

**(First Reprint)**  
**SENATE BILL NO. 514**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 514 (First Reprint) with my recommendations for reconsideration.

**A. Summary of Bill**

This bill is a modified version of the Uniform Arbitration Act of 2000 as proposed by the National Conference of Commissioners on Uniform State laws which was approved by the American Bar Association. The bill is intended to provide an updated and comprehensive vehicle for the conduct of arbitrations in light of the developments of the law in this area and to advance arbitration as a desirable alternative to litigation.

The bill provides various mechanisms that are designed to expedite arbitration procedure. For example, under this bill, a party will be permitted to apply for summary judicial relief in order to compel arbitration instead of being required to pursue a jury trial on this specific issue. The bill also codifies the bases for overturning an award, consistent with the injunctions of our Supreme Court. Additionally, the bill allows arbitrators to resolve claims by summary disposition. The bill raises the standard of arbitrators' conduct and authority to the level of a judge acting in a judicial capacity. Arbitrators are required to disclose a possible conflict of interest. The failure to disclose conflicts of interest by an arbitrator may be a ground for vacating an award. Arbitrators are also granted immunity from civil liability to the same extent as a judge. Moreover, arbitrators are authorized to award punitive damages, other exemplary relief, and attorney's fee under certain situations. The court could award attorney's fees to a prevailing party that confirms, vacates, modifies or corrects an award in court. The bill also includes language mandating that procedural matters be governed consistent with the procedural rules governing conduct in court. Arbitrators are explicitly allowed to hold pre-arbitration proceeding meetings and to use any discovery process deemed practical to resolve a dispute. Under the bill, parties are left free to agree upon varying or modifying arbitration agreement provisions except for three key provisions: (1) the rule that an agreement to submit a dispute to arbitration is valid; (2) the rules that govern disclosure of facts to parties not involved in arbitration by a neutral arbitrator; and (3) the standards for vacating an award, although parties can agree to expand the scope of judicial review under certain circumstances.

This bill repeals the current New Jersey arbitration law, N.J.S.2A:24-1 through N.J.S. 2A:24-11. However, it does not modify "The New Jersey Alternative Procedure for Dispute Resolution Act," P.L.1987, c.54 (C.2A:23A-1 et seq.).

**B. Recommended Action**

I commend the sponsors of this bill and the Legislature for working to provide a valuable measure for the conduct of arbitration by clarifying arbitration procedure and conduct of arbitrators. This bill will promote arbitration as an effective, expedient, and fair resolution of disputes in a non-judicial forum and significantly reduce the burdens on the judicial system by clarifying undefined aspects of arbitration law and raising the standard of conduct in arbitration.

Although numerous benefits of the bill are recognized, this bill could lead to the introduction of new issues, specifically with regard to the labor relations

process between employers and employees, that are not warranted. Therefore, the bill should be amended to address such issues accordingly.

Certain aspects of the current bill, including but not limited to discovery, punitive damages, and attorney's fees, may have the unintended effect of being applied in the labor relations arbitration process. I have also been assured by the bill's sponsors and by interested parties that the bill was not intended to modify existing practice and procedure with respect to labor arbitrations. Arbitration of disputes arising from collective bargaining agreements has quite different functions from arbitration under an ordinary agreement to arbitrate commercial disputes. See *United Steelworkers of America v. Warrior and Gulf Navigation*, 363 U.S. 574, 578 (1960). Since a series of cases known as the "Steelworkers trilogy," the Supreme Court of the United States has consistently shown that the federal policy in labor practice is to "promote industrial stabilization through the collective bargaining agreement." *Id.* The main component of achieving industrial peace is the "inclusion of a provision for arbitration of grievances in the collective bargaining agreement." *Id.* As the Supreme Court has indicated, arbitration in a labor setting is distinctive because it is neither the settlement of cases or controversies in a more informal tribunal nor a substitute for litigation. *Id.* Labor arbitration is, rather, considered the "substitute for industrial strife," and "part and parcel of the collective bargaining process itself." *Id.*

Although the Steelworkers Trilogy originated in the private sector, the same principles have been applied in the public sector. New Jersey has embraced and applied the Steelworkers Trilogy principles of favoring arbitration in public sector labor relations. In the public labor sector, arbitration is also favored and is commonly utilized to settle labor-management disputes. *State v. IFPTE, Local 195*, 169 N.J. 505, 530 (2001);

see also *South Plainfield Bd. of Educ. v. South Plainfield Educ. Assoc.*, 320 N.J. Super. 281, 292 (App. Div. 1999). The policy favoring arbitration in the public sector is also supported by the fact that public employees do not have the right to strike, as do private sector employees. Therefore, negotiation and arbitration constitute the primary method of resolving disputes with management. See *Neptune City Bd. of Educ. V. Neptune City Educ. Assoc.*, 153 N.J. Super. 406, 409 (App. Div. 1977).

This system of industrial justice has meaningfully evolved to reach the current status of maintaining labor stability through collective negotiations. Considering the significance and distinctive nature of arbitration in promoting labor stability, placing a new body of law, however deemed beneficial, in lieu of the traditionally acknowledged manner of labor practice, is more than likely to disturb the environment that has been mutually accepted as the labor relations process for decades.

Accordingly, it is recommended that the bill should be implemented with the sole exception of exempting arbitration between employers and employees under collective bargaining agreements. In addition, the current New Jersey arbitration law should remain in full force as it applies to the arbitration of disputes arising from the collective bargaining agreement between an employer and the duly elected representative of its employees. The suggested changes will allow dispute resolution in a commercial setting to take full advantage of the bill while the practice of labor arbitration that has been traditionally adopted in the labor relations process continues to operate.

As a result of the above considerations, I recommend that the bill be

conditionally vetoed to ensure that the legislation avoids the potential disturbance of the practice of labor arbitration, at the same time, providing the advantage of the bill to arbitration of disputes in a commercial setting.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 514 and recommend that it should be amended as follows:

- Page 2, Title, Lines 1-2: Delete "revising parts of the statutory law" and insert "supplementing title 2A of the New Jersey Statutes."
- Page 3, Section 3, Line 1: Following "2003" insert "with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement"
- Page 3, Section 3, Line 4: Following "record" insert "with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement"
- Page 3, Section 3, Line 6: Following "made" insert "with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement"
- Page 3, Section 4, Lines 26-28: Delete ", but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration"
- Page 17, Section 34, Lines 37-38: Delete in its entirety. Insert a new section 34 as follows:
- 34.(new section). N.J.S.2A:24-1 through N.J.S.2A:24-11 shall only apply to an arbitration or dispute arising from a collective bargaining agreement or a collectively negotiated agreement.

Respectfully,

/s/ James E. McGreevey

Governor

[seal]

Attest:

/s/ Paul P. Josephson

Chief Counsel to the Governor