

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:

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

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

16 S 2. Paragraph (f) of subdivision 3 of section 210 of the civil  
17 service law, as amended by chapter 677 of the laws of 1977, is amended  
18 to read as follows:

19 (f) If the board determines that an employee organization has violated  
20 the provisions of subdivision one of this section, the board shall order  
21 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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1 (b) of subdivision one, and subdivision three of section two hundred  
2 eight of this chapter, for such specified period of time as the board  
3 shall determine, or, in the discretion of the board, for an indefinite  
4 period of time subject to restoration upon application, with notice to  
5 all interested parties, supported by proof of good faith compliance with  
6 the requirements of subdivision one of this section since the date of  
7 such violation, such proof to include, for example, the successful nego-  
8 tiation, without a violation of subdivision one of this section, of a  
9 contract covering the employees in the unit affected by such violation;  
10 provided, however, that where a fine imposed on an employee organization  
11 pursuant to subdivision two of section seven hundred fifty-one of the  
12 judiciary law remains wholly or partly unpaid, after the exhaustion of  
13 the cash and securities of the employee organization, the board shall  
14 direct that, notwithstanding such forfeiture, such membership dues  
15 deduction shall be continued to the extent necessary to pay such fine  
16 and such public employer shall transmit such moneys to the court. In  
17 fixing the duration of the forfeiture, the board shall consider all the  
18 relevant facts and circumstances, including but not limited to: (i) the  
19 extent of any wilful defiance of subdivision one of this section (ii)  
20 the impact of the strike on the public health, safety, and welfare of  
21 the community and (iii) the financial resources of the employee organ-  
22 ization; and the board [may] SHALL consider (i) the refusal of the  
23 employee organization or the appropriate public employer or the repre-  
24 sentative thereof, to submit to the mediation and fact-finding proce-  
25 dures provided in section two hundred nine and (ii) whether, if so  
26 alleged by the employee organization, the appropriate public employer or  
27 its representatives engaged in such acts of extreme provocation as to  
28 detract from the responsibility of the employee organization for the  
29 strike. In determining the financial resources of the employee organiza-  
30 tion, the board shall consider both the income and the assets of such  
31 employee organization. In the event membership dues are collected by the  
32 public employer as provided in paragraph (b) of subdivision one of  
33 section two hundred eight of this chapter, the books and records of such  
34 public employer shall be prima facie evidence of the amount so  
35 collected. IF THE BOARD FINDS THAT THE PUBLIC EMPLOYER HAS ENGAGED IN  
36 ACTS OF EXTREME PROVOCATION SUCH AS TO DETRACT FROM THE RESPONSIBILITY  
37 OF THE EMPLOYEE ORGANIZATION FOR THE STRIKE, THE BOARD SHALL ORDER THE  
38 PUBLIC EMPLOYER TO REMIT TO THE EMPLOYEE ORGANIZATION A PORTION OF THE  
39 LOSSES OF INCOME SUSTAINED BY THE EMPLOYEE ORGANIZATION OWING TO FORFEI-  
40 TURE OF DUES DEDUCTION PROVIDED FOR IN THIS SUBDIVISION, NOT TO EXCEED  
41 FIFTY PERCENT OF SUCH LOSSES. IN DETERMINING THE PAYMENT TO BE REMITTED  
42 BY THE PUBLIC EMPLOYER TO THE EMPLOYEE ORGANIZATION, THE BOARD SHALL  
43 CONSIDER THE EXTENT TO WHICH THE PUBLIC EMPLOYER'S ACTS CONTRIBUTED TO  
44 THE EMPLOYEE ORGANIZATION'S DECISION TO VIOLATE SUBDIVISION ONE OF THIS  
45 SECTION. FOR PURPOSES OF THIS SECTION, ACTS OF EXTREME PROVOCATION SHALL  
46 INCLUDE THE USE OF ANY BARGAINING TACTICS WHICH ARE DESIGNED TO OR HAVE  
47 THE EFFECT OF UNDULY EXACERBATING TENSIONS THAT ARISE IN COLLECTIVE  
48 NEGOTIATIONS WHICH THE BOARD FINDS HAVE CONTRIBUTED TO THE ONSET OF THE  
49 ACTIVITY WHICH VIOLATES SUBDIVISION ONE OF THIS SECTION, IRRESPECTIVE OF  
50 WHETHER SUCH TACTICS ARE THE IMMEDIATE CAUSE OF THE STRIKE.

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