

JUDGE PATTERSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE BUILDING INDUSTRY ELECTRICAL
CONTRACTORS ASSOCIATION on behalf of itself
and its members and UNITED ELECTRICAL
CONTRACTORS ASSOCIATION, on behalf of itself
and its members,

Plaintiffs,

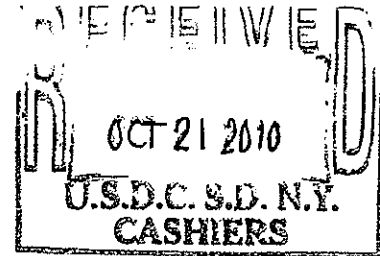
- against -

THE CITY OF NEW YORK on behalf of itself and its
various agencies and THE BUILDING AND
CONSTRUCTION TRADES COUNCIL OF
GREATER NEW YORK AND VICINITY, on behalf
of itself and its signatory affiliated Local Unions,

Defendants.

Action No. 10 CV 8002

COMPLAINT



Plaintiffs, THE BUILDING INDUSTRY ELECTRICAL CONTRACTORS
ASSOCIATION, on behalf of itself and its members, and UNITED ELECTRICAL
CONTRACTORS ASSOCIATION, on behalf of itself and its members, by their attorneys
Robinson Brog Leinwand Greene Genovese & Gluck P.C., as and for their Complaint against
Defendants THE CITY OF NEW YORK, on behalf of itself and its various agencies and THE
BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK and
VICINITY, on behalf of itself and its signatory affiliated Local Unions, allege as follows:

NATURE OF THE ACTION

1. This action arises out of the enactment of a series of Project Labor Agreements (“PLA”), entered into by and between various agencies of the City of New York (the “City”) and The Building and Construction Trades Council of Greater New York and Vicinity and its affiliated Local Unions (the “BCTC”), that cover both new construction and the renovation,

rehabilitation and repair of public works projects let before June 30, 2014, that the City has valued in the aggregate in excess of five billion dollars (\$5,000,000,000). Based on their magnitude and scope, the virtual monopolistic power given to the BCTC to control the labor force employed on these PLA projects and the patent political favoritism that these PLAs represent, these PLAs constitute an impermissible attempt to regulate labor relations in the construction industry in New York City in violation of the preemption principles of the National Labor Relations Act (“NLRA”), 29 U.S.C. § 151 *et seq.* and violate the competitive bidding statutes in New York State. Plaintiffs seek a declaratory judgment, declaring that the PLAs in question are unlawful, void, and unenforceable under federal and state law and an injunction to enjoin the application and enforcement of the PLAs in question on all present and future projects.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter and parties pursuant to 28 U.S.C. §§ 1331 and 1343. The rights sought to be secured in this action arise under 42 U.S.C. § 1983, 42 U.S.C. § 1988, 29 U.S.C. § 151 *et. seq.*, and the United States Constitution, including but not limited to, the Supremacy Clause of the United States Constitution, Art. VI, cl. 2.

3. The Court also has jurisdiction over the state law claims pursuant to 28 U.S.C. §1367, which provides for supplemental jurisdiction of all other claims that are directly related to claims in the action within the Court’s original jurisdiction. Plaintiffs’ state law claims that are asserted herein, directly relate to its claims arising under the laws of the United States.

4. Venue is proper in this district pursuant to section 1391(b) of Title 28 of the United States Code which provides for venue in a judicial district where any defendant resides. Both defendants are present within this judicial district, and the unlawful conduct and the actions

complained of herein have occurred within New York County and within the jurisdiction of this Court.

PARTIES

5. Plaintiff The Building Industry Electrical Contractors Association, on behalf of itself and its contractor-members (“BIECA”), is a trade association consisting of twenty-seven (27) contractors, of which sixteen (16) perform publicly financed projects for the City (the “BIECA contractors”). The object and purpose of the BIECA is, *inter alia*, to further the interests of its members and those in any way related to the construction industry, to do anything necessary, suitable and proper, including the institution of legal proceedings, consistent with the public interest as well as the interest of this industry and trade, to bargain collectively for the members of this association and to strive to secure labor peace and tranquility in the construction industry.

6. The BIECA, on behalf of its contractors, has entered into a collective bargaining agreement (“CBA”) with Local 363, United Electrical Workers of America, IUJAT, (“Local 363”). Pursuant to Article I of the CBA, the BIECA and its contractors have agreed to recognize Local 363 as the “sole and exclusive bargaining representative of all of the electrical workers ... who are or may hereinafter become employed” by any BIECA contractor.

7. Article 2 of the CBA requires all employees, who are employed by BIECA contractors, to become members of Local 363 by paying dues and initiation fees.

8. Article 25 of the CBA requires all contractors that participate in the BIECA to contribute to The Building Trades Welfare Fund, Building Trades Annuity Fund; The Building Trades Educational Benefit Fund; and the Electrician’s Retirement Fund (collectively the “Building Trades Funds”), as well as the United Service Workers Union Security Fund, on behalf of their employees who work on job classifications covered by the CBA. The purpose of

these contributions is to provide eligible employees with welfare, pension, educational and annuity benefits.

9. Plaintiff United Electrical Contractors Association (“UECA”), is a trade organization and not-for-profit corporation formed in 1965 under the laws of New York State. The UECA currently consists of thirteen (13) contractor-members, of which five (5) perform publicly financed projects for the City of New York (the “UECA contractors”). The object and purpose of the UECA is, *inter alia*, to further the interests of its members and those in any way related to the construction industry, to do anything necessary, suitable and proper, including the institution of legal proceedings, for the accomplishment of its lawful objectives, and to bargain collectively for its members.

10. Since 1995, the UECA has been engaged in ongoing collective bargaining negotiations with Local Union No. 3, International Brotherhood of Electrical Workers (“Local 3”). Local 3 is a member of the BCTC. To date, the UECA and Local 3 have not successfully negotiated a collective bargaining agreement nor has an impasse been declared.

11. Pursuant to a December 7, 1995 Settlement Agreement with the National Labor Relations Board (“Settlement Agreement”), contractors that participate in the UECA are required to contribute to the Building Trades Funds on behalf of their eligible employees pursuant to the terms of a written Participant Agreement between the Funds' Boards of Trustees and the employers.

12. BIECA and UECA contractors are currently performing public works projects that have a total value in excess of \$500 million dollars. Additionally, some of the BIECA and UECA contractors have over forty (40) years of experience in performing these public works projects.

13. Both the BIECA and the UECA have associational standing to bring this action as representatives of their contractor-members because their members would otherwise have standing to sue in their own right; the interests they seek to protect are related to the respective trade association's purposes; and neither the claims asserted, nor the relief requested, requires the participation of individual members in the lawsuit. Both the BIECA and the UECA are filing this action on behalf of their individual members, who have been and will continue to be injured by the loss of business opportunities resulting from the enforcement of these unlawful PLAs (collectively "Plaintiffs' Contractors.")

14. At all relevant times, defendant City was and is a municipality and political subdivision of the State of New York.

15. At all relevant times herein, the City owns, operates, manages, directs and controls the following New York City agencies: Department of Design and Construction ("DDC"), Department of Sanitation ("DSNY"), Department of Parks and Recreation ("DPR"), the Department of Environmental Protection ("DEP"), the Department for the Aging ("DFTA"), Administration for Children's Services ("ACS"), Department of Citywide Administrative Services ("DCAS"), Department of Corrections ("DOC"), Fire Department ("FDNY"), Department of Homeless Services ("DHS"), Human Resources Administration ("HRA"), Department of Health and Mental Hygiene ("DOHMH") and Police Department ("NYPD") (collectively "Various Agencies").

16. The BCTC is a trade organization representing approximately fifty (50) affiliated local unions in the construction industry with an office located at 71 West 23rd Street, Suite 501-03, New York, New York 10010. Membership in the BCTC is unilaterally controlled by the BCTC through its constitution and by-laws.

17. The City and the BCTC have entered into unlawful PLAs that are unprecedented in their size and scope, covering a multitude of City projects without identifying or addressing any unique or special factors – including the size or complexity of a particular project- that would warrant the application of a PLA and have failed to narrowly tailor the PLAs to the specific needs of each project.

18. Defendant BCTC, having entered into the unlawful PLAs with the City and in light of its significantly intertwined relationship with the City and its actions on behalf of the City in connection with the PLAs, is a "state actor" for purposes of the constitutionally challenged conduct, policies and practices herein.

19. The actions and conduct of the BCTC are functionally, symbiotically, and otherwise intertwined with that of the City such that, for the purposes of the challenged actions which give rise to this litigation, they are deemed the same entity.

FACTUAL BACKGROUND

A. PLAs Generally

20. A PLA is a prebid contract between a construction project owner and a labor union or building trades council such as the BCTC, representing a group of affiliated local unions.

21. The use of PLAs on public projects has traditionally been limited to very large projects, which present unique and complex construction issues based on their size, scope and other constraints.

22. The provisions of a PLA generally (1) apply to all work performed under a specific contract or project, or at a specific location; (2) require recognition of the "signatory" union as the sole bargaining representatives for covered workers, whether or not the workers are members of the union; (3) supersede all other collective bargaining agreements binding on the

signatory unions; (4) prohibit strikes and lockouts; (5) require hiring of at least 88% of its workers through the signatory union's hiring hall; (6) require all subcontractors to become signatory to the agreement; (7) establish uniform work rules covering overtime, working hours, dispute resolution, and other matters; and (8) require compliance with union wage, benefit, seniority, apprenticeship and other rules and contribution to the union benefit funds.

23. Projects covered by PLAs generally state on their face that they are "open" to all successful bidders – union or non-union – who agree to be bound by the terms and conditions of the PLA.

B. The City's PLAs are Unprecedented in Size and Scope

24. On or about November 24, 2009, Mayor Michael Bloomberg and the BCTC announced a series of five (5) PLAs ("City PLAs"), which were characterized as, "among the largest of such agreements in the United States."¹

25. The City PLAs are intended to cover work let and bid during Fiscal Years 2010 to 2014.

26. Pursuant to the BCTC's negotiations with the City, only those unions belonging to the BCTC were permitted to become participating signatory unions to each of the City's PLAs and benefit from being recognized as the collective bargaining representative for all persons who perform work on PLA projects.

27. The work covered by the City's PLAs include a multitude of projects including both new construction and the renovation, rehabilitation and repair of City-owned buildings and structures during the next four (4) years on behalf of various City agencies.

¹ See Mayor's Office of Contract Services, <http://www.nyc.gov/html/mocs/html/vendors/pla.shtml>, "Project Labor Agreements."

(a) **PLA between the City of NY on behalf of Various Agencies and BCTC (“PLA for Various City Agencies”)**. Covering over \$1 billion worth of work, the scope of work of this PLA includes the renovation, repair, alteration, rehabilitation or expansion of City-owned buildings located throughout the five boroughs during the 2010-2014 fiscal years for the following City agencies: DFTA, ACS, DCAS, DOC, DDC, FDNY, DHS, HRA, DOHMH, DPR, NYPD and DSNY.

(b) **PLA between DEP and BCTC (“DEP PLA”)**. The scope of work of this PLA covers unspecified “designated” rehabilitation and renovation construction contracts bid and let by DEP prior to June 30, 2014.

(c) **PLA between DSNY and BCTC (“DSNY PLA”)**. The scope of work of this PLA includes the new construction of three projects – East 91st Street (est. project cost \$217 million), Southwest Brooklyn Marine Transfer Station (est. project cost \$161 million), and Manhattan 1/2/5 Garage (est. project cost \$283.3 million). These three projects collectively total \$661.3 million in new construction costs.

(d) **PLA between DDC and BCTC (“DDC PLA”)**. The scope of work of this PLA covers the new construction of eight (8) projects – Public Safety Answering Center (PSAC II) (est. cost \$550 million); Police Academy (est. cost \$575 million); 40th Precinct Stationhouse (est. cost \$30.8 million); Soundview (Zerega) EMS (est. cost \$8.96 million); Greenpoint EMS (est. cost \$8.78 million); Far Rockaway Library (est. cost \$11.5 million); Solar II (est. cost \$16 million); and Queens Library-Hunters Point (est. cost \$13.5 million), collectively totaling \$1.21 billion in new construction costs.

(e) **PLA between the Parks Department and BCTC (“Parks PLA”)**. This PLA is for the new construction of the Bronx River Greenway Riverhouse.

28. The mandatory provisions of the City PLAs are virtually identical, containing the same boilerplate language. Some common features include:

(a) Requirement that all contractors and subcontractors sign a Letter of Assent or the equivalent thereof, agreeing to be bound by the terms of the PLA and certifying that they have no other commitments or agreements that would preclude complete compliance with the PLA (Art. 2, Sect. 3);

(b) Recognition of the signatory unions as the sole and exclusive bargaining representatives of all employees performing on-site work (Art. 4, sect. 1);

(c) Requirement that contractors hire workers through signatory union’s job referral systems and hiring halls (Art. 4, Sect. 2(A));

(d) Limit on hiring of employees of non-signatory contractors to 12% of their own workforce (Art. 4, Sect. (B));

(e) Union security provisions requiring all employees to pay union dues or equivalent to signatory union (Art. 4, Sect. 6);

(f) Grievance and arbitration procedures governed by the local signatory union for that craft (Art. 9, Sect. 1); and

(g) Contributions for employee benefits into those funds designated by signatory union (Art. 11, Sect. 2).

29. Based on the mandatory requirements common to each of the City's PLAs, a contract that is let for bidding under a PLA effectively excludes from the competitive bidding process the contractor-members of the UECA and the BIECA.

30. In order to be awarded a contract covered by a City PLA, a contractor is required to sign a Letter of Assent, agreeing to be bound by the terms of the PLA and certifying that it has no other commitments or agreements that would preclude its full and complete compliance with the PLA.

31. However, the requirement that a contractor sign a Letter of Assent to perform work under a City PLA unlawfully interferes with the existing collective bargaining agreements between the BIECA contractors and Local 363.

32. The requirement that a contractor sign a Letter of Assent to perform work under a City PLA also unlawfully interferes with the UECA's ongoing collective bargaining negotiations with Local 3, since a UECA contractor would essentially have to sign a collective bargaining agreement with Local 3 to perform work on a covered project.

33. The Plaintiffs' Contractors are also obligated to make fringe benefit contributions for their employees into funds other than those designated by the City's PLAs and are therefore placed at a significant competitive disadvantage to signatory contractors.

34. Since both the UECA and the BIECA contractors are also required to make benefit contributions into non-PLA benefit funds, these duplicative benefit expenses will significantly increase the estimated labor costs of any bid submitted by a UECA or BIECA

contractor competing for a City PLA contract, and will effectively prevent a UECA or BIECA contractor from submitting a competitive bid.

35. Since the Plaintiffs' Contractors would be required to contribute to benefit funds sponsored by the BCTC Union in addition to the Building Trades Funds, these PLAs would require the Plaintiffs' Contractors to make duplicative payments to their employees for holidays and vacation time, as well as duplicate contributions for welfare, pension, annuity and educational benefits. These duplicative payments would cause the Plaintiffs' Contractors to incur significantly greater labor rates than those required by the applicable prevailing wage rate laws were the Plaintiffs' Contractors performing identical work on a non-PLA project. As such, imposition of these mandatory City PLAs effectively adds a "penalty" to the Plaintiffs' Contractor's labor costs for work on a PLA project that would not be incurred by contractors affiliated with a BCTC union, while at the same time, operates to confer virtual monopolistic power to BCTC contractors covering over billions of dollars worth of City contracts.

36. Additionally, the effects of a City PLA would impair the ability of UECA and BIECA contractors to perform the project work. Both UECA and BIECA contractors have developed and retained their own workforce of qualified workers through years of performing public works contracts. The ability to retain the same workforce of qualified workers maximizes the contractor's efficiency and overall quality of work. The contractor is also in control over the terms and conditions under which their workers perform the work. However, if a non-signatory UECA or BIECA contractor signs onto a PLA-governed project, it is required to draw at least 88% of its labor for performing the work from the signatory trade union's hiring hall. At most, it is only permitted to use 12% of its own workforce, thus forcing contractors to become subject to the vagaries of a "stranger" union hiring hall, which compels the contractor to work with a

“stranger” workforce on projects governed by a PLA. Thus, it is virtually impossible for a non-signatory contractor such as a UECA or BIECA contractor to guarantee the quality of the work to be performed or that the work will be performed in a timely and efficient manner.

37. Employees of UECA and BIECA contractors are also severely disadvantaged by the City PLAs. To the extent that a PLA precludes UECA or BIECA contractors from using its full-time employed journeymen and apprentices on a PLA project and had no other commensurate work on non-PLA projects, they will be forced to lay off some of its workforce.

38. Under the terms of the mandatory City PLAs, any fringe benefit contributions made on an employee's behalf would be paid to the funds affiliated with the applicable BCTC signatory union. Since full vesting under a defined benefit pension plan generally occurs after 5 years of service under the applicable plan (except as otherwise required by applicable law), a longer period of time than the typical tenure of an employee under a PLA project, in practice, it is likely that almost all contributions to a defined benefit pension plan sponsored by the BCTC union will generally not inure to the benefit of the employees on whose behalf the contributions are made unless the employee works at least 5 years under the applicable plan. Therefore, the likely effect is that the pension plan sponsored by the BCTC union will keep the contributions and never be required to pay benefits to individuals on whose behalf the contributions are required to be made.

39. Employees of the UECA or BIECA contractor would likely not receive any pension benefits for their work on the PLA projects, unlike employees of employers that are signatory to a collective bargaining agreement with a BCTC union.

C. Cost Savings Under The City PLAs Are Speculative and Illusory

40. While the City contends that the PLAs in question are justified because they will provide economic benefits through various cost savings measures, these presumed economic benefits are illusory.

41. The City retained consultants to perform “feasibility studies” to determine the economic benefits and appropriateness of utilizing PLAs on some, but not all of the PLAs in question.

42. Hill International (“Hill”) prepared the feasibility study on behalf of the PLA for Various City Agencies. LiRo Program and Construction Management, P.C. (“LiRo”) prepared feasibility studies for both the DSNY and Parks PLAs. LiRo, Tishman Technologies Corporation of New York (“Tishman”) and Turner Construction Company (“Turner”) performed the feasibility study for the DDC PLA.

43. Upon information and belief, no feasibility study was prepared for the DEP PLA.

44. Each feasibility study in question contains the same flawed methodology and findings based on the erroneous assumption that only BCTC contractors would be employed on a particular City project whether or not the project was performed under a PLA.

45. The feasibility studies do not even address the fact that non-BCTC contractors, including the Plaintiffs’ Contractors herein, perform work on City projects that are not covered by PLAs. Had the authors of the feasibility studies considered non-BCTC contractors, they would have determined that without a PLA, the successful bidder might already have cost saving labor practices promised by the PLA.

46. By artificially limiting the universe of contractors who perform City work to BCTC contractors, the authors of the feasibility studies give false and unwarranted credit to the

PLAs for concessionary cost savings that would have been realized in the absence of a PLA and through the competitive bidding process.

47. For example, when the Local 363 CBA is compared with the CBA of Local 3, which is a signatory union, it is evident that certain cost savings the City claims can only be accomplished by concessions negotiated by a PLA, are already built into Local 363s' CBA.

48. Since the signatory unions mandate a seven hour workday, the feasibility study assumes that by adopting a PLA which mandates an eight-hour workday, the City is provided with cost savings benefits by saving an hour of overtime pay per day over the course of the project. Thus, the PLA would reduce costs by 12.5% (1/8) of the total number of hours worked, multiplied by the difference between overtime and straight time pay.

49. However, this presumed cost savings ignores the fact that Local 363's CBA, Article 6, section A (a), stipulates that a "regular week's work shall consist of forty (40) hours, divided into any five (5) consecutive days between Monday through Sunday inclusive, of eight (8) hours each, performed between the hours of 6:00 AM and 6:00 PM."² Had the City considered Local 363's CBA as their baseline, or the work rules and practices of a UECA contractor, it would have already realized a savings that would have obviated the need for any cost-savings through the enactment of a PLA.

50. The feasibility studies also cite to the avoidance of increased costs and scheduling delays resulting from labor disputes to justify the enactment of the PLA for the Various Agencies. However, none of the feasibility studies identify a single episode of labor unrest occurring on any similar City projects.

² Local 363 CBA, p.16.

51. Moreover, the City's assumption that its blanket PLA will save it the cost of Wicks Law compliance is fatally flawed, since the City has failed to identify any contract that would be subject to Wicks Law in the absence of the PLA.

52. New York General Municipal Law § 101, known as the "Wicks Law," requires the City to separately bid contracts for plumbing, heat, ventilation and air conditioning (HVAC) and electric wiring, on contracts in excess of three million dollars. Enacted in 2008, Section 222 of the New York Labor Law allows the City to avoid Wicks Law compliance where the public work has chosen to require a PLA and has met its burden in demonstrating a need for the PLA. However, whether in fact a PLA would provide any benefit under Section 222 requires a project-by-project analysis to determine if a particular project exceeds the three million dollar threshold and involves the type of craft work covered by the Wicks Law. In the absence of such an analysis, the City's projected cost-savings under the Wicks Law is based on pure conjecture and speculation.

53. The Hill International study prepared on behalf of the PLA for Various City Agencies also bases its cost savings analysis on eight "representative" renovation and rehabilitation construction projects rather than any actual project subject to the PLA in question. These eight "representative" renovation and rehabilitation projects include projects previously performed by the City, including "single contract" projects that do not involve multiple trades as well as projects that were under \$3 million dollars and therefore excluded from the requirements of Wicks Law without the necessity for a PLA.

D. No Recent History of Labor Unrest

54. Another misleading component of the City's feasibility studies is the elimination of completion delays resulting from strike activity.

55. None of the feasibility studies identify any specific history of labor unrest on similar City projects nor do they provide any specific information concerning the potential risk of strike activity on such projects.

56. The feasibility studies make a general reference to the potential for union demonstrations and work stoppages where non-union contractors have received significant awards. Ironically, although BCTC unions have typically been the source of such labor unrest, BCTC has successfully convinced the City that the utilization of PLAs would avoid, and save the public money by creating labor harmony on PLA projects.

57. In summary, the feasibility studies draw their conclusions from speculative and assumed facts regarding the benefits of PLAs in general, without any attempt to analyze and determine on a project-by-project basis whether a PLA should be utilized.

E. PLAs Are Anti-Competitive and Must Be Narrowly Construed

58. Due to the anti-competitive and preclusive impact of PLAs and because of the risk that a public authority will impermissibly use PLAs to implement labor policy through its spending power, PLAs must be narrowly tailored and project specific to withstand judicial scrutiny.

59. New York State has a multitude of competitive bidding statutes applicable to public entities. There are two central purposes of New York State's competitive bidding statutes, both falling under the rubric of promoting the public interest: (1) protection of the public fisc by obtaining the best work at the lowest price; and (2) prevention of favoritism, improvidence, fraud and corruption in the awarding of public contracts.

60. Pursuant to New York's competitive bidding statutes, contracts for public works are to be awarded to the lowest responsible bidder.

61. PLAs are recognized as having an anticompetitive impact on the bidding process, based on the fact that bidders must assent to a variety of practices and rules designated by the signatory unions and are precluded from negotiating their own separate labor terms. While PLAs have been upheld for use on specific major construction projects, they are closely scrutinized.

62. Accordingly, in New York State, a public authority seeking to adopt a PLA bears the burden of showing that for each particular project, more than a rational basis exists for the enactment of a PLA and that the decision to enter into the PLA has as its purpose and likely effect the advancement of the interests embodied in New York State's competitive bidding statutes.

63. A public authority is required to assess whether any unique challenges exist based on the size and complexity of the specific project, whether there has been a history of labor unrest on projects that have been built by the authority and provide a detailed analysis of the actual cost savings in order to justify the adoption of the PLA.

64. Similarly, the City PLAs must be narrowly tailored to meet the needs of a specific contract or risk federal preemption for impermissibly regulating through government spending power. To avoid federal preemption, a public authority must demonstrate that (1) the PLA is necessary for the efficient procurement of needed goods and services, as measured by comparison with the typical behavior of private parties in similar circumstances; and (2) the narrow scope of the PLA defeats any inference that its primary goal was to encourage a general policy rather than address a specific proprietary problem.

65. Another common feature of the City PLAs is that in most instances, the PLAs are not contract specific, nor are they narrowly tailored to meet the needs of a specific project. In

fact, without specifications or descriptions of work that is expected to be performed on future contracts, it is virtually impossible to determine whether a PLA is warranted for such covered work.

66. The blanket adoption of multi-project, and in some instances, multi-agency PLAs covering future projects fails to demonstrate any rational basis for the enactment of the City PLAs.

67. For example, in the PLA for Various City Agencies, the broad scope of work is described as follows:

Program Work shall be limited to designated rehabilitation and renovation construction contracts bid and let by an Agency (or its Construction Manager where applicable) after the effective date of this Agreement with respect to rehabilitation and renovation work performed for an Agency on City-owned property under contracts let prior to June 30, 2014. Subject to the foregoing, and the exclusions below, such Program Work shall mean ***any and all*** contracts that predominantly involve the renovation, repair, alteration, rehabilitation or expansion of an existing City-owned building or structure within the five boroughs of New York City. Examples of Program Work include, but are not limited to, the renovation, repair, alteration and rehabilitation of an existing temporary or permanent structure, or an expansion of above ground structures located in the City on a City-owned building. This Program Work shall also include JOCS contracts, demolition work, site work, asbestos and lead abatement, painting services, carpentry services, and carpet removal and installation, to the extent incidental to such building rehabilitation of City -owned buildings or structures. Art. 3, Sect. 1(emphasis added)

68. By adopting a blanket PLA for “***any and all***” future contracts for the rehabilitation and renovation of City-owned property, and by failing to identify actual contracts or demonstrate more than a rational basis for requiring a PLA on any specific contract, the City’s PLA for Various Agencies is patently unlawful.

69. Based on the foregoing, the record does not support the adoption of PLAs for any of the covered work.

70. Nevertheless, the BCTC and its member unions have been given control of billions of dollars worth of public work covered by the City PLAs, giving them an enormously unfair and unlawful competitive advantage over non-BCTC unions and their members.

COUNT I
(FOR PREEMPTION PURSUANT TO NLRA)

71. Plaintiffs repeat, reallege and incorporate in full the contents of Paragraphs 1 through 70.

72. Congress has regulated the field of labor relations by passing the National Labor Relations Act, 29 U.S.C. §§151-169 (“NLRA”) and by that legislation Congress has enacted an integrated scheme of regulation of labor relations.

73. The NLRA acts to protect certain rights of labor and management against governmental interference.

74. These rights include, but are not limited to, the right to be free from government regulation and interference in the collective bargaining process regarding wages, hours and other terms or conditions of employment on present and future public and private work/projects.

75. Present and future wages, hours and other terms or conditions of employment on public and private work/projects are to be negotiated and determined by the “free play of economic forces” between management and labor through the collective bargaining process.

76. The PLAs enacted by the City and implemented by BCTC unlawfully interfere with the rights of BIECA Contractors from engaging in the collective bargaining process and from bidding on covered contracts by imposing requirements on BIECA contractors that they cannot satisfy due to their existing CBAs with Local 363, by mandating adherence to the work practices and rules designated by the signatory union, and by effectively precluding the

submission of competitive bids based on the requirement that BIECA contractors remit duplicative benefit contributions.

77. Additionally, the PLAs enacted by the City and enforced by BCTC unlawfully interfere with the rights of UECA Contractors to engage in collective bargaining negotiations with Local 3 free from government interference. Local 3 is a BCTC signatory union. Because the City PLAs mandate adherence to the signatory union's work rules and practices and contributions into the signatory union's funds, acceptance of a PLA by a UECA contractor would undermine the ability of UECA contractors to effectively negotiate the terms and conditions of a CBA with Local 3.

78. Moreover, inasmuch as the Plaintiffs' Contractors are members of non-BCTC unions and signatories to separate CBAs or are engaged in ongoing collective bargaining negotiations, the imposition of mandatory PLAs that require them to recognize a BCTC signatory union as the sole collective bargaining representative and abide by the signatory union's work rules, preclude Plaintiff Contractors from bidding on covered projects, thereby interfering with the collective bargaining process.

79. The unprecedented breadth and scope of the City PLAs are the result of political favoritism and serve no legitimate interest that the City has in its efficient procurement of needed goods and services which would be better served by competitive bidding in the absence of the PLAs.

80. The City has failed to identify, nor are the Plaintiffs aware of any history of labor unrest on similar projects performed on behalf of the City to justify the imposition of these PLAs. Moreover, the projected cost-savings on projects covered by the PLAs in question are

pretextual, *de minimus* and will be offset by diminished competition and increased construction costs.

81. The City PLAs are broad, overreaching and not narrowly focused or specifically tailored to address the goals and labor needs of individual projects, constituting an unlawful attempt by the City to use its spending power to create policy and regulate labor relations in the construction industry in New York City.

82. The force and effect of the expansive PLAs adopted by the City and enforced by BCTC eliminate competition from non-BCTC contractors and non-BCTC workers. The imposition of these mandatory PLAs are unjustified and are patently calculated by the City as a method of providing BCTC contractors with an unfair and unlawful competitive advantage over other union and non-union contractors and construction workers in bidding and performing City construction projects.

83. The City PLAs are unlawfully designed to preclude non-BCTC bidders in violation of federal law.

84. Plaintiffs have no adequate remedy at law and have suffered and will continue to suffer, irreparable harm from these PLAs and future PLAs mandated by the City and have been deprived of the protections established by the NLRA.

85. The Plaintiffs are likely to succeed on the merits of their NLRA preemption claim, brought under the Supremacy Clause of the United States Constitution, and on the merits of their civil rights claim, brought under Section 1983 of the Civil Rights Act.

86. The Plaintiffs' remedy at law is inadequate to the extent that the City's enactment and BCTC's enforcement of the unlawful PLAs precludes the Plaintiffs' Contractors from bidding on any City contract covered by a PLA.

87. Plaintiffs are entitled to a judgment declaring that the City PLAs are preempted by the NLRA, and are entitled to an order enjoining the Defendants from enforcing these PLAs, or otherwise declaring the PLAs to be invalid, unlawful, void and unenforceable and enjoining the City and the BCTC from imposing the mandates of these PLAs on all present and future projects.

COUNT II
(§1983 VIOLATION)

88. Plaintiffs repeat, reallege and incorporate in full the contents of Paragraphs 1 through 87.

89. By enactment and enforcement of the City PLAs, Defendants have unlawfully injected themselves into the collective bargaining process between the BIECA Contractors and Local 363 and the UECA Contractors and Local 3, depriving the UECA and BIECA contractors of their federally-guaranteed right under the NLRA to bargain collectively free of governmental interference.

90. The City PLAs constitute a deprivation of rights secured by the NLRA. The UECA and BIECA contractors and their employees are ready, willing and able to bid on and perform construction services on the projects covered by the City PLAs. However, because of the unreasonable and unlawful restrictions contained in the City PLAs and enforced by the BCTC, Plaintiffs' members have been effectively precluded and will continue to be precluded from the opportunity to obtain work on all projects covered by the City PLAs.

91. The Plaintiffs are entitled to an order enjoining the Defendants from enforcing these City PLAs, or otherwise declaring the PLAs to be invalid, unlawful, void and unenforceable and enjoining the City and the BCTC from imposing the mandates of these PLAs on all present and future projects.

92. The Plaintiffs are also entitled to recover attorneys' fees for the Defendants' violation of their federal right to engage in collective bargaining negotiations free from governmental interference under Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983.

COUNT III
(DECLARATORY JUDGMENT)

93. Plaintiffs repeat, reallege and incorporate in full the contents of Paragraphs 1 through 92.

94. Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 of the rights, duties, and responsibilities of the Plaintiffs and Defendants arising from the City's mandate of five (5) unlawful PLAs covering present and future public construction projects in violation of federal labor law, New York State law, and the Constitution of the United States.

95. In light of the City's unlawful policy of adopting boilerplate PLAs with the BCTC regardless of whether any of the individually covered projects warrant a PLA is capable of repetition and may evade review.

96. An actual and justiciable dispute exists between the parties for which Plaintiffs lack an adequate remedy at law and are entitled to a declaration of rights from the Court.

STATE SUPPLEMENTAL LAW CLAIMS

COUNT IV
(FOR VIOLATION OF GENERAL MUNICIPAL LAW § 103(1))

97. Plaintiffs repeat, reallege and incorporate in full the contents of Paragraphs 1 through 96.

98. New York's procurement statutes applicable to public entities are intended to assure the prudent use of public moneys and to facilitate the acquisition of high quality goods and services at the lowest possible cost.

99. Specifically, Gen. Municipal Law § 103(1) requires all public works contracts to be awarded to the lowest responsible bidder. General Municipal Law § 103(1) states that:

Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than ten thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district, to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section. Gen. Mun. Law § 103(1)

100. While the City may promulgate their own policies and regulations concerning the companies it chooses to contract with, the legislative restrictions of § 103 on the municipality's power prevails.

101. By enacting the City PLAs, the Defendants have established an unlawful precondition to the award of contracts to the lowest responsible bidder, inconsistent with General Municipal Law § 103.

102. The Defendants have failed to demonstrate that their decision to enter into the City PLAs is supported by the record or is sufficiently tailored to a specific project in order to advance the interests embodied in the competitive bidding statutes.

103. The Defendants have failed to identify any unique challenges posed by the size or complexity of the projects covered by the City PLAs, failed to demonstrate actual rather than illusory cost savings, and have failed to identify any history of labor unrest on similar projects to support the conclusion that the City PLAs were adopted in conformity with the competitive bidding statutes.

104. As a result, the Defendants have failed to demonstrate any rational basis for the City PLAs, which are in violation of General Municipal Law § 103 and therefore are void and unenforceable.

COUNT V
(FOR VIOLATION OF NEW YORK LABOR LAW SECTION 222)

105. Plaintiffs repeat, reallege and incorporate in full the contents of Paragraphs 1 through 104.

106. Under New York Labor Law § 222, a municipality may require a contractor to enter into a PLA for a specific project where it “determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor agreement.” McKinney's Labor Law § 222(a) (2009).

107. The City has violated Section 222 by enacting blanket PLAs not limited to a specific project and by failing to determine the need for a PLA on a project-by-project basis.

108. As a result, the City's PLAs are in direct violation of New York Labor Law § 222.

WHEREFORE Plaintiffs demand judgment against defendants as follows:

- a) declaratory and injunctive relief;
- b) reasonable attorney's fees and other costs and disbursements of this action; and
- c) such other and further relief as appears just and proper.

Dated: New York, New York
October 21, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan M. Pollack", written over a horizontal line.

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