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

5858

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. ESPAILLAT, GREENE, BENJAMIN, CAMARA, SCARBOROUGH, COOK, POWELL, PERALTA, ROBINSON, J. RIVERA, ZEBROWSKI, MILLMAN, COLTON -- Multi-Sponsored by -- M. of A. BRENNAN, DIAZ, FARRELL, GOTTFRIED, HEASTIE, HOOPER, LENTOL, PERRY, RAMOS, TITUS -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to enhancing the collective bargaining obligations of public employers and adjusting penalties for striking of public employees

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

Section 1. Paragraph (a) of subdivision 4 of section 209-a of the civil service law, as added by chapter 695 of the laws of 1994, is amended to read as follows:

(a) A party filing an improper practice charge under this section may petition the board to obtain injunctive relief, pending a decision on the merits of said charge by an administrative law judge, upon a showing that: (i) there is reasonable cause to believe an improper practice has occurred, OR THERE IS REASONABLE CAUSE TO BELIEVE THAT THE INSISTENCE OF A PUBLIC EMPLOYER OR EMPLOYEE ORGANIZATION UPON A BARGAINING DEMAND WHICH IS A NON-MANDATORY SUBJECT OF BARGAINING IS LIKELY TO LEAD TO A VIOLATION OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, and (ii) where it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief.

S 2. 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

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

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(b) of subdivision one, and subdivision three of section two hundred eight of this chapter, 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 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] SHALL consider (i) the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the mediation and fact-finding procedures provided in section two hundred nine and (ii) 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, the books and records of such public employer shall be prima facie evidence of the amount so collected. IF THE BOARD FINDS THAT THE PUBLIC EMPLOYER HAS ENGAGED IN ACTS OF EXTREME PROVOCATION SUCH AS TO DETRACT FROM THE RESPONSIBILITY OF THE EMPLOYEE ORGANIZATION FOR THE STRIKE, THE BOARD SHALL ORDER THE PUBLIC EMPLOYER TO REMIT TO THE EMPLOYEE ORGANIZATION A PORTION OF THE LOSSES OF INCOME SUSTAINED BY THE EMPLOYEE ORGANIZATION OWING TO FORFEITURE OF DUES DEDUCTION PROVIDED FOR IN THIS SUBDIVISION, NOT TO EXCEED FIFTY PERCENT OF SUCH LOSSES. IN DETERMINING THE PAYMENT TO BE REMITTED BY THE PUBLIC EMPLOYER TO THE EMPLOYEE ORGANIZATION, THE BOARD SHALL CONSIDER THE EXTENT TO WHICH THE PUBLIC EMPLOYER'S ACTS CONTRIBUTED TO THE EMPLOYEE ORGANIZATION'S DECISION TO VIOLATE SUBDIVISION ONE OF THIS SECTION. FOR PURPOSES OF THIS SECTION, ACTS OF EXTREME PROVOCATION SHALL INCLUDE THE USE OF ANY BARGAINING TACTICS WHICH ARE DESIGNED TO OR HAVE THE EFFECT OF UNDULY EXACERBATING TENSIONS THAT ARISE IN COLLECTIVE NEGOTIATIONS WHICH THE BOARD FINDS HAVE CONTRIBUTED TO THE ONSET OF THE ACTIVITY WHICH VIOLATES SUBDIVISION ONE OF THIS SECTION, IRRESPECTIVE OF WHETHER SUCH TACTICS ARE THE IMMEDIATE CAUSE OF THE STRIKE.

S 3. This act shall take effect immediately; provided, however, that the amendments to paragraph (a) of subdivision 4 of section 209-a of the civil service law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.