S T A T E O F N E W Y O R K

9463

I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. JOHN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to hours, wages, and supplements for work on public work projects including charter schools and to amend the education law, in relation to contracts for charter school construction and collective bargaining representation of employees in certain charter schools

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 2 of section 220 of the labor law, as amended by chapter 678 of the laws of 2007, is amended to read as follows:

2. Each contract, LEASE, GRANT, BOND, COVENANT, DEBT AGREEMENT, OR PERMIT, to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law OR AN EDUCATION CORPORATION ORGANIZED TO OPERATE A CHARTER SCHOOL is a party, and any contract for public work entered into by a third party acting in place of, on behalf of and for the benefit of such public entity pursuant to any lease, permit or other agreement between such third party and the public entity, and which may involve the employment of laborers, workers or mechanics shall contain a stipulation that no laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workers and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the commissioner determines that there are not sufficient workers, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the commissioner shall grant a dispensation permitting all laborers, workers and mechanics, or any classification of such laborers, workers and mechanics, to work such additional hours or days per week on such public project or in such areas the commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workers and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

S 2. Subdivision 2 of section 220 of the labor law, as amended by chapter 851 of the laws of 1947, is amended to read as follows:

2. Each contract, LEASE, GRANT, BOND, COVENANT, DEBT AGREEMENT, OR PERMIT, to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law OR AN EDUCATION CORPORATION ORGANIZED TO OPERATE A CHARTER SCHOOL is a party and which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations in which sufficient laborers, workmen and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the industrial commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the industrial commissioner shall

make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workmen and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the industrial commissioner determines that there are not sufficient workmen, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the industrial commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the industrial commissioner shall grant a dispensation permitting all laborers, workmen and mechanics, or any classification of such laborers, workmen and mechanics, to work such additional hours or days per week on such public project or in such areas the industrial commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workmen and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the industrial commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

S 3. Paragraph (a) of subdivision 3 of section 2853 of the education law, as amended by section 4 of part D-2 of chapter 57 of the laws of 2007, is amended to read as follows:

(a) A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building or in any other suitable location. Provided, however, before a charter school may be located in part of an existing public school building, the charter entity shall provide notice to the parents or guardians of the students then enrolled in the existing school building and shall hold a public hearing for purposes of discussing the location of the charter school. ALL CONTRACTS ENTERED INTO BY SUCH CHARTER SCHOOL, OR ANY EDUCATION CORPORATION ORGANIZED TO OPERATE A CHARTER SCHOOL, OR ANY OTHER PUBLIC ENTITY, INCLUDING THE STATE, A PUBLIC BENEFIT CORPORATION, MUNICIPAL CORPORATION, OR ANY PRIVATE ENTITY ACTING ON BEHALF OF ANY OF THESE ENTITIES, INVOLVING THE CONSTRUCTION, RECONSTRUCTION, DEMOLITION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION, OR ALTERATION OF ANY CHARTER SCHOOL FACILITY SHALL BE SUBJECT TO THE REQUIREMENTS OF SECTION ONE HUNDRED THREE OF THE GENERAL MUNICIPAL LAW AND ARTICLES EIGHT AND NINE OF THE LABOR LAW. A charter school may own, lease or rent its space. For purposes of local zoning, land use regulation and building code compliance, a charter school shall be deemed a nonpublic school.

S 4. Paragraph (b-1) of subdivision 3 of section 2854 of the education law, as amended by section 6 of part D-2 of chapter 57 of the laws of 2007, is amended to read as follows:

(b-1) The employees of a charter school that is not a conversion from an existing public school shall not be deemed members of any existing collective bargaining unit representing employees of the school district in which the charter school is located, and the charter school and its employees shall not be subject to any existing collective bargaining agreement between the school district and its employees. Provided, however, that (i) if the student enrollment of the charter school on the first day on which the charter school commences student instruction exceeds two hundred fifty or if the average daily student enrollment of such school exceeds two hundred fifty students at any point during the first two years after the charter school commences student instruction, all employees of the school who are eligible for representation under article fourteen of the civil service law shall be deemed to be represented in a separate negotiating unit at the charter school by the same employee organization, if any, that represents like employees in the school district in which such charter school is located; (ii) the provisions of subparagraph (i) of this paragraph may be waived in up to ten charters issued on the recommendation of the charter entity set forth in paragraph (b) of subdivision three of section twenty-eight hundred fifty-one of this article; AND (iii) [the provisions of subparagraph (i) of this paragraph shall not be applicable to the renewal or extension of a charter; and (iv)] nothing in this sentence shall be construed to subject a charter school subject to the provisions of this paragraph or its employees to any collective bargaining agreement between any public school district and its employees or to make the employees of such charter school part of any negotiating unit at such school district. [The charter school may, in its sole discretion, choose whether or not to offer the terms of any existing collective bargaining to school employees.]

S 5. This act shall take effect immediately; provided that the amendments to subdivision 2 of section 220 of the labor law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 5 of chapter 678 of the laws of 2007, as amended, when upon such date the provisions of section two of this act shall take effect.