Committee on Civil Service and Labor

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The Council of the City of New York

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

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COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. I. Daneek Miller, *Chair*

**December 9, 2021**

**RES. NO. 976-A:** By Council Members Dromm, Rosenthal, Kallos, Cumbo, Rivera, Chin, Gibson, Cornegy, Brannan, Reynoso, Louis, Rodriguez, Gjonaj, Van Bramer, Menchaca, Levin, Koslowitz, Miller, Perkins, Rose, Treyger, Ayala, Vallone, Koo, Lander, Adams, Salamanca, Moya, Barron, Cabrera, Dinowitz, Riley and the Public Advocate (Mr. Williams)

**TITLE:** Resolution calling on the New York City Comptroller to instruct the pension funds of public employees in New York City to divest from and avoid any financial exposure to companies involved in the production and maintenance of nuclear weapons, reaffirming New York City as a Nuclear Weapons Free Zone, and joining the ICAN Cities Appeal and calling on the United States to support and join the Treaty on the Prohibition of Nuclear Weapons

**INT. NO. 2454-2021:** By Council Members Miller, Yeger, Grodenchik, Koo, Kallos, Koslowitz, Dinowitz

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the New York city collective bargaining law

**ADMINISTRATIVE CODE:** Amends Sections 12-306, 12-307 and 12-312

1. **Introduction**

On December 8, 2021, the Committee on Civil Service and Labor, chaired by Council Member I. Daneek Miller, held a vote on Resolution No. 976-A, a Resolution calling on the New York City Comptroller to instruct the pension funds of the City’s public employees to divest from and avoid any financial exposure to companies involved in the production and maintenance of nuclear weapons, sponsored by Council Member Dromm. This resolution was previously heard at a joint hearing of the Committee on Governmental Operations and the Committee on Civil Service and Labor on January 28, 2020, at which the committees received testimony from the Mayor’s Office for International Affairs, nuclear disarmament advocates and other interested parties.

The committee also held a vote on Introduction No. 2454, a Local Law to amend the administrative code of the city of New York, in relation to the New York City collective bargaining law, sponsored by Council Member Miller. This legislation was previously heard at a hearing of this committee on November 30, 2021, at which the committee received testimony from the Mayor’s Office of Collective Bargaining, municipal labor organizations and advocates.

1. **BACKGROUND**

*Resolution No. 479-A*

Nuclear non-proliferation advocates have engaged in campaigns to encourage financial institutions and pension funds to divest from nuclear weapons producers. Financial institutions finance weapons producers by providing loans, assisting companies with share- and bond issues, and managing investments in shares and bonds of these weapons producers. For asset managers and pension funds, financial involvement means managing share- and bond holdings of these companies. Advocates contend that these investments are not neutral and that institutions should prohibit investment in nuclear weapons to demonstrate stigma associated with these weapons.

Currently, the City’s pension system for its municipal retirees has significant investments in financial institutions and other companies involved in producing key components for and maintaining nuclear weapons. These investments include equity holdings, bond holdings and other assets.

*Int. No. 2454-2021: Collective Bargaining*

On June 27, 2018, the Supreme Court ruled in *Janus v. AFSCME,*[[1]](#footnote-2) that unions could no longer collect mandatory “fair share” fees to cover the costs of collective bargaining, reversing a 40-year precedent that let unions charge partial dues.[[2]](#footnote-3) The case was brought by Mark Janus, an Illinois government worker who objected to paying a portion of his salary to American Federation of State County and Municipal Employee (AFSCME).[[3]](#footnote-4) Janus’s attorneys argued that mandatory “fair share” fees to cover costs of collective bargaining in the public sector amounted to forced political speech.[[4]](#footnote-5) Since the 1977 ruling in *Abood vs. Detroit Board* *of Education*,[[5]](#footnote-6) the Supreme Court held that because a union must advocate on behalf of all workers, they may charge fees to recoup collective bargaining costs.[[6]](#footnote-7) But in 2018, the Court agreed with Janus’s attorneys that collective bargaining in the government realm is inherently political and requiring workers to pay for it is therefore unconstitutional.[[7]](#footnote-8) The decision applies to 5.9 million state and local public employees in 22 states and has destabilized public-sector labor relations.[[8]](#footnote-9)

In the aftermath of the Supreme Court’s 2018 decision in *Janus v. AFSCME*, union leaders raised concerns that more public workers would withdraw from their unions, magnifying the “free rider” effect where employees can reap the benefits of union bargaining without supporting the union financially.

1. **Update**

The Committee on Civil Service and Labor passed Resolution No. 976-A by a vote of seven in the affirmative, zero in the negative, and zero abstentions. The Committee also passed Introduction No. 2454 by a vote of seven in the affirmative, zero in the negative, and zero abstentions.

1. **BILL Analysis**

***Analysis of Int. No. 2454-2021***

*A Local Law to amend the administrative code of the city of New York, in relation to New York city collective bargaining law*

This bill would amend the New York City Collective Bargaining Law to account for the U.S. Supreme Court's decision in *Janus v. AFSCMC.*[[9]](#footnote-10) The bill would provide that there are certain services and benefits that public unions are not required to provide to non-members. In addition, it would remove a reference to “agency fees” which are no longer required to be paid by non-members. It would also allow non-members, in certain circumstances and with the permission of the union, to proceed through the grievance process and arbitration without union representation, so long as the non-member assumes the cost for arbitration that would otherwise be paid by the union.

This bill would take effect 30 days after it becomes law.

Res. No. 976-A

Resolution calling on the New York City Comptroller to instruct the pension funds of public employees in New York City to divest from and avoid any financial exposure to companies involved in the production and maintenance of nuclear weapons, reaffirming New York City as a Nuclear Weapons Free Zone, and joining the ICAN Cities Appeal and calling on the United States to support and join the Treaty on the Prohibition of Nuclear Weapons

By Council Members Dromm, Rosenthal, Kallos, Cumbo, Rivera, Chin, Gibson, Cornegy, Brannan, Reynoso, Louis, Rodriguez, Gjonaj, Van Bramer, Menchaca, Levin, Koslowitz, Miller, Perkins, Rose, Treyger, Ayala, Vallone, Koo, Lander, Adams, Salamanca, Moya, Barron, Cabrera, Dinowitz, Riley and the Public Advocate (Mr. Williams)

Whereas, Catastrophic humanitarian and environmental consequences would result from any nuclear detonation in New York City and could not be adequately addressed; and

Whereas, Eliminating nuclear weapons remains the only way to guarantee that nuclear weapons are never used again under any circumstances; and

Whereas, The suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons, is unacceptable; and

Whereas, New York City has a special responsibility, as a site of Manhattan Project activities and a nexus for financing of nuclear weapons, to express solidarity with all victims and communities harmed by nuclear weapons use, testing and related activities; and

Whereas, On July 7, 2017, 122 countries voted in favor of adopting the United Nations Treaty on the Prohibition of Nuclear Weapons, which is a legally binding multilateral Treaty among the States Parties to the document, advanced by the International Campaign to Abolish Nuclear Weapons (ICAN), which was subsequently awarded the Nobel Peace Prize in December 2017 for this work; and

Whereas, The Treaty was entered into force on January 22, 2021 following ratification by 86 countries, but not including the United States; and

Whereas, The United States, along with other nuclear armed nations, did not ratify or accede the treaty; and

Whereas, ICAN has established the Cities Appeal, a commitment to mobilize local government to support the Treaty with the aim of influencing the national government to sign, with Washington, DC, Los Angeles, Berlin, Sydney, Paris, and Toronto among the major cities who have joined; and

Whereas, The Treaty prohibits the development, testing, production, manufacture, acquisition, possession, stockpiling, stationing, transfer, use and threat of use of nuclear weapons among the member nations of the Treaty, as well as assisting, encouraging or inducing, in any way, anyone to engage in any such activity, with the eventual goal of total elimination of nuclear weapons; further, the Treaty obligates assistance to victims of nuclear weapons use and testing, remediation of contaminated environments and international cooperation and assistance to affected nations; and

Whereas, According to the 2018 report compiled by Don’t Bank on the Bomb, 329 financial institutions around the world including Goldman Sachs, Bank of America, and JP Morgan Chase among others have invested through financing, manufacturing or production of nuclear weapons with BlackRock and Capital Group, the highest contributors among United States based financial institutions, with their investments totaling $38 billion and $36 billion respectively; and

Whereas, The pension system for the City of New York retirees has significant investments in these financial institutions and other companies involved in producing key components for and maintaining nuclear weapons through equity holdings, bond holdings and other assets, according to the annual report issued by the New York City Employees’ Retirement System; and

Whereas, New York City has a demonstrated history of opposing nuclear weapons, including when one million people demonstrated on the streets and in Central Park for nuclear disarmament and an end to the Cold War arms race on June 12, 1982; and

Whereas, On April 26, 1983, the New York City Council adopted Resolution 364 declaring the City a Nuclear Weapons Free Zone; and

Whereas, Seventy-four years after the nuclear bombings of Nagasaki and Hiroshima, which killed more than 200,000 people in 1945, and exposed hundreds of thousands of people in subsequent decades to radiation exposure resulting from nuclear weapons tests and related activities, the United States continues to have policies and procedures in place to facilitate the manufacturing, possession and use of nuclear weapons; and

Whereas, Despite efforts towards disarmament in the last several decades, the global nuclear stockpile consists of approximately 14,000 warheads, more than 13,000 of which are owned by the United States and Russia; and

Whereas, On April 16, 2018, Council Member Daniel Dromm and 27 co-signers in the New York City Council sent a letter to New York City Comptroller Scott Stringer requesting that pension funds and finances be divested from banks, corporations and financial institutions that profit from the production of nuclear weapons in similar fashion to the City’s divestment from coal and oil investments; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York City Comptroller to instruct the pension funds of public employees in New York City to divest from and avoid any financial exposure to companies involved in the production and maintenance of nuclear weapons, reaffirming New York City as a Nuclear Weapons Free Zone, and joining the ICAN Cities Appeal and calling on the United States to support and join the Treaty on the Prohibition of Nuclear Weapons.

N.O./EA

12/2/2021

LS 10259

Int. No. 2454

By Council Members Miller and Yeger

..Title

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the New York city collective bargaining law

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 12-306 of the administrative code of the city of New York, as amended by local law number 26 for the year 1998, is amended to read as follows:

b. Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so, provided, however, that an employee organization does not interfere with, restrain or coerce public employees when, in accordance with this section, it limits its services to and representation of non-members of the employee organization;

(2) to refuse to bargain collectively in good faith with a public employer [or] on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer;

(3) to breach its duty of fair representation to public employees under this chapter. Notwithstanding any law, rule or regulation to the contrary, an employee organization’s duty of fair representation to a public employee it represents but who is not a member of the employee organization shall be limited to the negotiation or enforcement of the terms of an agreement with the public employer. No provision of this chapter shall be construed to require an employee organization to provide representation to a non-member of the employee organization:

(a) During questioning by the employer;

(b) In statutory or administrative proceedings or to enforce statutory or regulatory rights; or

(c) In any stage of a grievance, arbitration or other contractual process concerning the evaluation or discipline of a public employee where the non-member is permitted to proceed without the employee organization and be represented by his or her own advocate. Nor shall any provision of this chapter prohibit an employee organization from providing legal, economic or job-related services or benefits beyond those provided in the agreement with a public employer only to its members.

§ 2. The introductory paragraph of subdivision a of section 12-307 of the administrative code of the city of New York, as amended by local law number 56 for the year 2005, is amended to read as follows:

a. Subject to the provisions of subdivision b of this section and subdivision c of section 12-304 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits), working conditions and provisions for the deduction of dues from the wages or salaries of employees in the appropriate bargaining unit [who are not members of the certified or designated employee organization of an agency shop fee to the extent permitted by law, but in no event exceeding sums equal to the periodic dues uniformly required of its members by such certified or designated employee organization] and for the payment of the sums so deducted to the certified or designated employee organization, subject to applicable state law, except that:

§ 3. Subdivisions c and g of section 12-312 of the administrative code of the city of New York are amended to read as follows:

c. Arbitrators appointed under arbitration provisions relating to municipal agencies shall be persons on the register of the board of collective bargaining. The costs of such arbitration shall be determined and allocated pursuant to section [eleven hundred seventy-four] 1174 of the charter. The board of collective bargaining, in its discretion, may publish arbitration awards. To the extent the certified employee organization grants permission to proceed to a non-member of the employee organization pursuant to paragraph (3) of subdivision g of this section, the non-member shall be responsible for the public employee organization’s share of any costs associated with the grievance or arbitration pursuant to section 1174 of the charter.

g. An employee may present his or her own grievance either personally or through an appropriate representative, provided that:

 (1) a grievance relating to a matter referred to in paragraph two, three or five of subdivision a of section 12-307 of this chapter may be presented and processed only by the employee or by the appropriate designated representative or its designee, but only the appropriate designated representative or its designee shall have the right to invoke and utilize the arbitration procedure provided by executive order or in the collective agreement to which the designated representative is a party; and provided further that

(2) any other grievance of an employee in a unit for which an employee organization is the certified collective bargaining representative may be presented and processed only by, the employee or by the certified employee organization, but only the certified employee organization shall have the right to invoke and utilize the arbitration procedure provided by executive order or in the collective agreement to which the certified representative is a party[.]; and provided further that

(3) a designated or certified employee organization may permit a non-member of such employee organization to proceed, including through arbitration, without representation by the employee organization and be represented by his or her own advocate for matters excluded from the duty of fair representation pursuant to paragraph (3) of subdivision b of section 12-306. In such matters, the employee organization retains the right to participate in the proceeding.

§ 4. This local law takes effect 30 days after it becomes law.

NAB

LS #18110

12/01/21

1. 138 S. Ct. 2448 (2018). [↑](#footnote-ref-2)
2. Ian Kullgren and Aaron Kessler, *Unions Fend Off Membership Exodus in 2 years Since Janus Ruling*, (June 26, 2020) Bloomberg Law, *available at* <https://news.bloomberglaw.com/daily-labor-report/unions-fend-off-membership-exodus-in-2-years-since-janus-ruling> (accessed on June 26, 2020). [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. *Id.* [↑](#footnote-ref-5)
5. **431 U.S. 209 (1977).** [↑](#footnote-ref-6)
6. *Id.* [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. Daniel Disalvo, *Public Sector Unions after Janus: An Update* (Feb. 2019) Manhattan Institute, *available at* <https://www.manhattan-institute.org/public-sector-unions-after-janus#notes> (accessed on Nov. 21, 2021). [↑](#footnote-ref-9)
9. 138 S. Ct. 2448 (2018). [↑](#footnote-ref-10)