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I N   A S S E M B L Y

February 24, 2010

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Introduced by M. of A. ABBATE -- read once and referred to the Committee  
on Governmental Employees

AN ACT to amend the civil service law, in relation to powers of the  
public employment relations board to assess damages

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,  
DO ENACT AS FOLLOWS:

1     Section 1. Paragraph (d) of subdivision 5 of section 205 of the civil  
2     service law, as amended by chapter 83 of the laws of 2006, is amended to  
3     read as follows:  
4     (d) To establish procedures for the prevention of improper employer  
5     and employee organization practices as provided in section two hundred  
6     nine-a of this article, and to issue a decision and order directing an  
7     offending party to cease and desist from any improper practice, and to  
8     take such affirmative action as will effectuate the policies of this  
9     article [(but not to assess exemplary damages)], including but not  
10    limited to the reinstatement of employees with or without back pay AND  
11    THE ASSESSMENT OF EXEMPLARY DAMAGES UPON A FINDING THAT AN OFFENDING  
12    PARTY HAS COMMITTED REPEATED IMPROPER PRACTICES OR AN EGREGIOUS  
13    PRACTICE; provided, however, that except as appropriate to effectuate  
14    the policies of subdivision three of section two hundred nine-a of this  
15    article, the board shall not have authority to enforce an agreement  
16    between an employer and an employee organization and shall not exercise  
17    jurisdiction over an alleged violation of such an agreement that would  
18    not otherwise constitute an improper employer or employee organization  
19    practice; provided further that, without limiting in any way the board's  
20    general power to take affirmative action, including the provision to  
21    make whole relief, the board's power to address employer violations of  
22    cease and desist orders issued pursuant to this section in connection  
23    with charges of unfair labor practices under paragraph (d) of subdivi-  
24    sion one of section two hundred nine-a of this article shall include, to  
25    the extent the board deems appropriate, the authority to make employees  
26    whole for the loss of pay and/or benefits resulting from the violation  
27    of the cease and desist order and the underlying unfair labor practice  
28    by providing that any agreement between the parties be given retroactive

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

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1 effect to the date on which the unfair labor practice was found to have  
2 commenced and by providing for appropriate interest from that date,  
3 calculated using the short-term federal rate for the underpayment of  
4 taxes as set out in 26 U.S.C. 6621.14, except that the make whole relief  
5 provided for under this paragraph shall not be ordered when and to the  
6 extent that the employee organization is also found to have refused to  
7 bargain in good faith. When the board has determined that a duly recog-  
8 nized or certified employee organization representing public employees  
9 has breached its duty of fair representation in the processing or fail-  
10 ure to process a claim alleging that a public employer has breached its  
11 agreement with such employee organization, the board may direct the  
12 employee organization and the public employer to process the contract  
13 claim in accordance with the parties' grievance procedure. The board  
14 may, in its discretion, retain jurisdiction to apportion between such  
15 employee organization and public employer any damages assessed as a  
16 result of such grievance procedure. The pendency of proceedings under  
17 this paragraph shall not be used as the basis to delay or interfere with  
18 determination of representation status pursuant to section two hundred  
19 seven of this article or with collective negotiations. The board shall  
20 exercise exclusive nondelegable jurisdiction of the powers granted to it  
21 by this paragraph, in which connection, no finding of fact or law  
22 contained in a report and recommendation of a hearing officer appointed  
23 pursuant to subdivision two of section seventy-five of this chapter  
24 shall preclude the resolution of any issue of fact or law in a subse-  
25 quent proceeding held under procedures established by the board under  
26 this paragraph; provided, however, that this sentence shall not apply to  
27 the city of New York. The board of collective bargaining established by  
28 section eleven hundred seventy-one of the New York city charter shall  
29 establish procedures for the prevention of improper employer and employ-  
30 ee organization practices as provided in section 12-306 of the adminis-  
31 trative code of the city of New York, provided, however, that a party  
32 aggrieved by a final order issued by the board of collective bargaining  
33 in an improper practice proceeding may, within ten days after service of  
34 the final order, petition the board for review thereof. Within twenty  
35 days thereafter, the board, in its discretion, may assert jurisdiction  
36 to review such final order. The failure or refusal of the board to  
37 assert jurisdiction shall not be subject to judicial review. Upon the  
38 refusal of the board to assert jurisdiction, an aggrieved party shall  
39 have the right to seek review of the final order of the board of collec-  
40 tive bargaining. Such proceeding to review shall be brought within thir-  
41 ty days of the board's refusal and shall otherwise conform to the  
42 requirements of article seventy-eight of the civil practice law and  
43 rules. If the board shall choose to review, it may affirm, or reverse in  
44 whole or in part, or modify the final order, or remand the matter for  
45 further proceedings, or make such other order as it may deem appropri-  
46 ate, provided, however, that findings by the board of collective  
47 bargaining regarding evidentiary matters and issues of credibility  
48 regarding testimony of witnesses shall be final and not subject to board  
49 review.

50 S 2. This act shall take effect immediately.