

STATE OF NEW YORK

8383

IN SENATE

February 18, 2022

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, the public authorities law and the general municipal law, in relation to requiring labor peace agreements in contracts for certain retail or distribution projects involving public agencies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 222-b to
2 read as follows:

3 § 222-b. Labor peace agreements; covered retail and distribution
4 projects. 1. As used in this section:

5 (a) "Contractor" means any person, firm, partnership, corporation,
6 association, company, organization or other similar entity, or any
7 combination thereof, including any subcontractor thereof, that employs
8 employees to perform work pursuant to an agreement with a public agency
9 to undertake a covered retail or distribution project as defined in
10 paragraph (b) of this subdivision, or to serve as the owner or operator
11 of any facility, including but not limited to a retail establishment or
12 distribution center that is part of a covered project, or to provide
13 services integral to the operations of the covered project or the facil-
14 ities.

15 (b) "Covered retail or distribution project" or "covered project"
16 means any project in which a public agency enters into an agreement for
17 development after the effective date of this section, where: (i) one or
18 more retail establishments or distribution centers are part of the
19 project; (ii) the state agency has a substantial proprietary interest in
20 the project, or in the retail or distribution center; and (iii) the
21 project includes at least one retail establishment which will have at
22 least ten employees, or at least one distribution center which will have
23 more than twenty employees.

24 (c) "Distribution center" means a large-scale facility involving proc-
25 essing, repackaging and/or movement of finished or semi-finished goods
26 to be redistributed to retailers, wholesalers, or directly to customers,

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

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1 including but not limited to a warehouse, storage facility, sortation
2 facility, fulfillment center, or any other similar facility.

3 (d) "Labor peace agreement" means an agreement between a contractor
4 and one or more bona fide labor organizations representing workers in
5 this state that, at a minimum, requires that the labor organization and
6 its members refrain from engaging in labor activity that will disrupt
7 the contractor's operations, including strikes, boycotts, work stop-
8 pages, corporate campaigns, picketing or other economic action against
9 the covered retail or distribution project for a period of not less than
10 five years following the commencement of operations under the contract
11 or agreement for the covered project.

12 (e) "Proprietary interest" means an economic and non-regulatory inter-
13 est of a public agency in the economic or financial success of a covered
14 retail or distribution project that could be adversely affected by
15 labor-management conflict, including, but not limited to, the interest
16 of the public agency as a financier, investor, lessee, lessor, operator,
17 or owner of the project, facility, or property on which the project or
18 facility is located, or as the provider or facilitator of financial
19 assistance to or for the project, facility, or property, whether by
20 direct loan or grant, or by a guarantee, subsidy, deposit, credit
21 enhancement or similar method, and any interest of a public agency
22 derived from the ongoing receipt of revenues from the project or facili-
23 ties of the project.

24 (f) "Public agency" means the state, and any department, agency,
25 board, bureau, commission, division, council or office of the state or
26 any political subdivision thereof, as defined in section one hundred of
27 the general municipal law, a municipal corporation as defined in section
28 sixty-six of the general construction law and any district thereof, a
29 public benefit corporation, or local or state authority as defined in
30 section two of the public authorities law, and any other entity author-
31 ized and empowered to enter into any contract or arrangement to conduct
32 economic development activity on behalf of any such public agency.

33 (g) "Retail establishment" means any vendor that in the regular course
34 of business sells products at retail directly to members of the general
35 public.

36 2. (a) Except as provided in paragraph (c) of this subdivision, no
37 public agency shall enter into any agreement or contract under which
38 such agency has a proprietary interest in a covered project unless the
39 agreement or contract requires as a material condition that the contrac-
40 tor and any subcontractor thereof has entered into a labor peace agree-
41 ment, as defined in paragraph (d) of subdivision one of this section,
42 with a bona fide labor organization that is actively engaged in repres-
43 enting or attempting to represent retail or distribution center employ-
44 ees in the state.

45 (b) (i) Every contractor or subcontractor subject to the provisions of
46 this section shall incorporate the terms of such labor peace agreement
47 in any contract, subcontract, lease, sublease, operating agreement,
48 concessionaire agreement, franchise agreement or other agreement or
49 instrument giving a right to any person or entity to own or operate a
50 retail establishment or distribution center in the covered project and
51 shall require the maintenance of such labor peace agreement as an ongo-
52 ing material condition of continued operation of such covered project.

53 (ii) (A) The duration of every labor peace agreement entered into
54 pursuant to this subdivision shall be included within the duration of
55 such agreement, provided, however, that no such labor peace agreement
56 shall be deemed to comply with the requirements of this section unless

1 such agreement shall be enforceable and binding between all parties
2 thereto for not less than five years from the date the covered project
3 becomes operational; provided further, that nothing in this subparagraph
4 shall be construed so as to prohibit the parties from entering into a
5 labor peace agreement that exceeds the minimum five year period other-
6 wise required herein.

7 (B) The provisions of this subdivision requiring a labor peace agree-
8 ment shall apply to any successor contractor, and any subcontractor
9 thereof, that takes the place of any initial contractor or subcontractor,
10 provided such replacement occurs while the project remains a
11 covered project as defined in paragraph (b) of subdivision one of this
12 section. The duration of a labor peace agreement entered into by a
13 successor contractor or subcontractor pursuant to this clause shall be
14 for a period of not less than five years commencing on the later of the
15 date of such replacement or the date on which the project becomes opera-
16 tional.

17 (iii) Every public agency shall, prior to entering into an agreement
18 or contract for a covered project, provide written disclosure to the
19 contractor and any subcontractors of the labor peace agreement required
20 pursuant to this section and any other provisions applicable to such
21 agreement or contract. Where competitive bidding is required by statute,
22 rule, regulation or local law, for work or services to be performed in
23 connection with a covered project under this section, the public agency
24 shall provide such written disclosure to each prospective bidder or
25 contractor as part of any specifications or other conditions required
26 under this chapter or pursuant to any other general, special, or local
27 law or administrative code.

28 (iv) Any contractor or subcontractor that fails or refuses to include
29 any of the provisions required by this paragraph in the terms of any
30 contract, agreement or other instrument subject to the requirements of
31 this section shall not be considered a responsible bidder for the
32 purposes of any bid or proposal submitted in connection with such
33 covered project.

34 (c) (i) Notwithstanding any contrary provision of this section, a
35 public agency may enter into an agreement or contract wherein the public
36 agency has a substantial proprietary interest in a covered project with-
37 out a contractor entering into a labor peace agreement, if the agency
38 determines that the project would not be able to go forward if a labor
39 peace agreement was required, or the costs of the project to the public
40 agency would be substantially increased by such requirement, provided,
41 however, that no such determination shall be made without first solicit-
42 ing input from any labor organization that would otherwise be a party to
43 such labor peace agreement. Such a determination shall be supported by
44 a written finding setting forth the specific basis for such determi-
45 nation, which may include, but shall not be limited to experience with
46 similar projects, earlier requests for proposal for the same project, or
47 a detailed evaluation of potential bidders. Each such written determi-
48 nation, together with any supporting materials shall be submitted to the
49 commissioner in accordance with the provisions of subparagraph (ii) of
50 this paragraph in a manner consistent with rules and regulations promul-
51 gated by the commissioner for such purpose.

52 (ii) The commissioner shall review each such written determination
53 submitted pursuant to subparagraph (i) of this paragraph and shall issue
54 a public finding on such determination no later than fifteen business
55 days after receipt of such determination. In the event the commissioner
56 approves such determination, such determination, together with the

1 commissioner's statement of approval and findings thereon shall be
2 provided to the public agency and all other interested parties and shall
3 be included in any public materials in connection with the project and
4 shall be maintained by such agency in accordance with all applicable
5 provisions of the public officers law, the public authorities law, and
6 any other applicable law, rule or regulation.

7 (iii) If, after review of such determination pursuant to subparagraph
8 (ii) of this paragraph, the commissioner shall not approve such determi-
9 nation, the contract and agreement shall be subject to the mandatory
10 labor peace agreement pursuant to paragraphs (a) and (b) of this subdivi-
11 vision and subdivision three of this section.

12 3. (a) Beginning on the effective date of this section and thereafter,
13 no agreement or contract to undertake a covered retail or distribution
14 project shall be valid or enforceable unless it complies with the
15 requirements set forth in this section.

16 (b) The commissioner shall require every public agency that is subject
17 to the provisions of this section that has not entered into a labor
18 peace agreement on or before the effective date of this section to
19 produce an affidavit stating it shall enter into a labor peace agreement
20 with labor organizations that are actively engaged in representing or
21 attempting to represent retail and distribution center employees in this
22 state.

23 (c) Beginning on the effective date of this section and thereafter,
24 each public agency that enters into a contract or agreement for a
25 covered project subject to a labor peace agreement required by this
26 section shall submit to the commissioner proof of such executed labor
27 peace agreement, or a written determination pursuant to paragraph (c) of
28 subdivision two of this section, together with such other information
29 and documents as the commissioner may require in a manner prescribed by
30 the commissioner for such purpose.

31 (d) The commissioner shall adopt any rules and regulations necessary
32 to accomplish the purposes of this section in accordance with the state
33 administrative procedure act. Such rules and regulations shall include,
34 but not be limited to: a model labor peace agreement that complies with
35 the requirements of this section; remedies and procedures for public
36 authorities to enforce compliance with this section, including
37 provisions for the reimbursement of any costs or damages incurred by a
38 public authority in connection with any noncompliance with the
39 provisions of this section or with any contract or agreement subject to
40 the provisions of this section; and any internal controls necessary to
41 ensure compliance with such rules and regulations.

42 4. This section shall not apply to any construction contract entered
43 into in connection with a covered project; provided, however, that noth-
44 ing in this section shall prohibit or restrict the parties to any such
45 construction contract from executing a labor peace agreement where
46 otherwise permitted by applicable law. For the purposes of this section,
47 a "construction contract" means a contract for building, addition, demo-
48 lition, and other alterations and improvements to a covered project.

49 § 2. The public authorities law is amended by adding a new section
50 2879-d to read as follows:

51 § 2879-d. Labor peace; covered retail or distribution projects. 1.
52 Notwithstanding any contrary provision of any law, rule or regulation,
53 beginning on the effective date of this section and thereafter, all
54 contracts entered into by a public authority for a covered retail or
55 distribution project as defined in paragraph (b) of subdivision one of
56 section two hundred twenty-two-b of the labor law, shall include as a

1 material condition that the contractor or any subcontractor thereof
2 shall enter into a labor peace agreement with a labor organization that
3 represents retail or distribution center employees in the state, in
4 conformity with the provisions of section two hundred twenty-two-b of
5 the labor law, and the provisions of such section shall be deemed terms
6 of all such contracts.

7 2. Except as provided in paragraph (c) of subdivision two of section
8 two hundred twenty-two-b of the labor law, no public authority shall
9 enter into any agreement or contract for a covered retail or distrib-
10 ution project as defined in paragraph (b) of subdivision one of section
11 two hundred twenty-two-b of the labor law unless the agreement or
12 contract requires as a material condition that the contractor and any
13 subcontractor thereof has entered into a labor peace agreement with a
14 labor organization that is actively engaged in representing or attempt-
15 ing to represent retail or distribution center employees in the state in
16 conformity with section two hundred twenty-two-b of the labor law, and
17 the provisions of such section shall be deemed terms of all such
18 contracts.

19 § 3. The general municipal law is amended by adding a new section
20 109-e to read as follows:

21 § 109-e. Labor peace agreements; covered retail and distribution
22 projects. 1. Notwithstanding any contrary provision of any law, rule or
23 regulation, beginning on the effective date of this section and there-
24 after, all contracts entered into by an officer, board or agency of a
25 political subdivision, or of any district therein involving a covered
26 retail or distribution project as defined in paragraph (b) of subdivi-
27 sion one of section two hundred twenty-two-b of the labor law, shall
28 include as a material condition that the contractor or a subcontractor
29 thereof shall enter into a labor peace agreement with a labor organiza-
30 tion that represents retail or distribution center employees in the
31 state in conformity with the provisions of section two hundred twenty-
32 two-b of the labor law, and the provisions of such section shall be
33 deemed terms of all such contracts.

34 2. Except as provided in paragraph (c) of subdivision two of section
35 two hundred twenty-two-b of the labor law, no officer, board or agency
36 of a political subdivision, or of any district therein shall enter into
37 any agreement or contract for a covered retail or distribution project
38 as defined in paragraph (b) of subdivision one of section two hundred
39 twenty-two-b of the labor law unless the agreement or contract requires
40 as a material condition that the contractor and any subcontractor there-
41 of has entered into a labor peace agreement with a labor organization
42 that is actively engaged in representing or attempting to represent
43 retail or distribution center employees in the state in conformity with
44 section two hundred twenty-two-b of the labor law, and the provisions of
45 such section shall be deemed terms of all such contracts.

46 § 4. This act shall take effect on the ninetieth day after it shall
47 have become a law. Effective immediately, the addition, amendment and/or
48 repeal of any rule or regulation necessary for the implementation of
49 this act on its effective date are authorized to be made and completed
50 on or before such effective date.