S T A T E O F N E W Y O R K

2468

2009-2010 Regular Sessions

I N A S S E M B L Y

January 16, 2009

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

AN ACT to amend the civil service law, in relation to disputes arising from collective negotiations

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

Section 1. Subdivision 6 of section 209-a of the civil service law, as amended by chapter 467 of the laws of 1990 and as renumbered by chapter 695 of the laws of 1994, is amended to read as follows:

6. Application. In applying this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent. WITH RESPECT TO ANY IMPROPER PRACTICE CHARGE FILED AGAINST EITHER A PUBLIC EMPLOYER OR A PUBLIC EMPLOYEE ORGANIZATION THAT ALLEGES A REFUSAL TO NEGOTIATE IN GOOD FAITH A PRESUMPTION OF BAD FAITH SHALL APPLY WHENEVER THE LAST AGREEMENT BETWEEN THE PARTIES OR, AS APPLICABLE, THE LAST INTEREST ARBITRATION AWARD BETWEEN THEM, HAS BEEN EXPIRED FOR A PERIOD IN EXCESS OF ONE YEAR FROM FINAL EXECUTION OF THE AGREEMENT OR DELIVERY OF THE AWARD TO THE PARTIES AND NO NEW AGREEMENT HAS BEEN REACHED AT THE DATE SUCH IMPROPER PRACTICE CHARGE IS FILED.

S 2. Subdivision 1 of section 209 of the civil service law, as amended by chapter 216 of the laws of 1977, is amended to read as follows:

1. (A) For purposes of this section, an impasse may be deemed to exist if the parties fail to achieve agreement at least one hundred twenty days prior to the end of the fiscal year of the public employer AND SHALL BE DEEMED TO EXIST IF THE LAST AGREEMENT BETWEEN THE PARTIES AT IMPASSE, OR AS APPLICABLE, THEIR LAST INTEREST ARBITRATION AWARD, HAS BEEN EXPIRED FOR A PERIOD IN EXCESS OF ONE YEAR FROM FINAL EXECUTION OF THE AGREEMENT OR DELIVERY OF THE ARBITRATION AWARD TO THE PARTIES.

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

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(B) IN ANY CIRCUMSTANCE IN WHICH AN IMPASSE HAS BEEN FOUND TO EXIST OR HAS BEEN DEEMED TO EXIST, THE BOARD SHALL TAKE SUCH ACTION AS IT CONSIDERS TO BE NECESSARY AND APPROPRIATE TO ENSURE THE COMPLETION WITHOUT DELAY OF ANY AND ALL APPLICABLE IMPASSE RESOLUTION PROCEDURES AUTHORIZED OR REQUIRED BY THIS ARTICLE.

S 3. Paragraph (b) of subdivision 2 of section 210 of the civil service law, as amended by chapter 24 of the laws of 1969, is amended to read as follows:

(b) Presumption. (I) For purposes of this subdivision an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates.

(II) ANY STRIKE WHICH OCCURS ON A DATE OR DATES MORE THAN ONE YEAR AFTER THE EXPIRATION OF THE LAST AGREEMENT BETWEEN THE EMPLOYEE'S PUBLIC EMPLOYER AND THE PUBLIC EMPLOYEE ORGANIZATION REPRESENTING SUCH EMPLOYEE, OR, AS APPLICABLE, MORE THAN ONE YEAR AFTER DELIVERY OF AN INTEREST ARBITRATION AWARD TO SUCH EMPLOYEE'S EMPLOYER AND PUBLIC EMPLOYEE ORGANIZATION SHALL BE PRESUMED TO HAVE BEEN ONE CAUSED BY ACTS OF EXTREME PROVOCATION WITHIN THE MEANING OF THIS ARTICLE.

S 4. Paragraph (f) of subdivision 3 of section 210 of the civil service law, as amended by chapter 677 of the laws of 1977, is amended to read as follows:

(f) If the board determines that an employee organization has violated the provisions of subdivision one of this section, the board shall order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision three of section two hundred eight of this [chapter] ARTICLE, for such specified period of time as the board shall determine, or, in the discretion of the board, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed on an employee organization pursuant to subdivision two of section seven hundred fifty-one of the judiciary law remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organization, the board shall direct that, notwithstanding such forfeiture, such membership dues deduction shall be continued to the extent necessary to pay such fine and such public employer shall transmit such moneys to the court. In fixing the duration of the forfeiture, the board, OR ANY OTHER COURT OR OTHER TRIBUNAL AUTHORIZED BY LAW, INCLUDING WITHOUT LIMITATION SECTION SEVEN HUNDRED FIFTY-ONE OF THE JUDICIARY LAW, TO DETERMINE SUCH ISSUE shall consider all the relevant facts and circumstances, including but not limited to: (i) the extent of any wilful defiance of subdivision one of this section; (ii) the impact of the strike on the public health, safety, and welfare of the community [and]; (iii) the financial resources of the employee organization; [and the board may consider (i)] (IV) the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the [mediation and fact-finding] IMPASSE RESOLUTION procedures provided in section two hundred nine OF THIS ARTICLE; and [(ii)] (V) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme

provocation as to detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organization, the board shall consider both the income and the assets of such employee organization. In the event membership dues are collected by the public employer as provided in paragraph (b) of subdivision one of section two hundred eight of this [chapter] ARTICLE, the books and records of such public employer shall be prima facie evidence of the amount so collected.

S 5. This act shall take effect immediately, provided that the amendments to paragraph (f) of subdivision 3 of section 210 of the civil service law made by section four of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 7 of chapter 677 of the laws of 1977, as amended, when upon such date the provisions of section five of this act shall take effect.