

Testimony of Liz Vladeck
Senior Labor Policy Advisor to the First Deputy Mayor

Before the Committee on
Civil Service and Labor

Introduction 2252

May 5, 2021

Good morning, Chair, Speaker and members of the Committee on Civil Service & Labor. My name is Liz Vladeck, I serve as the Senior Labor Policy Advisor to the First Deputy Mayor. Thank you for the opportunity to testify today on Introduction 2252, sponsored by Speaker Johnson, which would require employers at certain city economic development projects and city human services contractors to enter into labor peace agreements. With me here today is Krishna Omolade, Vice President of the Strategic Investment Group and Executive Director of NYCIDA and Build NYC within the Economic Development Corporation.

I'd like to begin our testimony with a quick lookback at this Administration's record in advancing a progressive pro-labor agenda for NYC. This Administration has worked with its municipal union partners to settle two rounds of contracts with NYC's workforce, reaching collective bargaining agreements which span between 11 and 13 years for most employees, and revitalizing collaborative relationships with our union partners. Under this Mayor, we have introduced new protections for our workforce, including paid parental leave and family leave, and expanded paid leave during the COVID-19 pandemic, again in cooperation with organized labor and covering the vast majority of City workers.

And we have been similarly determined when it comes to strengthening protections for workers in the private sector. From paid sick leave, to fair scheduling, and freelance worker protections, and as recently as last week with the passage of retirement security legislation, we have made great strides in raising workplace standards, especially for workers of color, women and immigrant workers. These accomplishments in particular would not have been possible without the support of the City Council, for which I thank every one of you present here today.

This Administration has also made significant investments, with the support of the Council, in the work of our non-profit partners. As of Fiscal Year 2021 (FY21), the City budget includes over \$700 million in new investments in the nonprofit sector made during the Administration. These investments provide resources to ensure that the nonprofit human service organizations that NYC relies on can deliver high-quality services to vulnerable New Yorkers.

Further, just two weeks ago, the Mayor and the Speaker announced a \$120M investment to cover indirect rates, which helps pay for rent and other key services. In 2019, the Administration committed to Pay Parity for our certified early childhood education teachers, which will take full effect by October 2021. This is a historic investment that fulfills the promise made by the Mayor and City Council to the provider community during summer 2019.

Now let me specifically address Labor Peace Agreements. The Mayor strongly believes in workers' right to organize and has used the powers of his office to support this right wherever he can/is appropriate. At his request, our Office of Labor Relations has frequently stepped in to assist private sector employers and unions representing their workforce in resolving labor disputes, and he has actively used his bully pulpit to emphasize how critical these rights are. The Mayor signed Executive Order 19 in 2016, which obligates certain developers of economic and housing development projects receiving financial assistance from the City to require large retail and food service establishments to enter into labor peace agreements with labor organizations that seek to represent their employees who work on the premises of such projects.

Now I want to turn to Introduction 2252. This bill would require City human services contractors to enter into labor peace agreements with labor organizations that seek to represent their employees rendering services under City human services contracts. It would mandate that recipients of financial assistance from economic development projects require tenants, concessionaires, and contractors (including subcontractors) to sign labor peace agreements with labor organizations seeking to organize these parties' workforces. The bill sets forth enforcement authority for the comptroller to audit contract compliance with the provisions and perform an investigation in response to a verified complaint. The Administration supports the intent of the bill. However, there are some areas we'd like to continue working with the Council on as this bill moves forward. It is a very complex bill, but we do have some preliminary thoughts.

Most important for today's purpose is to recognize the great range and diversity of services and work represented by the contracts that would be covered by this bill. For example, strictly with respect to human services providers, there are dozens of agencies overseeing contracts with hundreds of providers, and each contract has its own characteristics that could be impacted differently by a bill like this one. We must ensure that we've established sufficient facts on the ground with respect to this universe, to be confident that final legislation is sufficiently tailored to these facts to achieve the bill's stated objective, and to eliminate or minimize unintended consequences

Thank you for the opportunity to testify today. I'd like to conclude by committing on behalf of the Mayor to continue working with the Council to ensure the final draft of this bill will accomplish our shared goals of a more fair, equitable City that effectively and efficiently delivers critical services to all New Yorkers.



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Testimony of Homeless Services United before the Committee on Civil Service and Labor

May 5, 2021

My name is Catherine Trapani, and I am the Executive Director of Homeless Services United (HSU). HSU is a coalition of approximately 50 non-profit agencies serving homeless and at-risk adults and families in New York City. Each day, HSU member programs work with thousands of homeless families and individuals, preventing shelter entry whenever possible and working to end homelessness through counseling, social services, health care, legal services, and public benefits assistance, among many other supports.

I offer this written testimony in response to Intro 2252, a bill that would require nonprofit human services providers to enter into “peace agreements” with labor organizations as a condition of their contracts. Because this bill was introduced and this hearing was calendared so quickly, we have not yet had the chance to talk with the Council about the negative impact this bill would have on our sector. In the pages that follow, we’ve outlined areas of the legislation that contain language that is ambiguous and how that ambiguity could have unintended consequences. We believe that this bill could create unfunded mandates, introduce outsized penalties on nonprofit organizations which are not contemplated for economic development entities and, could weaken the entire nonprofit sector. Critical and mandatory services for homeless New Yorkers could ultimately be undermined and the City’s ability to uphold the right to shelter would be at risk.

In thinking about what the legislative intent might be, the hope is that the goal is to protect the rights of workers and ensure that they are fairly and appropriately compensated for their work. This is a goal that we absolutely share. The Council is no doubt aware that the City sets the funding levels for human services providers and wages are based on those funding levels. Therefore, **the only way to remedy the issue of low pay and sub-optimal benefits for the workforce would be to open up the “model budgets” that dictate wage ranges and renegotiate funding levels to raise wages for human services workers and lift the cap of fringe benefits that is currently baked into agency fiscal manuals (the rate for DHS is 26%).**

We strongly urge the Council to set aside a meaningful pot of funding to address wage parity in the FY22 Budget.

Our second recommendation, would be to amend intro 2252 so that instead of introducing new, blanket mandates on all human services providers which necessitate numerous contract amendments and expensive (unfunded) administrative burdens, the Council should take a more targeted approach to address the relationship between labor organizations and nonprofits. Some of our members already work with labor organizations and others do not. We understand and respect that some workers may wish to join a union and others do not. Preemptively requiring peace agreements may conflict with the National Labor Relations Act¹ however, if the intent of this bill is to ensure that nonprofits do not interfere with

¹ <https://www.foxrothschild.com/publications/nyc-%E2%80%99labor-peace%E2%80%99-order-may-clash-with-federal-law/>

workers' rights to organize it should be so amended and the scope should be limited to cases where there is an active effort to organize staff. In such cases, **the City should be required to provide funding for any new obligations that arise from the requirements of this legislation and, if funding is not available, those obligations should be waived.**

Additional details about the impact of this bill are below. Thank you for the opportunity to submit testimony. Should you have any questions, I can be reached at ctrapani@hsunited.org.

Impact of Intro 2252 on Human Services Providers

Background:

Executive Order No. 19 of 2016 mandates that certain developers of economic development projects receiving \$1 million or more in financial assistance from the City must require large retail and food service tenants to enter into labor peace agreements with labor organizations seeking to represent their employees working on the premises of such development projects. This bill would expand the labor peace requirement to additional employers at such economic development projects, including other tenants, subtenants and concessionaires. This bill would also require City human services contractors to enter into labor peace agreements with labor organizations seeking to represent their employees rendering services under City human services contracts.

It is unclear what problem this bill seeks to solve. Work stoppages and strikes are exceedingly rare in our sector.

Applicability:

"Covered Employers" (pg. 2 lines 16-18)

This bill would apply to entities that enter into "Human Services Contracts" including both primary contractors and sub-contractors (with the exception of sub-contractors that simply provide goods or general services). Any substantial service subcontracted out by the primary service provider such as medical assistance, temporary staffing or other services would be required to comply with this law. The Primary contractor would not be permitted to work with sub-contractors who did not comply with the requirements of this law. This could create situations where **a nonprofit would have difficulty meeting the requirements of this law and/or meeting the requirements of their contract if there is a dearth of subcontractors with specialized skills that are willing or able to comply with this law.** It would be particularly challenging to ensure contractual obligations were met in a crisis. For example, at the height of the COVID-19 pandemic, many nonprofits relied on temp agencies to ensure adequate site coverage; if those agencies didn't have a pre-existing peace agreement in place, the service provider would have been in violation of this section.

"Covered Employees" (pg. 2 lines 19-23)

Covered employees include any staff member of the contractor or subcontractor that "directly renders human services in performance of a city service contract". It is unclear what "directly renders human services" means. This definition seems to exclude administrative employees, certain supervisors and, building services staff such as security and maintenance however, it is not clear that nonprofits could pick and choose which staff a union would or wouldn't seek to represent. There may also be situations where a nonprofit would have to negotiate with multiple unions to ensure all employees are covered by

a peace agreement substantially increases administrative burdens and costs of labor lawyers and other resources.

Obligations:

Nonprofits and subcontracts would be required to enter into a “labor peace agreement” with a labor organization “that represents” employees who perform the type(s) of work to be performed pursuant to the city services contract. **The parties would have to “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.” This obligation essentially takes the ability of the workers to strike off the table. In order to get labor to consent to this, presumably, labor leaders would want some other assurances from the nonprofit including but not limited to wage, benefit or work rule enhancements or concessions.**

Nonprofits do not have flexibility in their budgets to raise wages and benefits. Fringe benefits are capped at 26% on all DHS contracts, wages are set based on model budget funding levels.

Work rule demands may disrupt existing service models by forcing uniformity on job descriptions across the sector and could otherwise limit a program’s ability to adapt practices or assign additional or different duties as needed.

Page 3, line 9 describes the obligation applying when the labor organization “seeks to represent” its covered employees. “Seeks to represent” is not defined. Elsewhere, in the definition section describes a “peace agreement” as an agreement between an employer and a labor organization that “represents employees who perform the type(s) of work to be performed under the city service contract” which seems to suggest a more general requirement to proactively identify a labor organization that may represent the workforce more generally and oblige the nonprofit to execute an agreement with them. **This obligation can then be read to apply to all contracts, regardless of any active labor organizing efforts or, the obligation may only apply to active union drives. This ambiguity is confusing and could pave the way for violation claims regardless of the actual legislative intent or the intent of the provider.**

Providers would have to certify that they entered into the required agreement upon execution of a new contract or upon renewal of an existing one.

The legislation states that the name, address and telephone number of the chief executive officer would need to be included in the certification (pg. 4, lines 1-2). The legislation does not specify if a business address and phone number would suffice or if a residential or direct/personal phone number would be required. Because these agreements are public documents subject to FOIL (pg. 4, line 17), privacy and security issues may arise.

Certifications would need to be updated at least annually, and it is not clear how often negotiations would need to be revisited. (pg. 4, lines 20-22)

Because the certification of the existence of an agreement is required (pg. 6, line 3), it would seem to suggest that such agreements were always mandatory, even if no unionization efforts were underway. It may be possible to interpret this section differently to mean that a nonprofit would have to certify that no labor organization was seeking to organize its workforce. This ambiguity is a challenge and opens up the potential for lawsuits or other claims of a violation.

Penalties:

“No contracting agency may expend city funds in connection with any city service contract that does not comply with the requirements of this section” Nonprofits cannot draw down funding unless or until “peace agreements” are executed as required. (pg. 5, lines 20-21). **Lack of clarity regarding the scope, applicability and certification compliance of this legislation coupled with this extreme budgetary measure would create additional extraneous delays to non-profit contract reimbursements, a chronic problem which plagues the financial health of DHS contracted homeless service providers.**

Additional penalties for noncompliance include cancelling contracts and, in cases where the services are necessary (like shelter) obtaining those services from another entity and charging the non-performing contractor for any difference in price resulting from the alternative arrangements. **Shelter providers who cannot successfully negotiate agreements and end up in violation of this section would therefore have to pay another entity out of their own resources for any difference in costs.** Given that this law doesn’t provide a funding mechanism for any labor demands necessary to get to the agreement, providers would be at risk for serious financial repercussions if they didn’t immediately return contracts. **Any widespread returning of contracts could undermine the right to shelter and places DHS at risk of failing to deliver on their obligations to persons experiencing homelessness.**

Equivalent penalties are not described in the section of the bill describing the obligations of economic development partners. **This bill disproportionately seeks to penalize nonprofit human services providers who are not in control of funding levels or other levers that would directly impact their ability to comply with this section.**

The section of the bill that covers economic development projects exempts nonprofits and therefore most supportive housing providers (pg. 13, line 14). This exemption is confusing given that many such projects would be covered by a human services service contract. Clarity is needed to determine which category such projects fall under and what obligations would apply.

The effective date is 90 days after the introduction becomes law giving nonprofits very little time to negotiate these agreements and file the necessary certifications.



**Testimony to the New York City Council
Committee on Civil Service and Labor
Submitted by the Supportive Housing Network of New York
May 5, 2021**

Hello members of the New York City Council Committee on Civil Service and Labor. My name is Tierra Labrada, and I am the Senior Policy Analyst at the Supportive Housing Network of NY. The Network is a membership organization representing the nonprofit developers and operators of supportive housing, their staff and tenants therein. Thank you for the opportunity to submit comments regarding Intro 2252, in relation to requiring employers at certain city economic development projects and city human service contractors to enter into labor peace agreements.

The Network, like many others, only recently learned of this bill, and therefore did not have an opportunity to do an in-depth analysis or consult with our membership, which speaks to the heart of our concerns about this legislation: it was drafted without consultation or prior knowledge to the nonprofit human services sector. We are dismayed to learn that council would attempt such bold legislation without the community's input.

There is lack of clarity about the precise circumstances in which a labor peace agreement is required. The agreement itself would also require a provision for "uninterrupted delivery of services," which curtails the labor organizations' bargaining power. So in order to reach an agreement, it is likely they would require human service providers agree to provisions such as enhancing wages, benefits, or work rules. For years, the Network, along with our members and partners, have advocated for higher wages and benefits for our workforce. But it is clear that our providers are beholden to their budgets, and that the City is the main party responsible in setting wages for their contracted work. This legislation is confusing because it seems to place the burden solely on the providers, with no funding mechanism in place, or similar reporting and compliance structures for labor unions. Because we were not consulted during its drafting, it is hard to determine if this was the intent of the bill.

Additionally, it is even unclear whether supportive housing developers and operators would be exempt as economic development nonprofits, or have to comply as human service providers. Other questions have been raised by our partners, as well: How will unionized human services providers be treated in the RFP process? How will contracts be amended for union agreements? What happens if the union negotiates employment terms that run counter to the contracted agreement? These are all very basic questions this legislation does not address, in addition to needing a clear explanation of many of the terms included in the legislation.

Due to all of this uncertainty, we strongly urge the council to delay voting on this legislation until we have had an opportunity to discuss its impact in more detail, and come to an agreement that will achieve what we all desire: increased, livable and equitable wages for the nonprofit human services sector.

Thank you, and we look forward to working together.

Sincerely,
Tierra Labrada
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We need help in getting protection for non union supported employees in NYC. We brought Right to Recall legislation to this committee back in January and we want to see why the process of getting it to committee has stalled. It was already introduced to city council. I am one of nine representing 850 terminated Marriott Marquis employees we are trying to get this legislation passed so we can get our jobs back. This legislation would help various industries get their jobs back. A lot of major cities already have this legislation, California just made this a state law Friday April 16. We want NYC council to consider the fact that NYC is opening back up very soon. We need this legislation to be passed so we can help start rebuilding this city. We need to be heard.

Thank you
Pete Dorton