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

4956

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 powers of the public employment relations board to assess damages

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

Section 1. Paragraph (d) of subdivision 5 of section 205 of the civil service law, as amended by chapter 83 of the laws of 2006, is amended to read as follows:

(d) To establish procedures for the prevention of improper employer and employee organization practices as provided in section two hundred nine-a of this article, and to issue a decision and order directing an offending party to cease and desist from any improper practice, and to take such affirmative action as will effectuate the policies of this article [(but not to assess exemplary damages)], including but not limited to the reinstatement of employees with or without back pay AND THE ASSESSMENT OF EXEMPLARY DAMAGES UPON A FINDING THAT AN OFFENDING PARTY HAS COMMITTED REPEATED IMPROPER PRACTICES OR AN EGREGIOUS PRACTICE; provided, however, that except as appropriate to effectuate the policies of subdivision three of section two hundred nine-a of this article, the board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice; provided further that, without limiting in any way the board's general power to take affirmative action, including the provision to make whole relief, the board's power to address employer violations of cease and desist orders issued pursuant to this section in connection with charges of unfair labor practices under paragraph (d) of subdivision one of section two hundred nine-a of this article shall include, to the extent the board deems appropriate, the authority to make employees

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

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whole for the loss of pay and/or benefits resulting from the violation of the cease and desist order and the underlying unfair labor practice by providing that any agreement between the parties be given retroactive effect to the date on which the unfair labor practice was found to have commenced and by providing for appropriate interest from that date, calculated using the short-term federal rate for the underpayment of taxes as set out in 26 U.S.C. 6621.14, except that the make whole relief provided for under this paragraph shall not be ordered when and to the extent that the employee organization is also found to have refused to bargain in good faith. When the board has determined that a duly recognized or certified employee organization representing public employees has breached its duty of fair representation in the processing or failure to process a claim alleging that a public employer has breached its agreement with such employee organization, the board may direct the employee organization and the public employer to process the contract claim in accordance with the parties' grievance procedure. The board may, in its discretion, retain jurisdiction to apportion between such employee organization and public employer any damages assessed as a result of such grievance procedure. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to section two hundred seven of this article or with collective negotiations. The board shall exercise exclusive nondelegable jurisdiction of the powers granted to it by this paragraph, in which connection, no finding of fact or law contained in a report and recommendation of a hearing officer appointed pursuant to subdivision two of section seventy-five of this chapter shall preclude the resolution of any issue of fact or law in a subsequent proceeding held under procedures established by the board under this paragraph; provided, however, that this sentence shall not apply to the city of New York. The board of collective bargaining established by section eleven hundred seventy-one of the New York city charter shall establish procedures for the prevention of improper employer and employee organization practices as provided in section 12-306 of the administrative code of the city of New York, provided, however, that a party aggrieved by a final order issued by the board of collective bargaining in an improper practice proceeding may, within ten days after service of the final order, petition the board for review thereof. Within twenty days thereafter, the board, in its discretion, may assert jurisdiction to review such final order. The failure or refusal of the board to assert jurisdiction shall not be subject to judicial review. Upon the refusal of the board to assert jurisdiction, an aggrieved party shall have the right to seek review of the final order of the board of collective bargaining. Such proceeding to review shall be brought within thirty days of the board's refusal and shall otherwise conform to the requirements of article seventy-eight of the civil practice law and rules. If the board shall choose to review, it may affirm, or reverse in whole or in part, or modify the final order, or remand the matter for further proceedings, or make such other order as it may deem appropriate, provided, however, that findings by the board of collective bargaining regarding evidentiary matters and issues of credibility regarding testimony of witnesses shall be final and not subject to board review.

S 2. This act shall take effect immediately.