

4101

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 30, 2009

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

AN ACT to amend the civil service law, in relation to binding arbitration for court clerks and uniformed court officers of the unified court system

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

1     Section 1. Section 209 of the civil service law is amended by adding a  
2     new subdivision 6 to read as follows:  
3     6. (A) IN THE EVENT THAT THE BOARD CERTIFIES THAT A VOLUNTARY RESOL-  
4     UTION OF THE CONTRACT NEGOTIATIONS BETWEEN THE UNIFIED COURT SYSTEM AND  
5     THE PUBLIC EMPLOYEE ORGANIZATION CERTIFIED OR RECOGNIZED TO REPRESENT  
6     THE NINTH JUDICIAL DISTRICT NEGOTIATING UNIT, NASSAU COUNTY NEGOTIATING  
7     UNIT, SUFFOLK COUNTY NEGOTIATING UNIT, NEW YORK CITY SENIOR COURT OFFI-  
8     CERS NEGOTIATING UNIT, NEW YORK CITY COURT REPORTERS NEGOTIATING UNIT,  
9     NEW YORK CITY COURT OFFICERS NEGOTIATING UNIT AND NEW YORK CITY COURT  
10    CLERKS NEGOTIATING UNIT SUCH BOARD SHALL REFER THE DISPUTE TO A PUBLIC  
11    ARBITRATION PANEL, CONSISTING OF ONE MEMBER APPOINTED BY THE UNIFIED  
12    COURT SYSTEM, ONE MEMBER APPOINTED BY THE EMPLOYEE ORGANIZATION AND ONE  
13    PUBLIC MEMBER APPOINTED JOINTLY BY THE UNIFIED COURT SYSTEM AND THE  
14    EMPLOYEE ORGANIZATION WHO SHALL BE SELECTED WITHIN TEN DAYS AFTER  
15    RECEIPT BY THE BOARD OF A PETITION FOR CREATION OF THE ARBITRATION  
16    PANEL. IF EITHER PARTY FAILS TO DESIGNATE ITS MEMBER TO THE PUBLIC ARBI-  
17    TRATION PANEL, THE BOARD SHALL PROMPTLY, UPON RECEIPT OF A REQUEST BY  
18    EITHER PARTY, DESIGNATE A MEMBER ASSOCIATED IN INTEREST WITH THE UNIFIED  
19    COURT SYSTEM OR EMPLOYEE ORGANIZATION HE OR SHE IS TO REPRESENT. EACH OF  
20    THE RESPECTIVE PARTIES IS TO BEAR THE COST OF ITS MEMBER APPOINTED OR  
21    DESIGNATED TO THE ARBITRATION PANEL AND EACH OF THE RESPECTIVE PARTIES  
22    IS TO SHARE EQUALLY THE COST OF THE PUBLIC MEMBER. IF, WITHIN SEVEN DAYS  
23    AFTER THE MAILING DATE, THE PARTIES ARE UNABLE TO AGREE UPON THE ONE  
24    PUBLIC MEMBER, THE BOARD SHALL SUBMIT TO THE PARTIES A LIST OF QUALI-

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

LBD07377-01-9

1 FIED, DISINTERESTED PERSONS FOR THE SELECTION OF THE PUBLIC MEMBER. EACH  
2 PARTY SHALL ALTERNATELY STRIKE FROM THE LIST ONE OF THE NAMES WITH THE  
3 ORDER OF STRIKING DETERMINED BY LOT, UNTIL THE REMAINING ONE PERSON  
4 SHALL BE DESIGNATED AS PUBLIC MEMBER. THIS PROCESS SHALL BE COMPLETED  
5 WITHIN FIVE DAYS OF RECEIPT OF THIS LIST. THE PARTIES SHALL NOTIFY THE  
6 BOARD OF THE DESIGNATED PUBLIC MEMBER. THE PUBLIC MEMBER SHALL BE CHOSEN  
7 AS CHAIRPERSON.

8 (B) THE ARBITRATION PANEL SHALL HOLD HEARINGS ON ALL MATTERS WITHIN  
9 THE SCOPE OF NEGOTIATIONS RELATED TO THE DISPUTE FOR WHICH THE PANEL WAS  
10 APPOINTED. THE PARTIES MAY BE HEARD EITHER IN PERSON, BY COUNSEL OR BY  
11 OTHER REPRESENTATIVES AS THEY MAY RESPECTIVELY DESIGNATE. THE PARTIES  
12 MAY PRESENT, EITHER ORALLY OR IN WRITING OR BOTH, STATEMENT OF FACT,  
13 SUPPORTING WITNESSES AND OTHER EVIDENCE AND ARGUMENT OF THEIR RESPECTIVE  
14 POSITION WITH RESPECT TO EACH CASE. THE PANEL SHALL HAVE AUTHORITY TO  
15 REQUIRE THE PRODUCTION OF SUCH ADDITIONAL EVIDENCE, EITHER ORAL OR WRIT-  
16 TEN, AS IT MAY DESIRE FROM THE PARTIES AND SHALL PROVIDE AT THE REQUEST  
17 OF EITHER PARTY THAT A FULL AND COMPLETE RECORD BE KEPT OF ANY SUCH  
18 HEARINGS, THE COST OF SUCH RECORD TO BE SHARED EQUALLY BY THE PARTIES.

19 (C) ALL MATTERS PRESENTED TO SUCH PANEL FOR ITS DETERMINATION SHALL BE  
20 DECIDED BY A MAJORITY VOTE OF THE MEMBERS OF THE PANEL. THE PANEL, PRIOR  
21 TO A VOTE ON ANY ISSUE IN DISPUTE BEFORE IT, MAY REFER THE ISSUE BACK TO  
22 THE PARTIES FOR FURTHER NEGOTIATIONS.

23 (D) SUCH PANEL SHALL MAKE A JUST AND REASONABLE DETERMINATION OF  
24 MATTERS IN DISPUTE. IN ARRIVING AT SUCH DETERMINATION, THE PANEL SHALL  
25 SPECIFY THE BASIS FOR ITS FINDINGS, TAKING INTO CONSIDERATION, IN ADDI-  
26 TION TO ANY OTHER RELEVANT FACTORS, THE FOLLOWING: (I) COMPARISON OF THE  
27 WAGES, HOURS, FRINGE BENEFITS, CONDITIONS AND CHARACTERISTICS OF EMPLOY-  
28 MENT OF THE PUBLIC EMPLOYEES INVOLVED IN THE IMPASSE PROCEEDING WITH THE  
29 WAGES, HOURS, FRINGE BENEFITS, CONDITIONS AND CHARACTERISTICS OF EMPLOY-  
30 MENT OF OTHER EMPLOYEES PERFORMING SIMILAR WORK AND OTHER EMPLOYEES  
31 GENERALLY IN PUBLIC OR PRIVATE EMPLOYMENT IN NEW YORK CITY OR COMPARABLE  
32 COMMUNITIES; (II) THE OVERALL COMPENSATION PAID TO THE EMPLOYEES  
33 INVOLVED IN THE IMPASSE PROCEEDING, INCLUDING DIRECT WAGE COMPENSATION,  
34 OVERTIME AND PREMIUM PAY, VACATIONS, HOLIDAYS AND OTHER EXCUSED TIME,  
35 INSURANCE, PENSIONS, MEDICAL AND HOSPITALIZATION BENEFITS, FOOD AND  
36 APPAREL FURNISHED, AND ALL OTHER BENEFITS RECEIVED; (III) THE IMPACT OF  
37 THE PANEL'S AWARD ON THE FINANCIAL ABILITY OF THE UNIFIED COURT SYSTEM  
38 TO PAY, ON THE PRESENT FARES AND ON THE CONTINUED PROVISION OF SERVICES  
39 TO THE PUBLIC; (IV) CHANGES IN THE AVERAGE CONSUMER PRICES FOR GOODS AND  
40 SERVICES, COMMONLY KNOWN AS THE COST OF LIVING; (V) THE INTEREST AND  
41 WELFARE OF THE PUBLIC; AND (VI) SUCH OTHER FACTORS AS ARE NORMALLY AND  
42 CUSTOMARILY CONSIDERED IN THE DETERMINATION OF WAGES, HOURS, FRINGE  
43 BENEFITS AND OTHER WORKING CONDITIONS IN COLLECTIVE NEGOTIATIONS OR  
44 IMPASSE PANEL PROCEEDINGS.

45 (E) THE PANEL SHALL HAVE FULL AUTHORITY TO RESOLVE THE MATTERS IN  
46 DISPUTE BEFORE IT AND ISSUE A DETERMINATION WHICH SHALL BE FINAL AND  
47 BINDING UPON THE PARTIES, NOTWITHSTANDING ANY OTHER PROVISION OF THIS  
48 ARTICLE. EXCEPT FOR THE PURPOSES OF JUDICIAL REVIEW, ANY PROVISION OF A  
49 DETERMINATION OF THE ARBITRATION PANEL, THE IMPLEMENTATION OF WHICH  
50 REQUIRES AN ENACTMENT OF LAW, SHALL NOT BECOME BINDING UNTIL THE APPRO-  
51 PRIATE LEGISLATIVE BODY ENACTS SUCH LAW.

52 S 2. This act shall take effect immediately.