

[Second Reprint]

ASSEMBLY, No. 1926

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

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District 17 (Middlesex and Somerset)

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SYNOPSIS

Concerns public works contracts and project labor agreements with labor organizations.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 13, 2002, with amendments.

(Sponsorship Updated As Of: 6/25/2002)

1 AN ACT concerning project ¹labor¹ agreements with ¹[appropriate]¹
2 labor organizations in connection with public works contracts.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The Legislature finds and declares:

8 a The United States Supreme Court held in Building & Const.
9 Trades Council of Metropolitan Dist. v. Associated Builders &
10 Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993)
11 that state and local governments, when acting as market participants,
12 are permitted under the National Labor Relations Act (29 U.S.C. s.
13 151 et seq.) to enforce ¹bid specifications requiring contractors to
14 abide by¹ project ¹labor¹ agreements with labor organizations ¹for
15 construction projects owned by those state and local governments¹;

16 b. The Supreme Court commented in that case that ¹[the use of]
17 when a State or local governmental agency utilizes bid specifications
18 containing a¹ project ¹[agreements] labor agreement for a
19 construction project owned by the agency, the agency “does not
20 regulate the workings of market forces” in violation of National Labor
21 Relations Act pre-emption of such regulation, but is acting as a market
22 participant and¹ "exemplifies" the ¹[purposes of] workings of market
23 forces, and therefore is not prevented from doing so by¹ the National
24 Labor Relations Act;

25 c. New Jersey has a compelling interest in carrying out public
26 works projects at the lowest reasonable cost and the highest degree of
27 quality;

28 d. New Jersey ¹[must ensure that] has a compelling interest in
29 having¹ labor disputes ¹[are] in connection with public works
30 projects¹ resolved without the disruptions of strikes, lock-outs, or
31 slowdowns;

32 e. Project ¹labor¹ agreements ¹[provide] make possible¹ legally
33 enforceable guarantees that projects will be carried out in an orderly
34 and timely manner, without strikes, lock-outs, or slowdowns;

35 f. Project ¹labor¹ agreements also ¹make it possible to¹ provide
36 for peaceful, orderly, and mutually binding procedures for resolving
37 labor issues;

38 g. The State also has a compelling interest in guaranteeing that
39 public works projects meet the highest standards of safety and quality;

40 h. A highly skilled workforce ensures lower costs for repairs and

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALA committee amendments adopted March 11, 2002.

² Assembly AAP committee amendments adopted June 13, 2002.

- 1 maintenance over the lifetime of the completed project;
- 2 i. Project ¹labor¹ agreements ¹make it possible to¹ provide the
3 State with a guarantee that public works projects are completed with
4 highly skilled workers;
- 5 j. Project ¹labor¹ agreements allow public agencies to more
6 accurately predict the actual cost of projects;
- 7 k. ²Project labor agreements make it possible to provide the State
8 with assurances that public works projects are completed with a
9 diverse workforce;
- 10 l.² Project ¹labor¹ agreements facilitate the efficient integration of
11 work schedules among different trades on project sites;
- 12 ²[l.] m.² Project ¹labor¹ agreements also promote harmonious and
13 productive work environments ¹in public works projects¹;
- 14 ²[m.] n.² New Jersey can best accomplish these goals by
15 encouraging¹, for suitable public works projects,¹ project ¹labor¹
16 agreements between public works contractors and subcontractors and
17 ¹[the appropriate]¹ labor organizations concerning important issues
18 of employment, including work hours, starting times, overtime rates,
19 and procedures for resolving disputes; and
- 20 ²[n.] o.² Project ¹labor¹ agreements, therefore, ¹give the State an
21 effective means to¹ advance the interests of efficiency, quality, and
22 timeliness of ¹suitable¹ public works projects.
- 23
- 24 2. For the purposes of this act:
- 25 "Apprenticeship program" means a registered apprenticeship
26 program providing to each trainee combined classroom and on-the-job
27 training under the direct and close supervision of a highly skilled
28 worker in an occupation recognized as an apprenticeable trade, and
29 registered by the Bureau of Apprenticeship and Training of the U.S.
30 Department of Labor and meeting the standards established by the
31 bureau, or registered by a State apprenticeship agency recognized by
32 the bureau.
- 33 ¹["Appropriate labor"] ²Labor ¹organization" means, with
34 respect to a contracted work on a public works project, an
35 organization which ¹[:
- 36 (1) Represents,] represents,¹ for purposes of collective bargaining,
37 employees ²[in one or more crafts or trades]² involved in the
38 performance of public ¹[work] works¹ contracts and eligible to be
39 paid prevailing wages under the "New Jersey Prevailing Wage Act",
40 P.L.1963, c.150 (C.34:11-56.25 et seq.)¹[:
- 41 (2) Has entered into one or more labor agreements with one or
42 more employers in the building and construction industry;
- 43 (3) Has represented employees employed in projects similar to the
44 public works project; and
- 45 (4) Has] and has¹ the present ability to refer, provide or represent

1 sufficient numbers of qualified employees ²[in the crafts or trades
2 required by the contract]² to perform the contracted work², in a
3 manner consistent with the provisions of this act and any plan mutually
4 agreed upon by the labor organization and the public entity pursuant
5 to subsection g. of section 5 of this act².

6 "Project ¹labor¹ agreement" means a form of pre-hire collective
7 bargaining agreement covering terms and conditions of a specific
8 project.

9 "Public entity" means the State, any of its political subdivisions, any
10 authority created by the Legislature and any instrumentality or agency
11 of the State or of any of its political subdivisions.

12 ²"Public works project" means any public works project for the
13 construction, reconstruction, demolition or renovation of buildings at
14 the public expense, other than pumping stations or water or sewage
15 treatment plants, for which:

16 (1) It is required by law that workers be paid the prevailing wage
17 determined by the Commissioner of Labor pursuant to the provisions
18 of the "New Jersey Prevailing Wage Act", P.L.1963, c.150 (C.34:11-
19 56.26 et seq.); and

20 (2) The public entity estimates that the total cost of the project,
21 exclusive of any land acquisition costs, will equal or exceed \$5
22 million.²

23
24 3. ²[A public entity or its representative ²may enter into a project
25 ¹labor¹ agreement with one or more]² ¹[appropriate]¹ ²[labor
26 organizations.]² A public entity may include ²[the] a² project ¹labor¹
27 agreement in a public works project on a project-by-project basis,
28 ¹[without limitation to the size, complexity or cost of the public works
29 project,]¹ if the public entity determines¹, taking into consideration
30 the size, complexity and cost of the public works project,¹ that², with
31 respect to that project² the project ¹labor¹ agreement will ²[¹, with
32 respect to that project,¹ promote] meet the requirements of section 5
33 of this act, including promoting² labor stability and ²[advance]
34 advancing² the interests of the public entity in cost, efficiency, skilled
35 labor force, quality, safety and timeliness. ²[¹The] If the public entity
36 determines that a project labor agreement will meet those requirements
37 with respect to a particular public works project, the public entity shall
38 either: directly negotiate in good faith a project labor agreement with
39 one or more labor organizations; or condition the award of a contract
40 to a construction manager upon a requirement that the construction
41 manager negotiate in good faith a project labor agreement with one or
42 more labor organizations. Upon the request of the public entity, the²
43 Commissioner of Labor shall assist in facilitating the negotiation of the
44 project labor agreement² [and shall review the finalized project labor
45 agreement]². The decision by the public entity to ²[incorporate the]

1 require the inclusion of a² project ¹labor¹ agreement requirement shall
2 not be deemed to unduly restrict competition if the public entity finds
3 that the ¹project labor¹ agreement is reasonably related to the
4 satisfactory performance and completion of the public works project,
5 and any bidder for the public works project refusing to ¹[concur with
6 the] agree to abide by the conditions of the project labor¹ agreement
7 ²or the requirement to negotiate a project labor agreement² shall not
8 be regarded as a responsible bidder. ²Upon the request of the public
9 entity, the Commissioner of Labor shall review the finalized project
10 labor agreement and provide to the public entity, not more than 30
11 calendar days after the agreement is submitted to the commissioner by
12 the public entity, a written advisory statement regarding whether the
13 project labor agreement conforms with the provisions of this act.²

14
15 4. Any ²[negotiated]² project ¹labor¹ agreement ²negotiated
16 pursuant to this act² between the public entity or its representative
17 ²[with] or a construction manager and² one or more ¹[appropriate]¹
18 labor organizations shall be binding on all contractors and
19 subcontractors working on the public works project and may include
20 provisions that permit contractors and subcontractors working on the
21 public works project to retain a percentage of their current workforce,
22 and provisions that the successful bidder ²and any subcontractor of the
23 bidder² need not be a party to a labor agreement with the
24 ¹[appropriate]¹ labor organizations other than for the public works
25 project covered by the project ¹labor¹ agreement.

26
27 5. Each project ¹labor¹ agreement executed pursuant to the
28 provisions of this act shall:
29 a. Advance the interests of the public entity, including the
30 interests in cost, efficiency, quality, timeliness, skilled labor force, and
31 safety;
32 b. Contain guarantees against strikes, lock-outs, or other similar
33 actions;
34 c. Set forth effective, immediate, and mutually binding procedures
35 for resolving jurisdictional and labor disputes arising before the
36 completion of the work;
37 d. Be made binding on all contractors and subcontractors on the
38 public works project through the inclusion of appropriate bid
39 specifications in all relevant bid documents;
40 e. Require that each contractor and subcontractor working on the
41 public works project have an apprenticeship program; ¹[and]¹
42 f. Fully conform to all statutes, regulations ²[and],² executive
43 orders ²and applicable local ordinances² regarding the implementation
44 of set-aside goals for women and minority owned businesses, the
45 obligation to comply with which shall be expressly provided in the
46 project ¹labor¹ agreement¹; and

1 g. Include a ²publicly available² plan [which is in full
2 conformance with the requirements of all applicable statutes,
3 regulations and executive orders and is mutually agreed upon by the
4 public entity and the participating labor organization or
5 organizations]² regarding the ²[share] shares² of employment and
6 apprenticeship positions in the public works project for minority group
7 members and women¹ ²which is in full conformance with the
8 requirements of all applicable statutes, regulations, executive orders
9 and local ordinances and is mutually agreed upon by the participating
10 labor organizations and the public entity which will own the facilities
11 which are built, altered or repaired under the public works project,
12 provided that any shares mutually agreed upon pursuant to this
13 subsection shall equal or exceed the requirements of other statutes,
14 regulations, executive orders or local ordinances;

15 h. Require the contract for the public works project to provide
16 whatever resources may be needed to prepare for apprenticeship a
17 number of women and minority members sufficient to enable
18 compliance with the plan agreed upon pursuant to subsection g. of this
19 section and provide that the use of those resources be administered
20 jointly by the participating labor organizations and the public entity or
21 community-based organizations selected by the public entity; and

22 i. Require the public body to monitor, or arrange to have a State
23 agency monitor, the amount and share of work done on the project by
24 minority group members and women and the progression of minority
25 group members and women into apprentice and journey worker
26 positions and require the public body to make public, or have the State
27 agency make public, all records of monitoring conducted pursuant to
28 this subsection².

29
30 ² 6. The Commissioner of Labor shall make an annual report to the
31 Governor and the Legislature on the effectiveness of all project labor
32 agreements entered into pursuant to this act in advancing the purposes
33 of this act and in meeting the requirements of this act, including any
34 recommendations deemed necessary by the commissioner to better
35 effectuate those purposes. The report shall include a reporting, review
36 and analysis of the information obtained from the monitoring
37 conducted pursuant to subsection i. of section 5 of this act, an analysis
38 of the effectiveness of the project labor agreements in meeting the
39 objectives of section 5 of this act, and a comparison of the
40 performance of public works projects with project labor agreements
41 to the performance of public works projects without project labor
42 agreements.

43 The first report shall be made on or before December 31, 2003, and
44 subsequent reports shall be made on December 31 of each year
45 thereafter. The report issued on December 31, 2006 shall include an
46 analysis of the overall effectiveness of the implementation of the act

1 from the time of its enactment and any recommendations regarding
2 legislation to make changes in the act deemed necessary by the
3 commissioner to better effectuate those purposes.²

4

5 ¹[6.] 7.¹ This act shall take effect immediately.