

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK INDEPENDENT CONTRACTORS	:
ALLIANCE INC. and LOCAL 175 OF THE	:
UNITED PLANT & PRODUCTION WORKERS	:
UNION,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
CONSOLIDATED EDISON COMPANY OF	:
NEW YORK, INC.,	:
	:
Defendant.	:
-----X	

COMPLAINT

16 Civ. _____

JURY TRIAL DEMANDED

Plaintiffs New York Independent Contractors Alliance Inc. (“NYICA”) and Local 175 of the United Plant & Production Workers Union (“Local 175”), by their attorneys Morvillo Abramowitz Grand Iason & Anello P.C., as and for their Complaint against defendant Consolidated Edison Company of New York, Inc. (“Con Edison”), allege upon personal knowledge as to themselves and upon information and belief as to Con Edison, as follows:

NATURE OF THE CASE

1. Defendant Con Edison has engaged in an ongoing conspiracy to lock up the New York City market for specialized asphalt paving work in the hands of Laborers International Union of North America (“LIUNA”), LIUNA Local 1010 and the group of contractors and subcontractors (collectively “contractors”) affiliated with LIUNA Local 1010, in violation of the federal antitrust laws. In an abrupt departure from its practices for the last ten years, Con Edison made a deal with LIUNA and LIUNA Local 1010 whereby Con Edison agreed to award asphalt paving contracts exclusively to contractors affiliated with LIUNA Local 1010.

2. Con Edison has acted in concert and agreement with LIUNA and LIUNA Local 1010 to prevent and prohibit contractors with collective bargaining relationships with Local 175 from obtaining contracts from Con Edison to perform asphalt patch-paving and related work—that is, the restoration of asphalt patches and trenches that have been excavated to maintain electric, gas and steam lines. Pursuant to that agreement, Con Edison will award construction contracts only to contractors with collective bargaining relationships with unions affiliated with the Building & Construction Trades Council of Greater New York (the “BCTC”), such as LIUNA Local 1010.

3. Con Edison’s agreement with LIUNA and LIUNA Local 1010 also precludes members of Local 175 from performing asphalt patch-paving and related work on Con Edison contracts.

4. As a result of Con Edison’s concerted conduct and agreement with LIUNA and LIUNA Local 1010, Con Edison revised its longstanding Standard Terms and Conditions for Construction Contracts (“Contract Terms”). In 2014, Con Edison, in concert with LIUNA and LIUNA Local 1010, revised its Contract Terms to require that contractors employ only workers who belong to a union affiliated with the BCTC. That provision states: “With respect to work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals (*affiliated with the Building & Construction Trades Council of Greater New York*) having jurisdiction over the Work to the extent such labor is available.” The italicized clause revises Con Edison’s longstanding Contract Terms.

5. LIUNA Local 1010 is affiliated with the BCTC. Local 175 is not affiliated with the BCTC. As a result, Con Edison's revised Contract Terms prohibit contractors with collective bargaining relationships with Local 175 from obtaining Con Edison contracts.

6. Until shortly before Con Edison changed its Contract Terms, Con Edison had never dictated that a contractor's employees must belong to any particular union, but only that the "union labor [be] from building trades locals having jurisdiction over the Work." For over ten years, since Local 175 became the representative of the employees of contractors performing asphalt patch-paving and related work in New York City, contractors affiliated with Local 175 have bid on, been awarded, and performed Con Edison contracts without any issue or labor unrest. Now, based on the deal that Con Edison struck with LIUNA and LIUNA Local 1010, even though contractors affiliated with Local 175 have performed *virtually all* of Con Edison's asphalt patch-paving work for over ten years, Con Edison is refusing to give them *any* asphalt patch-paving contracts.

7. Moreover, no procompetitive justification exists for Con Edison's change in its Contract Terms. Con Edison's agreement with LIUNA and LIUNA Local 1010 is a thinly-veiled effort to help LIUNA circumvent National Labor Relations Board ("NLRB") elections. In previous NLRB elections, the asphalt paving workers of New York City overwhelmingly chose Local 175 as their collective bargaining representative. By freezing contractors and workers associated with Local 175 out of the asphalt paving market, Con Edison has effectively decreed that joining LIUNA Local 1010—the union that the majority of asphalt paving workers *rejected* in NLRB elections—is a prerequisite for performing asphalt paving work in New York City. Con Edison's message is clear: disavow Local 175 and join LIUNA Local 1010, or be cut out of the market.

8. By colluding with LIUNA and LIUNA Local 1010—a union with which Con Edison has no collective bargaining relationship or project labor agreement—Con Edison has restrained trade by preventing contractors with relationships with Local 175 from being awarded asphalt paving contracts from Con Edison, thereby foreclosing the majority of the market for asphalt patch-paving services in New York City.

9. The agreement among LIUNA, LIUNA Local 1010 and Con Edison also creates a monopoly for asphalt patch-paving and related work in the hands of LIUNA, LIUNA Local 1010 and their affiliated contractors.

PARTIES

10. Plaintiff NYICA is a not-for-profit corporation organized and existing under the laws of the State of New York. NYICA is comprised of construction contractors whose members have collective bargaining relationships with Local 175. NYICA has its place of business in Queens in New York City.

11. Plaintiff Local 175 is an affiliate of the International Union of Journeyman and Allied Trades (“IUJAT”). Local 175 is a voluntary unincorporated association and labor organization under 29 U.S.C. § 152(5). Local 175 engages in collective bargaining and the enforcement of collective bargaining agreements on behalf of bargaining unit members, including an asphalt paving division and a concrete paving division, who serve and work in the relevant market area of New York City. Local 175 has offices in Roslyn Heights, New York.

12. Defendant Con Edison is a corporation organized and existing under the laws of the State of New York that provides electricity, gas and steam services in New York City. Con Edison has its headquarters in New York, New York.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 4, and this case arises under 15 U.S.C. §§ 1, 2, 15, and 26.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 15 U.S.C. § 22, as defendant Con Edison resides in or conducts business within this District.

INTERSTATE TRADE AND COMMERCE

15. The contractors who perform asphalt patch-paving and related work for Con Edison use raw materials that are a part of the flow of interstate commerce, including bituminous concrete, stone and tar. Con Edison's anticompetitive conduct therefore has a substantial effect on interstate commerce.

RELEVANT SERVICE AND GEOGRAPHIC MARKETS

I. The Utility Asphalt Patch-Paving Market in New York City

16. For purposes of this Complaint, the relevant market that is affected by Con Edison's anticompetitive agreement with LIUNA and LIUNA Local 1010 is the market for utility asphalt patch-paving services and related work.

17. Con Edison and other utility companies, such as KeySpan Corporation, maintain the steam, electric, and gas lines under the streets of New York City. That maintenance involves excavation work, including the digging of trenches necessary to perform the maintenance, and asphalt paving work, which restores the asphalt removed in connection with the excavation work. Excavation work and asphalt paving work are distinct crafts that require very different skills, equipment, manpower and materials. The asphalt restoration and related work is known as "utility asphalt patch-paving." Excavation work, on the one hand, and utility asphalt patch-

paving work, on the other, are bid independently and awarded as separate contracts, usually performed by separate contractors.

18. Utility asphalt patch-paving is a specialized type of paving that involves the restoration of asphalt removed in connection with excavation work. Utility asphalt patch-paving is distinct from other asphalt paving, referred to herein as “curb to curb” paving, where a contractor paves an entire road or a similar open area, such as a parking lot or an airport runway. Utility asphalt patch-paving requires expertise and experience that is not required for “curb to curb” paving. It also requires specialized equipment, more intensive manpower, and a higher quality output.

19. There is a reasonable interchangeability among the services provided by contractors that specialize in utility asphalt patch-paving. However, given the differences between utility asphalt patch-paving services and more general “curb to curb” paving services, they are not interchangeable. As result, only a small number of contractors regularly place bids, and even a smaller number are regularly awarded contracts, in the utility asphalt patch-paving market in New York City. By contrast, a much larger number of contractors seek work in the “curb to curb” asphalt paving market.

20. For purposes of this Complaint, the relevant geographical market for utility asphalt patch-paving services and related work is New York City. The contractors that regularly bid on utility asphalt patch-paving contracts for New York City streets are located and operate in the New York City area. As a practical matter, the entities that have a need for utility asphalt patch-paving services in New York City must turn to New York City-based contractors. The difficulty and cost of transporting equipment, supplies, and labor over long distances makes the use of other contractors prohibitively expensive and inefficient.

II. The Structure of the Utility Asphalt Patch-Paving Market

21. In the New York City market for utility asphalt patch-paving, Con Edison's contracts account for a substantial majority of the utility asphalt paving services—well over 50% of the market. Con Edison, along with KeySpan Corporation, purchase the vast majority of utility asphalt patch-paving services in New York City. Accordingly, Con Edison has substantial market power as a purchaser of utility asphalt patch-paving services in the New York City market.

22. Moreover, Con Edison's contracts account for a large portion of the market for *all* asphalt paving services in New York City, including both patch-paving and other “curb to curb” paving. Con Edison therefore has market power even in the broader market for all asphalt paving services in the New York City area.

23. Most contractors in the New York City market for utility asphalt patch-paving services are affiliated with either Local 175 or LIUNA Local 1010. However, LIUNA Local 1010 refuses to sign labor agreements with any contractor who is affiliated with Local 175.

24. Since 2005, when Local 175 was created, NYICA contractors performing utility asphalt patch-paving work have had collective bargaining agreements with Local 175, and have performed utility asphalt patch-paving work for Con Edison. Some of these contractors have worked exclusively for Con Edison. In fact, for thirty or more years before Local 175 was created, some of the same contractors performed the same work for Con Edison while affiliated with Local 175's predecessor, LIUNA Local 1018.

25. In secret ballot elections in or around 2005 through 2007, supervised by the NLRB, the asphalt paving workers in the New York City area elected Local 175 as their

collective bargaining representative. Since that time, Con Edison has recognized Local 175 as the utility asphalt patch-paving union that replaced LIUNA Local 1018.

26. Before the 2005-2007 NLRB elections, LIUNA Local 1018 had been the collective bargaining representative for utility asphalt patch-paving workers in New York City. However, LIUNA Local 1018 lost so many workers in the secret ballot elections that its remaining members merged into LIUNA Local 1010 in September 2009. In May 2010, LIUNA Local 1010 changed its collective bargaining agreements to assert jurisdiction over asphalt paving and related work for the first time in its history.

27. Contractors with collective bargaining relationships with Local 175 have performed almost all the utility asphalt patch-paving services in New York City for the last ten years. Con Edison contracts constitute most of that work. By contrast, contractors with collective bargaining relationships with LIUNA Local 1010 have performed only a tiny amount of the utility asphalt patch-paving services in the market.

CON EDISON'S ANTICOMPETITIVE CONDUCT

I. Con Edison Revises Its Standard Contract Terms

28. For the last ten years, during which NYICA contractors with collective bargaining relationships with Local 175 performed the majority of utility asphalt patch-paving work for Con Edison, Con Edison's Contract Terms provided as follows: "With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available." This provision, which remained in the Contract Terms until October 2014, did not require a contractor to use union labor affiliated with any particular union. Con Edison did not enforce any such restrictive union requirement.

29. In the summer of 2014, notwithstanding that contractors affiliated with Local 175 had long been performing utility asphalt patch-paving work for Con Edison without incident, Con Edison changed its longstanding interpretation of the Contract Terms to exclude contractors associated with Local 175. In or around July 2014, Mana Construction Group (“Mana”), a NYICA-affiliated contractor with a collective bargaining relationship with Local 175, placed the lowest bid on a Con Edison project in Queens. Con Edison advised Mana that Con Edison no longer recognized Local 175, and that in order to receive the contract, Mana would have to sign a labor agreement with LIUNA Local 1010. However, Mana cannot sign a collective agreement with LIUNA Local 1010 because Mana has a labor agreement with Local 175.

30. Con Edison subsequently disclosed that it had changed its interpretation of its standard Contract Terms. In a letter dated September 24, 2014, Con Edison’s Assistant General Counsel, Richard A. Levin, informed counsel for Local 175 that the clause in the Contract Terms referring to “building trades locals having jurisdiction over the Work” meant *only* building trades locals associated with the BCTC. Mr. Levin wrote, “It appears that [Local 175] does not fall within the term ‘building trades locals having jurisdiction over the Work,’ as it . . . is not associated with the [BCTC].”

31. Local 175 is not associated with the BCTC, which denied membership to Local 175. Meanwhile, LIUNA Local 1010 is affiliated with the BCTC.

32. As a result, Con Edison’s new interpretation of its Contract Terms prevents NYICA contractors, who have collective bargaining relationships with Local 175, from obtaining *any* utility asphalt patch-paving or other contracts from Con Edison. These contractors have been performing utility asphalt patch-paving work, as well as other work, for Con Edison for the last ten years pursuant to multiple Con Edison contracts—even though Local 175 has

never been associated with the BCTC. Con Edison's new Contract Terms are therefore inconsistent with its longstanding practice of awarding contracts to NYICA contractors affiliated with Local 175. Despite Mr. Levin's assertion in his letter of September 24, 2014 that Con Edison would "continue" to hold contractors to the requirement that they use labor from unions affiliated with the BCTC, Con Edison never previously enforced any such requirement.

33. Under Con Edison's new Contract Terms, only contractors who have collective bargaining agreements with LIUNA Local 1010 can perform utility asphalt patch-paving work for Con Edison. All other contractors are excluded from the market.

34. On or about October 15, 2014, Con Edison formalized its new position by revising its standard Contract Terms. For the first time, the revised Contract Terms explicitly state that contractors must use workers belonging to unions affiliated with the BCTC, and therefore may not use workers affiliated with Local 175 and the contractors that employ them.

II. Con Edison's Agreement with LIUNA and LIUNA LOCAL 1010

35. Con Edison changed its Contract Terms pursuant to an agreement with LIUNA and LIUNA Local 1010. A LIUNA Local 1010 representative has informed Local 175, and a contractor affiliated with Local 175, that LIUNA Local 1010 struck a "deal" with Con Edison that will shut out contractors affiliated with Local 175 from Con Edison's utility asphalt patch-paving work.¹

36. In or around November 2014, Alfonse Taibi of GreenGold Contracting ("GreenGold"), a contractor with a collective agreement with Local 175, met with John Peters, a representative of LIUNA Local 1010. They met to discuss various disputes between LIUNA Local 1010 and GreenGold. When Mr. Taibi asked Mr. Peters about Con Edison work, Mr.

¹ The language quoted in this section is based upon affidavits in plaintiffs' possession.

Peters said that he and Armand Sabatini, the New England Regional Manager of LIUNA, had “made a deal” with Con Edison, and that Local 175 contractors would no longer be allowed to work for Con Edison.

37. Mr. Taibi asked how such a thing was possible, and Mr. Peters replied, “We’ve been digging and digging and we won. It’s a done deal, in 2015 [Local 175 is] out. We got it done.” Mr. Peters explained that new contracts with Con Edison would require union workers to be affiliated with the BCTC, and that “the contracts have already been changed.” Mr. Peters told Mr. Taibi that contractors who use labor from Local 175 would be shut out of Con Edison work.

38. In or around December 2014, Roland Bedwell, the Business Manager of Local 175, met with Mr. Peters to discuss Con Edison’s requirement that contractors employ union labor affiliated with the BCTC. Mr. Peters said that Gary Labarba, the President of the BCTC, and Mr. Sabatini of LIUNA, had “meetings with Michael Perrino [the Con Edison Building Trades Relations Officer] and heads of Con Ed.” Mr. Peters also said that the arrangement was a done deal and there was nothing Mr. Bedwell could do about it.

39. In late December 2015, Phil Lentini, a member of Local 175, was specifically informed by Robert James, a LIUNA organizing representative, that LIUNA had made a deal with Con Edison to the effect that Con Edison would no longer award contracts to contractors affiliated with Local 175.

III. Con Edison and LIUNA LOCAL 1010 Threaten NYICA Contractors

40. Con Edison and LIUNA Local 1010 officials have threatened NYICA-affiliated contractors with the loss of Con Edison’s utility asphalt patch-paving work unless they repudiate their collective bargaining relationships with Local 175 and form collective bargaining relationships with LIUNA Local 1010.

41. In or around the fall of 2014, Con Edison contacted at least two NYICA-affiliated contractors who perform utility asphalt patch-paving work for Con Edison and are affiliated with Local 175. Con Edison informed those contractors that, while they would be allowed to finish their existing contracts with Con Edison, they would not be allowed to rebid for Con Edison contracts unless they signed collective bargaining agreements with LIUNA Local 1010. Since LIUNA Local 1010 will not enter into a collective bargaining relationship with any contractor that has a collective bargaining relationship with Local 175, Con Edison's new position bars Local 175 contractors from Con Edison's utility asphalt patch-paving contracts and other contracts. A LIUNA Local 1010 representative made similar threats to another NYICA-affiliated contractor.

42. Further, a Local 175 contractor was informed by Con Edison that it was the low bidder for a contract for Con Edison, but to receive the contract, it would have to sign a collective bargaining agreement with a union that belonged to the BCTC.

A. Alfonse Taibi, GreenGold Contracting

43. GreenGold has a collective bargaining agreement with Local 175. GreenGold has recently had several disputes with LIUNA Local 1010, which involved grievances and lawsuits filed by LIUNA Local 1010 against contractors with whom GreenGold works.

44. In an effort to resolve GreenGold's disputes with LIUNA Local 1010, Alfonse Taibi of GreenGold met with Mr. Peters, a representative of LIUNA Local 1010, on or about November 13, 2014. When Mr. Taibi asked Mr. Peters why LIUNA Local 1010 had filed grievances in an effort to stop contractors from working with GreenGold, Mr. Peters replied that the grievances were filed because GreenGold left LIUNA Local 1010 and affiliated with Local 175. Mr. Taibi replied that it was the workers who had chosen to leave for Local 175. Mr.

Peters responded that Mr. Taibi should form a new corporation and sign a collective bargaining agreement with LIUNA Local 1010, so that he could continue receiving contracts from Con Edison, and that he would have to work with a new complement of workers.

B. Tri-Messine Construction

45. In or about October 2014, a representative of Tri-Messine Construction (“Tri-Messine”) was contacted by a Con Edison representative. The Con Edison representative informed Tri-Messine that it would be permitted to finish its existing contracts with Con Edison, but Tri-Messine would not be able to rebid those contracts unless it signed a collective bargaining agreement with LIUNA Local 1010.

C. Natale Cardino, Mana Construction

46. Natale Cardino is the Vice President of Mana Construction, which has a collective bargaining relationship with Local 175. In or around the spring of 2014, Con Edison approved Mana as a contractor and began sending it bid solicitations.

47. In or about May 2014, Mana bid on a parking lot renovation in Brooklyn for Con Edison, and was offered the job a few weeks later. Mana received a purchase order for the work on or about June 27, 2014, and began the work on or about September 2014, using Local 175 members.

48. In or about June 2014, Mana bid on a parking lot renovation in the Bronx for Con Edison, and was told by Con Edison that it was the low bidder. At about the same time, Mana put in a bid for a Queens concrete requirements contract, which was to last three years, with a two year renewal option. Con Edison also told Mana that it was the low bidder on the Queens project.

49. Approximately two weeks after Mana accepted the Queens project, Con Edison asked Mana for its union signatory agreements. Mana provided the agreements, and shortly thereafter was told by Con Edison that it would have to sign with LIUNA Local 731 and LIUNA Local 1010 to perform the Queens contract. Mr. Cardino asked why that was required, given that he was performing a Brooklyn contract using labor from Local 175. Con Edison's labor relations representative told Mr. Cardino that Local 175 was no longer recognized by Con Edison, and that Mana would have to sign an agreement with LIUNA Local 1010 and LIUNA Local 731.²

D. Mike Petranico, Nico Asphalt Paving

50. Nico Asphalt Paving ("Nico"), which is owned in part by Mike Petranico and has a contract with Local 175, has also been threatened with the loss of Con Edison work based on Con Edison's new Contract Terms.

51. In October 2014, Mr. Petranico told a representative of Local 175 that Mr. Petranico had been called to Con Edison's main office and was told that, while he would be allowed to finish his existing contracts with Con Edison, Con Edison would not allow him to rebid contracts unless he signed with LIUNA Local 1010 because it is the only member of the BCTC that performs asphalt paving.

52. Nico recently obtained a six year, area-wide contract for utility asphalt patch-paving from Con Edison. Although Nico signed the contract, Con Edison told Nico that it needed to be in compliance with Con Edison's Contract Terms and sign an agreement with LIUNA Local 1010 before Con Edison would finalize the contract.

² Mana Construction was ultimately unable to finalize the Queens project due to an unrelated bonding issue.

53. On or about November 30, 2015, Nico was informed that the contract would be rebid to other contractors.

54. Faced with the prospect of losing the contract, Nico followed LIUNA Local 1010's playbook. Nico did precisely what John Peters, a LIUNA Local 1010 representative, had already told Mr. Taibi of GreenGold Contracting to do in order to retain Con Edison's business: Nico formed a new corporation to avoid its contractual obligations to Local 175.

55. On December 15, 2015, Nico formed an affiliated company, Citywide Paving Incorporated ("Citywide"), located at the same address as Nico. The transparent purpose of Citywide is to circumvent Nico's collective bargaining agreement with Local 175 so that Nico's owners can obtain the Con Edison area-wide paving contract. Citywide has entered into the area-wide paving contract with Con Edison that had previously been signed by Nico.

56. On February 12, 2016, Nico called a meeting of its Local 175 workers. Nico told its Local 175 workers that they would have to join Local 1010, and work for Citywide, in order to continue working on Con Edison contracts.

57. Under Con Edison's Contract Terms, Citywide may not use Local 175 members to perform work for Con Edison. Thus, as a result of Con Edison's agreement with LIUNA and LIUNA Local 1010, members of Local 175 will be deprived of work they otherwise would have performed.

ANTICOMPETITIVE EFFECTS OF CON EDISON'S CONDUCT

58. Con Edison's agreement with LIUNA and LIUNA Local 1010 has the purpose and effect of barring NYICA contractors and any other contractors with collective bargaining relationships with Local 175, as well as Local 175 and its members, from competing in the market for Con Edison's utility asphalt patch-paving contracts. Pursuant to the agreement, Con

Edison will only purchase utility asphalt patch-paving services from contractors who have collective bargaining agreements with LIUNA Local 1010. Given the structure of the utility asphalt patch-paving market in New York City, Con Edison's exclusive dealing arrangement will have significant anticompetitive effects.

59. Since Con Edison's contracts constitute well over half of the market for utility asphalt patch-paving services in New York City, Con Edison's agreement to deal exclusively with LIUNA Local 1010-affiliated contractors forecloses more than half of the relevant market. As a result, Con Edison's agreement has indiscriminately made all Local 175-affiliated contractors, and all Local 175 members, ineligible to compete for over half of the potential market for utility asphalt patch-paving services. By cutting off Local 175-affiliated contractors from a large portion of the market for utility asphalt patch-paving, Con Edison's conduct threatens their ability to continue providing those services, which could result in a shortage of contractors offering utility asphalt patch-paving services in the New York City market, and in turn, an increase in the costs associated with utility asphalt patch-paving. Likewise, cutting off Local 175 and its members from the asphalt patch-paving market will threaten the viability of Local 175, prevent all competition between Local 175 and LIUNA Local 1010, and in turn, increase the costs associated with utility asphalt-patch paving.

60. Additionally, the large market foreclosure created by Con Edison's exclusive dealing arrangement gives LIUNA and LIUNA Local 1010 the power to control access to the market for utility asphalt patch-paving work. Con Edison's revised Contract Terms bar all contractors that would employ union labor that is not affiliated with the BCTC, which means all contractors that are not affiliated with LIUNA Local 1010. As a result, LIUNA Local 1010 has complete control over utility asphalt patch-paving work offered by Con Edison—which is to say,

a substantial majority of all the available utility asphalt patch-paving work in the New York City market. This control, which constitutes a monopoly over a substantial majority of the relevant market, will adversely affect the market. For example, if LIUNA and LIUNA Local 1010 determine that their interests would be served by a market with fewer contractors, LIUNA Local 1010 can decline to enter into collective bargaining relationships with fringe contractors.

61. In addition to foreclosing a high percentage of the New York City utility asphalt patch-paving market, Con Edison's exclusive dealing agreement with LIUNA and LIUNA Local 1010 will decimate the competition for Con Edison contracts, which constitute a majority of the market. The agreement freezes out the most significant participants in the market—NYICA contractors with collective bargaining relationships with Local 175, and Local 175 and its members. During the last ten years, contractors affiliated with Local 175 have performed almost all of the utility asphalt patch-paving work in New York City, and almost all of the utility asphalt patch-paving work for Con Edison. Thus, Con Edison's agreement deprives Local 175-affiliated contractors and union members of utility asphalt patch-paving work they otherwise would have performed for Con Edison.

62. Moreover, the level of competition remaining in the foreclosed market for Con Edison contracts is very weak. The LIUNA Local 1010-affiliated contractors who remain eligible to bid on Con Edison utility asphalt patch-paving work, and the Local 1010 members who remain eligible to compete for that work, are fringe participants in the market. They account for only a small amount of the utility asphalt patch-paving services performed over the last forty years in New York City, and a tiny amount of the utility asphalt patch-paving services performed for Con Edison. As result of Con Edison's exclusive dealing agreement, few—if any—contractors with the requisite expertise, manpower, and equipment remain eligible to

compete for Con Edison patch-paving contracts. Likewise, under Con Edison's exclusive dealing agreement, only LIUNA Local 1010 and its members can compete for Con Edison's asphalt patch-paving work. This reduced level of competition is likely to result in increased costs associated with utility asphalt patch-paving.

63. The anticompetitive effects of Con Edison's exclusive dealing agreement are exacerbated by the fact that Con Edison intends to abide by the agreement indefinitely. In a September 2014 letter to IUJAT, Richard Levin, Con Edison's Assistant General Counsel, stated that "we intend to continue to hold our construction contractors" to the requirement that paving contractors be affiliated with the BCTC—which entails an exclusive dealing arrangement with LIUNA Local 1010 contractors. Furthermore, in a December 2014 submission to the New York State Public Service Commission ("NYSPSC"), Con Edison stated that its revisions to its Contract Terms "reiterate [Con Edison's] long-standing policy and practice."

64. Additionally, there are significant barriers to entering the utility asphalt patch-paving market. As a threshold matter, Con Edison's exclusive dealing agreement provides LIUNA Local 1010 with a veto over any contractor that seeks to compete for Con Edison's utility asphalt patch-paving work—again, a majority of the available market. Additionally, utility asphalt patch-paving is specialized work that requires a significant outlay of capital for a relatively small amount of potential construction work—including the cost of machinery and large performance bonds. The barriers to entry in the market are reflected by the small number of contractors that have recently bid for Con Edison's area-wide asphalt patch-paving contracts.

65. Con Edison also lacks a legitimate procompetitive justification for its exclusive dealing agreement with LIUNA and LIUNA Local 1010. In Con Edison's December 2014 submission to the NYSPSC, Con Edison claimed that its revised Contract Terms are a

“reasonable measure for avoiding labor disputes between and among labor organizations that could adversely affect the Company.” Con Edison’s explanation is pretextual and makes little sense in light of Con Edison’s longstanding practice. Contractors affiliated with Local 175 have been performing utility asphalt patch-paving services for Con Edison over the last ten years, and some of the same contractors have done so while affiliated with Local 175’s predecessor, LIUNA Local 1018, for at least the prior thirty years—without incident or industrial unrest. There has been no “labor dispute” between Local 175 and LIUNA Local 1010 that has adversely affected a Local 175-affiliated contractor’s performance of a utility asphalt patch-paving contract.

66. Instead, the transparent purpose of Con Edison’s exclusive dealing agreement with LIUNA and LIUNA Local 1010 is to exclude Local 175-affiliated contractors from a large portion of the utility asphalt patch-paving market, and thereby pressure contractors and workers to leave Local 175 and affiliate with LIUNA Local 1010 in order to access the market. Con Edison’s new position therefore is designed to help LIUNA and LIUNA Local 1010 circumvent the NLRB secret ballot process by which asphalt paving workers chose Local 175 to represent them. Local 175-affiliated contractors will be forced to either give up utility asphalt patch-paving work or repudiate their contracts with Local 175. Similarly, Local 175 members will be forced either to forego utility asphalt patch-paving work or leave Local 175 and join LIUNA Local 1010. Acceding to LIUNA and LIUNA Local 1010’s request to circumvent NLRB elections hardly constitutes a procompetitive justification for foreclosing a large percentage of the market.

FIRST CLAIM

Section 1 of the Sherman Act

67. Paragraphs 1-66 are incorporated and re-alleged herein, as if fully restated.

68. Con Edison has violated Section 1 of the Sherman Act by agreeing with LIUNA and LIUNA Local 1010 to prohibit contractors who do not have collective bargaining agreements with unions affiliated with the BCTC from bidding on and performing utility asphalt patch-paving work for Con Edison.

69. The agreement among Con Edison, LIUNA, and LIUNA Local 1010 is not protected by the construction industry proviso, 29 U.S.C. § 158(e), or the antitrust exemptions for labor activity. LIUNA Local 1010 does not have a collective bargaining agreement with Con Edison, and its agreement with Con Edison was not reached within the context of a collective bargaining relationship.

70. Con Edison's agreement with LIUNA and LIUNA Local 1010 has had and will continue to have anticompetitive effects in the utility asphalt patch-paving market in New York City. Con Edison's revised Contract Terms are not reasonably necessary to achieve procompetitive benefits. Further, any procompetitive benefits flowing from Con Edison's agreement are substantially outweighed by their anticompetitive effects, and less restrictive alternatives exist by which Con Edison could achieve any procompetitive goals.

71. NYICA contractors have not been awarded utility asphalt patch-paving contracts that they otherwise would have been awarded as a result of Con Edison's anticompetitive conduct, or have been threatened with the loss of such contracts.

72. Local 175 workers have been directly injured as a result of Con Edison's anticompetitive conduct, and have been threatened with continuing injury. They have lost work

from Con Edison contracts that they have traditionally performed, and have been threatened with further loss of work.

SECOND CLAIM

Section 2 of the Sherman Act

73. Paragraphs 1-72 are incorporated and re-alleged herein, as if fully restated.

74. Con Edison has violated Section 2 of the Sherman Act by conspiring with LIUNA and LIUNA Local 1010 to monopolize the market for utility asphalt patch-paving in New York City.

75. Con Edison agreed with LIUNA and LIUNA Local 1010 to prohibit contractors who do not have collective bargaining agreements with unions affiliated with the BCTC from bidding on and performing utility asphalt patch-paving work for Con Edison.

76. The agreement among Con Edison, LIUNA, and LIUNA Local 1010 is not protected by the construction industry proviso, 29 U.S.C. § 158(e), or the antitrust exemptions for labor activity. LIUNA Local 1010 does not have a collective bargaining agreement with Con Edison, and its agreement with Con Edison was not reached within the context of a collective bargaining relationship.

77. Con Edison entered the agreement with LIUNA and LIUNA Local 1010, and revised its Contract Terms, with the specific intent to create a monopoly in the market for utility asphalt patch-paving in New York City.

78. Con Edison has created a monopoly in the market for utility asphalt patch-paving in New York City in the hands of LIUNA Local 1010-affiliated contractors and LIUNA Local 1010, or has created a dangerous probability that LIUNA Local 1010-affiliated contractors and LIUNA Local 1010 will achieve monopoly power.

79. NYICA contractors have not been awarded paving contracts that they otherwise would have been awarded as a result of Con Edison's conspiracy to monopolize the market for utility asphalt patch-paving in New York City, or have been threatened with the loss of such contracts.

80. Local 175 workers have been directly injured as a result of Con Edison's conspiracy to monopolize the market for utility asphalt patch-paving in New York City, and have been threatened with continuing injury. They have lost work from Con Edison that they have traditionally performed, and have been threatened with further loss of work.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs New York Independent Contractors Alliance Inc. and Local 175 of the United Plant & Production Workers Union request judgment in their favor against defendant Consolidated Edison Company of New York, Inc. as follows:

- (a) on their first and second claims for relief, money damages (including treble damages) in an amount to be proven at trial;
- (b) on their first and second claims for relief, an injunction barring Con Edison from further violating the antitrust laws, including without limitation enforcing any requirement in its Standard Terms and Conditions for Construction Contracts that contractors employ only union labor from building trades locals affiliated with the Building & Construction Trades Council of Greater New York;
- (c) awarding plaintiffs their attorneys' fees and costs in this action; and
- (d) awarding such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 16, 2016

MORVILLO ABRAMOWITZ GRAND
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