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

4920

2011-2012 Regular Sessions

I N A S S E M B L Y

February 9, 2011

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

AN ACT to amend the civil service law, in relation to arbitration procedures for violation of the fair employment act

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

Section 1. Paragraph (e) of subdivision 2 of section 210 of the civil service law, as amended by chapter 254 of the laws of 1983, is amended to read as follows:

(e) Notice. The chief executive officer shall forthwith notify each employee AND THE RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION that he OR SHE has [been] found SUCH A VIOLATION to have BEEN committed [such violation], the date or dates thereof and of his OR HER right to object to such determination pursuant to paragraph [(g)] (F) of this subdivision; he OR SHE shall also notify the chief fiscal officer of the names of all such employees and of the total number of days, or part thereof, on which it has been determined that such violation occurred. Notice to each employee AND THE RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION shall be by personal service or by certified mail to his OR HER last address filed by him OR HER with his OR HER employer.

S 2. Paragraph (f) of subdivision 2 of section 210 of the civil service law, as amended by chapter 503 of the laws of 1971 and relettered by chapter 254 of the laws of 1983, is relettered paragraph (g) and amended to read as follows:

(g) Payroll deductions. Not earlier than thirty nor later than ninety days following the date of [such] THE determination MADE PURSUANT TO PARAGRAPH (D) OF THIS SUBDIVISION IN THE CASE OF AN EMPLOYEE WHO HAS MADE NO OBJECTION TO SUCH DETERMINATION, OR THE DECISION OF THE ARBITRATOR, WHERE SUCH OBJECTION HAS BEEN MADE, the chief fiscal officer of the government involved shall IMPLEMENT THE DECISION OF THE ARBITRATOR, OR IN THE CASE OF AN EMPLOYEE WHO HAS MADE NO OBJECTION TO THE DETERMI-

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

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NATION MADE PURSUANT TO PARAGRAPH (D) OF THIS SUBDIVISION deduct from the compensation of each such public employee an amount equal to twice his OR HER daily rate of pay for each day or part thereof that it was determined that he OR SHE had violated this subdivision; such rate of pay to be computed as of the time of such violation. In IMPLEMENTING THE DECISION OF THE ARBITRATOR, OR computing such deduction, credit shall be allowed for amounts already withheld from such employee's compensation on account of his OR HER absence from work or other withholding of services on such day or days. In computing the aforesaid thirty to ninety day period of time following THE DECISION OF THE ARBITRATOR, OR the determination of a violation pursuant to [subdivision] PARAGRAPH (d) of [paragraph two of] this [section] SUBDIVISION IN THE CASE OF AN EMPLOYEE WHO HAS MADE NO OBJECTION TO SUCH DETERMINATION, and where the employee's annual compensation is paid over a period of time which is less than fifty-two weeks, that period of time between the last day of the last payroll period of the employment term in which the violation occurred and the first day of the first payroll period of the next succeeding employment term shall be disregarded and not counted.

S 3. Paragraph (g) of subdivision 2 of section 210 of the civil service law, as amended by chapter 254 of the laws of 1983, is relettered paragraph (f) and amended to read as follows:

(f) Objections [and], restoration AND ARBITRATION. Any employee determined to have violated this subdivision may object to such determination ON THE GROUNDS THAT NO SUCH VIOLATION HAS OCCURRED AND, IF NO SUCH OBJECTION IS FILED BY THE RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION ON THE GROUNDS THAT THE GOVERNMENT INVOLVED PROVOKED THE CONDUCT ALLEGEDLY CONSTITUTING SUCH VIOLATION by filing with the chief executive officer, (within twenty days of the date on which notice was served or mailed to him OR HER pursuant to paragraph (e) of this subdivision) his OR HER sworn affidavit, supported by available documentary proof, containing a short and plain statement of the facts upon which he OR SHE relies to show that such determination was incorrect. Such affidavit shall be subject to the penalties of perjury. If the chief executive officer shall determine that the affidavit and supporting proof establishes that the employee did not violate this subdivision, he OR SHE shall sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to establish that the employee did not violate this subdivision, OR IF THE OBJECTION IS BASED SOLELY UPON PROVOCATION ON THE PART OF THE GOVERNMENT INVOLVED, he OR SHE shall dismiss the objection and so notify the employee[. If the chief executive officer shall determine that the affidavit and supporting proof raises a question of fact which, if resolved in favor of the employee, would establish that the employee did not violate this subdivision, he shall appoint a hearing officer to determine whether in fact the employee did violate this subdivision after a hearing at which such employee shall bear the burden of proof. If the hearing officer shall determine that the employee failed to establish that he did not violate this subdivision, the chief executive officer shall so notify the employee. If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that such employee did not violate this subdivision, the chief executive officer shall forthwith notify the chief fiscal officer who shall thereupon cease all further deductions and refund any deductions previously made pursuant to this subdivision. The determinations provided in this paragraph shall be reviewable pursuant to article seventy-eight of the civil practice law and rules] AND THE EMPLOYEE ORGANIZATION THAT REPRESENTED

HIM OR HER. WITHIN TWENTY DAYS AFTER RECEIPT OF SUCH NOTIFICATION BY THE PUBLIC EMPLOYEE OR THE EMPLOYEE ORGANIZATION WHICHEVER IS LATER, THE PUBLIC EMPLOYEE, THROUGH HIS OR HER EMPLOYEE ORGANIZATION, WHERE APPLICABLE, MAY REQUEST THAT A DETERMINATION AS TO WHETHER HE OR SHE VIOLATED THIS SUBDIVISION AND/OR WHETHER SUCH ALLEGED VIOLATION WAS PROVOKED BY THE GOVERNMENT INVOLVED BE MADE BY AN ARBITRATOR SELECTED, PURSUANT TO THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION, BY THE GOVERNMENT INVOLVED AND THE EMPLOYEE ORGANIZATION REPRESENTING THE OBJECTING EMPLOYEES, FROM A LIST SUPPLIED BY THE AMERICAN ARBITRATION ASSOCIATION AFTER A HEARING CONDUCTED UNDER THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION AT WHICH THE GOVERNMENT INVOLVED SHALL BEAR THE BURDEN OF PROOF. ALL OBJECTIONS ARISING OUT OF THE SAME INCIDENTS CONSTITUTING THE ALLEGED VIOLATIONS OF THIS SECTION AND/OR PROVOCATION ON THE PART OF THE GOVERNMENT INVOLVED SHALL BE CONSOLIDATED FOR DISPOSITION AND DETERMINATION BY ONE ARBITRATOR. THE COST OF THE ARBITRATION PROCEEDING AND THE FEE OF THE ARBITRATOR SHALL BE EQUALLY SHARED BY THE GOVERNMENT INVOLVED AND THE EMPLOYEE OR THE EMPLOYEE ORGANIZATION REPRESENTING THE OBJECTING EMPLOYEE. WITHIN FIVE DAYS OF THE CONCLUSION OF THE ARBITRATION HEARING THE ARBITRATOR SHALL FORWARD HIS OR HER REPORT CONSISTING OF HIS OR HER FINDINGS AND RECOMMENDATIONS INCLUDING RECOMMENDATIONS AS TO PENALTIES IF WARRANTED TO THE PARTIES AND TO THE CHIEF FISCAL OFFICER OF THE GOVERNMENT INVOLVED. IF THE ARBITRATOR FINDS THAT THE GOVERNMENT INVOLVED FAILED TO PROVE THE OBJECTING EMPLOYEE VIOLATED THIS SUBDIVISION HE OR SHE SHALL SUSTAIN THE OBJECTION OF THE EMPLOYEE. IF THE ARBITRATOR FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE GOVERNMENT INVOLVED PROVED THE OBJECTING EMPLOYEE VIOLATED THIS SUBDIVISION AND FURTHER FINDS THAT SUCH VIOLATION WAS NOT PROVOKED BY THE GOVERNMENT INVOLVED, HE OR SHE SHALL REQUIRE THAT THE CHIEF FISCAL OFFICER OF THE GOVERNMENT INVOLVED DEDUCT FROM THE COMPENSATION OF EACH SUCH EMPLOYEE AN AMOUNT EQUAL TO TWICE HIS OR HER DAILY RATE OF PAY FOR EACH DAY OR PART THEREOF IT WAS FOUND HE OR SHE HAD VIOLATED THIS SUBDIVISION. IF THE ARBITRATOR FINDS THAT THE OBJECTING EMPLOYEE VIOLATED THIS SUBDIVISION AND FURTHER FINDS THAT THE GOVERNMENT INVOLVED PROVOKED SUCH VIOLATION HE OR SHE SHALL REQUIRE THAT THE CHIEF FISCAL OFFICER OF THE GOVERNMENT INVOLVED DEDUCT FROM THE COMPENSATION OF EACH SUCH EMPLOYEE AN AMOUNT WHICH SHALL BE NO GREATER THAN ONE AND ONE-HALF NOR LESS THAN AN AMOUNT EQUAL TO, HIS OR HER DAILY RATE OF PAY FOR EACH DAY OR PART THEREOF IT WAS FOUND HE OR SHE HAD VIOLATED THIS SUBDIVISION. THE DETERMINATION OF THE ARBITRATOR SHALL BE REVIEWABLE PURSUANT TO ARTICLE SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES.

S 4. Subdivision 2 of section 210 of the civil service law is amended by adding a new paragraph (h) to read as follows:

(H) OBJECTIONS BY EMPLOYEE ORGANIZATIONS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION MAY, WHERE SUCH OBJECTION IS BASED SOLELY UPON PROVOCATION ON THE PART OF THE GOVERNMENT INVOLVED, FILE OBJECTIONS ON BEHALF OF ALL PERSONS REPRESENTED BY SUCH EMPLOYEE ORGANIZATION PURSUANT TO THE PROVISIONS OF PARAGRAPH (F) OF THIS SUBDIVISION.

S 5. This act shall take effect immediately.