

7712

2009-2010 Regular Sessions

I N A S S E M B L Y

April 22, 2009

Introduced by M. of A. WEISENBERG, COLTON, GABRYSZAK, SPANO, LANCMAN, MILLMAN, ROSENTHAL, BROOK-KRASNY, MAISEL, BARRA, ALFANO, RAI, MOLINARO, TOWNSEND, KELLNER, ESPAILLAT, EDDINGTON -- Multi-Sponsored by -- M. of A. BOYLAND, CALHOUN, CONTE, COOK, CROUCH, DUPREY, FINCH, GALEF, GIGLIO, GREENE, HYER-SPENCER, JOHN, KOON, LATIMER, MAYERSOHN, McDONOUGH, McENENY, PHEFFER, ROBINSON, SALADINO, SCHIMEL, SCOZZAFAVA, SWEENEY, THIELE, TOBACCO, WALKER -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to retaliatory actions by public employers taken against public employees

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

1 Section 1. Section 75-b of the civil service law, as added by chapter  
2 660 of the laws of 1984, paragraph (a) of subdivision 2 as amended by  
3 chapter 899 of the laws of 1986, is amended to read as follows:

4 S 75-b. Retaliatory action by public employers. 1. For the purposes of  
5 this section the term:

6 (a) "Public employer" or "employer" shall mean (i) the state of New  
7 York, (ii) a county, city, town, village, or any other political subdivi-  
8 sion or civil division of the state, (iii) a school district or any  
9 governmental entity operating a public school, college or university,  
10 (iv) a public improvement or special district, (v) a public authority,  
11 commission or public benefit corporation, or (vi) any other public  
12 corporation, agency, instrumentality or unit of government which exer-  
13 cises governmental power under the laws of the state.

14 (b) "Public employee" or "employee" shall mean any person holding a  
15 position by appointment or employment in the service of a public employ-  
16 er, except judges or justices of the unified court system and members of  
17 the legislature.

18 (c) "Governmental body" shall mean (i) an officer, employee, agency,  
19 department, division, bureau, board, commission, council, authority or

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

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1 other body of a public employer, (ii) employee, committee, member[,] or  
2 commission of the legislative branch of government, (iii) a represen-  
3 tative, member or employee of a legislative body of a county, town,  
4 village, or any other political subdivision or civil division of the  
5 state, (iv) a law enforcement agency or any member or employee of a law  
6 enforcement agency, or (v) the judiciary or any employee of the judici-  
7 ary.

8 (d) "Personnel action" shall mean an action affecting compensation,  
9 appointment, promotion, transfer, ELIMINATION OF JOB TITLE OR CLASSI-  
10 FICATION, assignment, reassignment, reinstatement or evaluation of  
11 performance.

12 2. (a) A public employer shall not dismiss or take other disciplinary  
13 or other adverse personnel action against a public employee regarding  
14 the employee's employment because the employee discloses to a govern-  
15 mental body information: (i) regarding a violation of a law, rule or  
16 regulation, which violation creates and presents a substantial and  
17 specific danger to the public health or safety, OR WHICH COULD REASON-  
18 ABLY BE EXPECTED TO LEAD TO ENDANGERING THE WELFARE OF A MINOR, INCLUD-  
19 ING BUT NOT LIMITED TO PHYSICAL, MENTAL OR SEXUAL MISUSE OR ABUSE; or  
20 (ii) which the employee reasonably believes to be true and reasonably  
21 believes constitutes an improper governmental action. "Improper govern-  
22 mental action" shall mean any action by a public employer or employee,  
23 or an agent of such employer or employee, which is undertaken in the  
24 performance of such agent's official duties, whether or not such action  
25 is within the scope of his OR HER employment, and which is in violation  
26 of any federal, state or local law, rule or regulation.

27 (b) Prior to disclosing information pursuant to paragraph (a) of this  
28 subdivision, an employee shall have made a good faith effort to provide  
29 the appointing authority or his or her designee the information to be  
30 disclosed and shall [provide] HAVE PROVIDED the appointing authority or  
31 designee a reasonable time to take appropriate action, unless (I) there  
32 is imminent and serious danger to public health or safety, OR (II) SUCH  
33 VIOLATION COULD REASONABLY BE EXPECTED TO RAPIDLY LEAD TO ENDANGERING  
34 THE WELFARE OF A MINOR, INCLUDING BUT NOT LIMITED TO PHYSICAL, MENTAL OR  
35 SEXUAL MISUSE OR ABUSE. For the purposes of this subdivision, an  
36 employee who acts pursuant to this paragraph shall be deemed to have  
37 disclosed information to a governmental body under paragraph (a) of this  
38 subdivision.

39 3. (a) Where an employee is subject to dismissal or other disciplinary  
40 action under a final and binding arbitration provision, or other disci-  
41 plinary procedure contained in a collectively negotiated agreement, or  
42 under section seventy-five of this title or any other provision of state  
43 or local law, OR THE ELIMINATION OF JOB TITLE OR CLASSIFICATION THAT  
44 UNIQUELY FITS AND SINGLES OUT SUCH EMPLOYEE and the employee reasonably  
45 believes THAT SUCH dismissal [or], other disciplinary action, OR ANY  
46 OTHER ADVERSE PERSONNEL ACTION would not have been taken but for the  
47 conduct protected under subdivision two of this section, he or she may  
48 assert such as a defense before the designated arbitrator or hearing  
49 officer. The merits of such defense shall be considered and determined  
50 as part of the arbitration award or hearing officer decision of the  
51 matter. If there is a finding that the dismissal [or], other discipli-  
52 nary action, OR OTHER PERSONNEL ACTION is based [solely] PRIMARILY on a  
53 violation by the employer of such subdivision, the arbitrator or hearing  
54 officer shall dismiss or recommend dismissal of the disciplinary  
55 proceeding, as appropriate, and, if appropriate, reinstate the employee  
56 with back pay, and, in the case of an arbitration procedure, may take

1 other appropriate action as is permitted in the collectively negotiated  
2 agreement.

3 (b) Where an employee is subject to a collectively negotiated agree-  
4 ment which contains provisions preventing an employer from taking  
5 adverse personnel actions and which contains a final and binding arbi-  
6 tration provision to resolve alleged violations of such provisions of  
7 the agreement and the employee reasonably believes that such personnel  
8 action would not have been taken but for the conduct protected under  
9 subdivision two of this section, he or she may assert such as a claim  
10 before the arbitrator. The arbitrator shall consider such claim and  
11 determine its merits and shall, if a determination is made that such  
12 adverse personnel action is based on a violation by the employer of such  
13 subdivision, take such action to remedy the violation as is permitted by  
14 the collectively negotiated agreement.

15 (B-1) WHERE AN EMPLOYEE IS THE SUBJECT OF AN ADVERSE PERSONNEL ACTION,  
16 SUCH AS THE ELIMINATION OF A JOB TITLE OR CLASSIFICATION THAT UNIQUELY  
17 FITS AND SINGLES OUT SUCH EMPLOYEE, AND ACTION IS NOT AN ADVERSE PERSON-  
18 NEL ACTION THAT IS SUBJECT TO A HEARING, AND THE EMPLOYEE REASONABLY  
19 BELIEVES THAT SUCH PERSONNEL ACTION WOULD NOT HAVE BEEN TAKEN BUT FOR  
20 THE CONDUCT PROTECTED UNDER SUBDIVISION TWO OF THIS SECTION, SUCH  
21 EMPLOYEE MAY BRING AN ACTION OR PROCEEDING IN A COURT OF COMPETENT  
22 JURISDICTION TO PROHIBIT SUCH PUBLIC EMPLOYER FROM TAKING SUCH ACTION.  
23 THE COURT SHALL CONSIDER SUCH CLAIM AND DETERMINE ITS MERITS; PROVIDED,  
24 THAT THE PUBLIC EMPLOYER MAY PRESENT EVIDENCE THAT THE ADVERSE PERSONNEL  
25 ACTION WAS TAKEN INDEPENDENTLY OF THE EMPLOYEE'S CONDUCT PURSUANT TO  
26 SUBDIVISION TWO OF THIS SECTION. A CLAIM OF AN INDEPENDENT, ADVERSE  
27 PERSONNEL ACTION BY A PUBLIC EMPLOYER MUST BE PROVEN BY THE AFFECTED  
28 EMPLOYEE BY A PREPONDERANCE OF THE EVIDENCE. THE COURT MAY AWARD  
29 REASONABLE ATTORNEYS' FEES, COSTS, AND DISBURSEMENTS TO A PREVAILING  
30 PLAINTIFF EMPLOYEE.

31 (c) Where an employee is not subject to any of the provisions of para-  
32 graph (a) or (b) of this subdivision, the employee may commence an  
33 action in a court of competent jurisdiction under the same terms and  
34 conditions as set forth in article twenty-C of the labor law.

35 4. Nothing in this section shall be deemed to diminish or impair the  
36 rights of a public employee or employer under any law, rule, regulation,  
37 or collectively negotiated agreement or to prohibit any personnel action  
38 which otherwise would have been taken regardless of any disclosure of  
39 information.

40 S 2. This act shall take effect immediately.