

NEW JERSEY STATE AFL-CIO

106 West State Street
Trenton, New Jersey 08608

(609) 989-8730
FAX (609) 989-8734

www.njafclcio.org

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LAUREL BRENNAN
SECRETARY-TREASURER

CHARLES H. MARCIANTE
PRESIDENT EMERITUS



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Dear Local Government Officials:

Re: The Benefit to Workers AND Local Governments of Expanding the Scope of Union Bargaining (Section 4 of S-3810: Sweeney / A-5862: Armato)

Legislation currently advancing in the State Legislature has the potential to help both labor and management at the local government level during union contract negotiations. As the bill continues to be debated, understanding how the provision referred to as the “scope of bargaining” functions during contract negotiations is important.

Recently, certain press articles have contained misinformation regarding this bill, and some local government officials misinterpreted certain provisions of the legislation. We are seeking to clarify what the legislation actually does and doesn’t do.

The reason the New Jersey State AFL-CIO, AFSCME, AFT, CWA, IFPTE and other local government unions are seeking this change is best illustrated by the 2020 memorandum of understanding (MOU) between the Murphy Administration and the CWA state worker unions, entered into due to anticipated revenue loss related to the pandemic. A similar agreement was reached in 2009 by Gov. Corzine and CWA due to the “Great Recession.” In exchange for deferred raises and unpaid furlough days, layoffs of state workers were avoided. An article link describing the 2020 agreement is below.

As positive as the outcome of these agreements was for both labor and management, due to the current state law governing the scope of bargaining, a straightforward agreement to save taxpayers millions of dollars by deferring salary increases or furloughing workers in return for a time-limited promise not to lay off employees is not an enforceable agreement. That is the case even though a local elected official, such as yourself, determines that such an agreement is in the public interest. The same is true with respect to subcontracting. Again, to save jobs a union may be willing to make significant economic concessions that will result in significant savings for taxpayers and avoid the need to subcontract. However, a simple agreement not to subcontract in return for concessions by a union and its members is also unenforceable.

By making the decision to lay off or subcontract a “permissive” subject of negotiations, the bill confers upon elected officials the discretion to enter into such agreements. **Importantly, it is solely up to local elected officials as to whether or not they are willing to even entertain a discussion over such subjects.** The bill does not require negotiations, or even discussions, over these subjects – and certainly does not compel an agreement. Instead, the bill merely empowers elected public officials to decide if an agreement to save taxpayers hundreds of thousands of dollars, or even millions of dollars, is in the public interest.

If management chooses not to agree to a permissive topic, a union has no legal recourse to force management to agree to any permissive subject of bargaining. The union **CANNOT** file a grievance against the local government if it refuses to agree to a permissive topic of bargaining – including layoffs and subcontracting. The union **CANNOT** take the local government to arbitration if it refuses to agree to a permissive topic of bargaining. Nothing in the bill allows negotiation disputes to be submitted to compulsory interest arbitration. Permissive subjects can only be included in a collective bargaining agreement if management agrees.

Establishing a permissive category of negotiations is a helpful new tool for both labor and management. It permits, but does not require, a union and a public official to enter into a broader range of agreements that save taxpayer dollars and preserve the jobs of public employees during times of extreme financial hardship – such as the great recession and the pandemic.

If you have any questions, or require additional information, please don't hesitate to contact us.

Sincerely,



Charles Wowkanech
President



Laurel Brennan
Secretary-Treasurer

CW:LB:jmn
OPEIU:153

c: District Legislators

www.nj.com/coronavirus/2020/06/nj-state-workers-union-murphy-strike-deal-on-furloughs-postponed-raises-to-avert-layoffs.html