington D.C., Pittsburgh, Baltimore, Los Angeles, Las Vegas, Portland, Minneapolis, Seattle, and more.²³

Currently, New York, along with Maryland, is one of only two states that has a state-issued labor peace law.²⁴ New York State has its own labor peace law, which covers hotels and convention

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 5.

²¹ *Id.* at 4.

²² *Id.* at 14.

²³ *Id.* at 13-15.

²⁴ *Id.* at 13.

centers specifically.²⁵ The law applies to a hotel or convention center which employs more than 15 people and in which a state agency asserts a proprietary interest.²⁶ The law requires an LPA under which unions agree to “refrain from engaging in labor activity that will disrupt the hotel’s operations, including strikes, boycotts, work stoppages, corporate campaigns, picketing or other economic action against the covered project.”²⁷

Labor Peace Agreements in New York City

Much of the legal framework surrounding labor peace agreements in New York stems from legislation and executive orders issued at the state level. In addition to New York State’s labor peace law covering hotels and convention centers, the state also requires labor peace agreements as part of its 2021 legalization of recreational marijuana, and also had previously instated a requirement for medical marijuana establishments.²⁸

The most prominent City-specific action on labor peace agreements thus far is Executive Order No. 19 of 2016, which was issued by Mayor Bill de Blasio on July 24, 2016.²⁹ Executive Order No. 19, which required that certain developers of economic development projects receiving \$1 million or more in financial assistance from the City requires large retail and food service tenants to enter into labor peace agreements with labor organizations seeking to represent employees working at these projects.³⁰ The agreement must contain a neutrality provision for the employer with respect to an employee’s decision to join a union or not, as well as a commitment

²⁵ *Id.* at 9.

²⁶ *Id.* at 9.

²⁷ *Id.* at 9.

²⁸ *New York’s Adult Use Cannabis Law: Embracing Labor Peace Agreements*, JD Supra, Apr. 29, 2021, available at <https://www.jdsupra.com/legalnews/new-york-s-adult-use-cannabis-law-1192749/>; Collins, Patrick M, *New York Legalizes Recreational Marijuana: Altered States for Employers*, National Law Review, Apr. 9, 2021, available at <https://www.natlawreview.com/article/new-york-legalizes-recreational-marijuana-altered-states-employers>.

²⁹ *Executive Order No. 16*, City of New York Office of the Mayor, Jul. 14, 2016, available at https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2016/eo_19.pdf/.

³⁰ *Executive Order No. 16*, City of New York Office of the Mayor, Jul. 14, 2016, available at https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2016/eo_19.pdf/.

by the labor organization to refrain from picketing, work stoppages, boycotts, or other economic interference.³¹

ANALYSIS OF LEGISLATION

Analysis of Proposed Int. No. 2225-A

A Local Law to amend the administrative code of the city of New York, in relation to requiring city human services contractors to enter into labor peace agreements

This bill would require City human services contractors and certain subcontractors to enter into labor peace agreements with labor organizations seeking to represent their employees rendering services under City human services contracts. During such agreements, employers agree to maintain a neutral posture at union efforts to organize employee, meaning they agree to not hinder or disrupt the organizing process, while the union in turn agrees to not go on strike or otherwise stop work.

The human service contracts impacted would include but are not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs. The bill would exempt building service employees and subcontractors whose principal purpose is to provide supplies, or administrative services, technical support or other similar services that do not directly relate to the performance of human services.

No later than 90 days after the award or renewal of a human services contract, the contractor would be obligated to submit an attestation that 1) the employer has entered into one or

³¹ *Id.*

more labor peace agreements with a labor organization, or 2) no labor organization has sought to represent their employees. Such attestation shall be updated annually.

The bill would take effect 90 days after it becomes law.

From introduction, Proposed Int. No. 2252-A has been amended to remove the provision requiring LPAs of certain city economic development projects and to clarify which human service contractors this bill applies to and which groups are exempted from the requirement. The revised bill also clarifies the definition of subcontractor within the parameters of this legislation, provides additional guidance on the comptroller's powers to investigate violations and issue remedies and sanctions for those violations, and includes that city human services contractors must submit an attestation within 90 days of being awarded a city contracted even if they have not been approached by a labor organization seeking an LPA.

Int. No. 2252-A

By The Speaker (Council Member Johnson) and Council Members Rosenthal, Riley, Ayala, Ampry-Samuel, Rose, Moya, Gibson, Treyger, Kallos, Grodenchik, Brannan, Van Bramer, Levine, Brooks-Powers, Gennaro, Dinowitz, Cornegy, Reynoso, Chin, Rivera, Salamanca, Cumbo, Koslowitz, Louis, Rodriguez, Vallone and Powers

A Local Law to amend the administrative code of the city of New York, in relation to requiring city human services contractors to enter into labor peace agreements

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-145 to read as follows:

§ 6-145 Labor peace agreements for human services contracts. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Building service employee. The term “building service employee” means any person, the majority of whose employment consists of performing work in connection with the care or maintenance of a building or property, including but not limited to a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

City service contract. The term “city service contract” means any written agreement, except an emergency contract procured pursuant to the procedure set forth in section 315 of the charter, between any person and a contracting agency whereby:

1. a contracting agency is committed to expend or does expend funds;
2. the principal purpose of such agreement is to provide human services; and
3. the value of the agreement is greater than the city’s small purchase limit set pursuant to section 314 of the charter.

City service contractor. The term “city service contractor” means any person that enters into a city service contract with a contracting agency. A person shall be deemed a city service contractor for the duration of the city service contract that such person enters into.

City service subcontractor. The term “city service subcontractor” means any person, including, but not limited to, a temporary services, staffing or employment agency or other similar entity, that pursuant to an agreement with a city service contractor, performs any of the services to be rendered pursuant to a city service contract, except that the term “city service subcontractor” shall not include any person who enters into a contract with a city service contractor the principle purpose of which is to provide supplies, or administrative services, technical support services, or any other similar services to such city service contractor that do not directly relate to the performance the human services to be rendered pursuant to such city service contract. A person shall be deemed a city service subcontractor for the duration of the period during which such person performs subcontracted services under the city service contract.

Comptroller. The term “comptroller” means the comptroller of the city.

Contracting agency. The term “contracting agency” means the city, a city agency, the city council, a county, a borough, or other office, position, administration, department, division, bureau, board, commission, corporation, or an institution or agency of government, the expenses of which are paid in whole or in part from the city treasury, or the department of education.

Covered employer. The term “covered employer” means a city service contractor or a city service subcontractor.

Covered employee. The term “covered employee” means 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.

Human services. The term “human services” means social services contracted for by an agency on behalf of third party clients including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs.

Labor organization. The term “labor organization” has the same meaning as set forth in subdivision (5) of section 152 of title 29 of the United States code.

Labor peace agreement. The term “labor peace agreement” means 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:

1. 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; and

2. includes any other terms required by rules promulgated pursuant to paragraph 2 of subdivision d of this section.

b. (1) No later than 90 days after the award or renewal of a city service contract or approval of a city service subcontractor, such covered employer, shall either:

(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.

(2) Where a labor organization seeks to represent the covered employees of a covered employer after the expiration of the 90-day period following the award date of the city service contract or the approval of a city service subcontractor, and the labor organization has provided notice to the contracting agency and the covered employer regarding such interest, the covered employer shall then 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 labor peace agreement negotiations have not yet concluded.

c. 1. Prior to the award or renewal of a city service contract, the bidder or proposer seeking award or the city service contractor seeking renewal shall provide the awarding contracting agency a certification containing the following information:

(a) The name, address and telephone number of the chief executive officer of the bidder or proposer seeking award, or the city service contractor seeking renewal, as applicable;

(b) A statement that, if the city service contract is awarded or renewed, the bidder or proposer seeking award, or the city service contractor seeking renewal, as applicable, agrees to comply with the requirements of this section, and with all applicable federal, state and local laws;
and

(c) A record of any instances during the preceding five years in which the bidder or proposer seeking award, or the city service contractor seeking renewal, as applicable, has been found by a court or government agency to have violated federal, state or local laws regulating labor relations, in which any government body initiated a judicial action, administrative proceeding or investigation of the bidder, proposer, or city service contractor in regard to such laws.

The certification shall be signed under penalty of perjury by an officer of the bidder, proposer, or city service contractor and shall be annexed to and form a part of the city service contract. The certification and the city service contract shall be public documents, and the contracting agency shall make such documents available to the public upon request for inspection and copying pursuant to article six of the public officers law.

2. A city service contractor shall each year throughout the term of the city service contract submit to the contracting agency an updated version of the certification required under paragraph one of this subdivision, and identify any changes from the previous certification.

d. 1. The comptroller shall monitor, investigate and audit the compliance by all contracting agencies, and provide covered employers and covered employees with the information and assistance necessary to ensure that the provisions of this section are implemented.

2. The 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.

3. The comptroller and the mayor shall ensure that the information set forth in the certifications required to be submitted under subdivision c of this section is integrated into and contained in the database established pursuant to subdivision b of section 6-116.2.

4. The comptroller shall submit annual reports to the mayor and the city council summarizing and assessing the implementation and enforcement of this section during the preceding year and include such information in the report required pursuant to subdivision f of section 6-116.2.

e. 1. Contracting agencies shall comply with and enforce the requirements of this section.

2. The contracting agency shall state in the solicitation for each city service contract that the city service contract shall include:

(a) a requirement that the city service contractor comply with all applicable requirements under this section and any rules promulgated pursuant to this section, and that such requirements constitute a material term of the city service contract;

(b) the certification required under subdivision c of this section; and

(c) a provision providing that: (i) Failure to comply with the requirements of this section may constitute a material breach by the city service contractor of the terms of the city service contract; (ii) Such failure shall be determined by the contracting agency; and (iii) If the city service contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 days of such notice or a longer time period established pursuant to the terms of the city service contract, the city shall have the right to pursue any rights or remedies available under the terms of the city service contract or under applicable law, including termination of the contract.

f. 1. Whenever the comptroller has reason to believe that a covered employer or other person has not complied with the requirements of this section, or upon a verified complaint in writing from an interested party, the comptroller shall conduct an investigation to determine the facts relating thereto. Based upon such investigation, the comptroller shall report the results of

such investigation to the contracting agency. Based on the contracting agency's own findings or as a result of the comptroller's investigation, the contracting agency may, where appropriate, issue an order, determination or other disposition. Such disposition may:

(a) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(b) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered employer;

(c) Find the city service contractor to be in default or otherwise terminate the applicable city service contract;

(d) Withdraw approval of a city service subcontractor;

(e) Assess actual and consequential damages; or

(f) Enter an agreement with the city service contractor allowing the contractor to cure the violation.

In assessing an appropriate remedy, due consideration shall be given to the size of the covered employer's business, the covered employer's good faith, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping, reporting or other requirements.

2. Before issuing an order, determination or any other disposition, the contracting agency shall give notice thereof together with a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person or covered employer affected thereby. The mayor or contracting agency, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and recommended disposition. Such covered employer shall be notified of a hearing date by the office

of administrative trials and hearings and shall have the opportunity to be heard in respect to such matters.

3. When, pursuant to the provisions of this section, a final disposition has been entered against a covered employer in two instances within any consecutive six year period determining that such covered employer has failed to comply with the requirements of this section, such covered employer, and any principal or officer of such covered employer who knowingly participated in such failure, shall be ineligible to submit a bid or proposal on or be awarded any city service contract for a period of five years from the date of the second disposition.

4. Each city service contract shall provide that, in circumstances where a city service contractor fails to perform in accordance with any of the requirements of this section and there is a continued need for the service, a contracting agency may obtain from another source the required service as specified in the original city service contract, or any part thereof, may charge the non-performing city service contractor for any difference in price resulting from the alternative arrangements, may assess any administrative charge established by the contracting agency, and may, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

§ 2. (a) This local law takes effect 90 days after it becomes law, provided that this local law shall not apply to awards or renewals of city service contracts prior to the effective date of this local law, and provided further that the mayor, or a designee of the mayor, may promulgate any rules necessary for implementation of this local law and take any other measures as are necessary for its implementation, prior to such date.

(b) For the purpose of this section, the term “city service contract”, shall be defined in accordance with the definition in section 6-145 of the administrative code.

MHL/LCB
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LS #545/Int. 1804-2017