STATE OF NEW YORK

8114

2023-2024 Regular Sessions

IN ASSEMBLY

October 13, 2023

Introduced by M. of A. KELLES -- read once and referred 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:

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

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

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

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

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

LBD06901-01-3

(c) "Distribution center" means a large-scale facility involving processing, repackaging and/or movement of finished or semi-finished goods to be redistributed to retailers, wholesalers, or directly to customers, including but not limited to a warehouse, storage facility, sortation facility, fulfillment center, or any other similar facility.

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

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

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

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

2. (a) Except as provided in paragraph (c) of this subdivision, no public agency shall enter into any agreement or contract under which such agency has a proprietary interest in a covered project unless the agreement or contract requires as a material condition that the contractor and any subcontractor thereof has entered into a labor peace agreement, as defined in paragraph (d) of subdivision one of this section, with a bona fide labor organization that is actively engaged in representing or attempting to represent retail or distribution center employees in the state.

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

(ii) (A) The duration of every labor peace agreement entered into pursuant to this subdivision shall be included within the duration of such agreement, provided, however, that no such labor peace agreement shall be deemed to comply with the requirements of this section unless such agreement shall be enforceable and binding between all parties thereto for not less than five years from the date the covered project becomes operational; provided further, that nothing in this subparagraph shall be construed so as to prohibit the parties from entering into a labor peace agreement that exceeds the minimum five year period otherwise required herein.

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

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

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

(c) (i) Notwithstanding any contrary provision of this section, a public agency may enter into an agreement or contract wherein the public agency has a substantial proprietary interest in a covered project without a contractor entering into a labor peace agreement, if the agency determines that the project would not be able to go forward if a labor peace agreement was required, or the costs of the project to the public agency would be substantially increased by such requirement, provided, however, that no such determination shall be made without first soliciting input from any labor organization that would otherwise be a party to such labor peace agreement. Such a determination shall be supported by a written finding setting forth the specific basis for such determination, which may include, but shall not be limited to experience with similar projects, earlier requests for proposal for the same project, or a detailed evaluation of potential bidders. Each such written determination, together with any supporting materials shall be submitted to the commissioner in accordance with the provisions of subparagraph (ii) of this paragraph in a manner consistent with rules and regulations promulgated by the commissioner for such purpose.

(ii) The commissioner shall review each such written determination submitted pursuant to subparagraph (i) of this paragraph and shall issue a public finding on such determination no later than fifteen business days after receipt of such determination. In the event the commissioner approves such determination, such determination, together with the commissioner's statement of approval and findings thereon shall be provided to the public agency and all other interested parties and shall be included in any public materials in connection with the project and shall be maintained by such agency in accordance with all applicable provisions of the public officers law, the public authorities law, and any other applicable law, rule or regulation.

(iii) If, after review of such determination pursuant to subparagraph (ii) of this paragraph, the commissioner shall not approve such determination, the contract and agreement shall be subject to the mandatory labor peace agreement pursuant to paragraphs (a) and (b) of this subdivision and subdivision three of this section.

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

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

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

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

4. This section shall not apply to any construction contract entered into in connection with a covered project; provided, however, that nothing in this section shall prohibit or restrict the parties to any such construction contract from executing a labor peace agreement where otherwise permitted by applicable law. For the purposes of this section, a "construction contract" means a contract for building, addition, demolition, and other alterations and improvements to a covered project.

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

§ 2879-d. Labor peace; covered retail or distribution projects. 1. Notwithstanding any contrary provision of any law, rule or regulation, beginning on the effective date of this section and thereafter, all contracts entered into by a public authority for a covered retail or distribution project as defined in paragraph (b) of subdivision one of section two hundred twenty-two-b of the labor law, shall include as a material condition that the contractor or any subcontractor thereof shall enter into a labor peace agreement with a labor organization that represents retail or distribution center employees in the state, in conformity with the provisions of section two hundred twenty-two-b of the labor law, and the provisions of such section shall be deemed terms of all such contracts.

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

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

§ 109-e. Labor peace agreements; covered retail and distribution projects. 1. Notwithstanding any contrary provision of any law, rule or regulation, beginning on the effective date of this section and thereafter, all contracts entered into by an officer, board or agency of a political subdivision, or of any district therein involving a covered retail or distribution project as defined in paragraph (b) of subdivision one of section two hundred twenty-two-b of the labor law, shall include as a material condition that the contractor or a subcontractor thereof shall enter into a labor peace agreement with a labor organization that represents retail or distribution center employees in the state in conformity with the provisions of section two hundred twenty-two-b of the labor law, and the provisions of such section shall be deemed terms of all such contracts.

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

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