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

1384

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. McENENY, PHEFFER -- Multi-Sponsored by -- M. of A. CLARK, COOK, GLICK, GOTTFRIED, LATIMER, TOWNS -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to the effect of deductions for excluded employee organizational dues and fair share fee deductions use for employment

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

Section 1. The civil service law is amended by adding a new article 15 to read as follows:

ARTICLE 15

MANAGEMENT/CONFIDENTIAL ORGANIZATIONAL ACT

SECTION 300. STATEMENT OF LEGISLATIVE INTENT.
301. DEFINITIONS.
302. RIGHT OF ORGANIZATION.
303. ELECTION OF EXCLUDED EMPLOYEE ORGANIZATION.
304. RIGHT OF REPRESENTATION.
305. RECOGNITION OF THE EXCLUDED EMPLOYEE ORGANIZATION.
306. MERIT SYSTEM.
307. RIGHTS OF THE RECOGNIZED EXCLUDED EMPLOYEE ORGANIZATION.

S 300. STATEMENT OF LEGISLATIVE INTENT. THE LEGISLATURE OF THE STATE OF NEW YORK DECLARES THAT IT IS THE PUBLIC POLICY OF THE STATE AND THE PURPOSE OF THIS ARTICLE TO PROMOTE THE EFFICIENT AND EFFECTIVE ADMINISTRATION OF EMPLOYER DESIGNATED STATE PROGRAMS BY MAINTAINING HIGH MORALE AND OBJECTIVE CONSIDERATION OF ISSUES RAISED BETWEEN EMPLOYEES DESIGNATED MANAGERIAL AND CONFIDENTIAL AND THE STATE. THE LEGISLATURE BELIEVES THAT THE CONDUCT OF STATE BUSINESS BETWEEN MANAGERIAL AND CONFIDENTIAL EMPLOYEES AND THE STATE IS BEST EFFECTUATED BY: (A) RECOGNIZING A DESIGNATED EMPLOYEE ORGANIZATION; (B) OPEN COMMUNICATION BETWEEN THE STATE AS EMPLOYER AND AN OBJECTIVE EMPLOYEE ORGANIZATION

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

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REPRESENTING MANAGERIAL AND CONFIDENTIAL EMPLOYEES REGARDING TERMS AND CONDITIONS OF EMPLOYMENT; (C) INFORMING SUCH EMPLOYEES OF THEIR RIGHTS AND TERMS AND CONDITIONS OF EMPLOYMENT THROUGH THE DESIGNATED EMPLOYEE ORGANIZATION; AND (D) PROVIDING CERTAIN BENEFITS FOR SUCH EMPLOYEES THROUGH THE EMPLOYEE ORGANIZATION. THE INTENT OF THE LEGISLATURE IS NOT TO REVISE, CHANGE OR MODIFY IN ANY WAY EXISTING REQUIREMENTS FOR SETTLING STATE EMPLOYEE TITLE DISPUTES BETWEEN ORGANIZATIONS WHICH REPRESENT EMPLOYEES AND AN ORGANIZATION AUTHORIZED UNDER THIS ARTICLE.

S 301. DEFINITIONS. AS USED IN THIS ARTICLE:

1. THE TERM "EXCLUDED EMPLOYEES" MEANS ALL EMPLOYEES OF THE STATE OF NEW YORK DESIGNATED MANAGERIAL OR CONFIDENTIAL PURSUANT TO SUBDIVISION SEVEN OF SECTION TWO HUNDRED ONE OF THIS CHAPTER EXCLUDING THOSE EMPLOYEES PAID PURSUANT TO SECTION ONE HUNDRED SIXTY-NINE OF THE EXECUTIVE LAW. SUCH EMPLOYEES SHALL NOT:

(A) HOLD ANY OFFICE IN AN EMPLOYEE ORGANIZATION THAT ALSO REPRESENTS EMPLOYEES NOT COVERED BY THIS ARTICLE;

(B) PARTICIPATE IN THE HANDLING OF GRIEVANCES ON BEHALF OF EMPLOYEES NOT COVERED BY THIS ARTICLE; AND

(C) PARTICIPATE IN ANY NEGOTIATION SESSION, INTERROGATIONS, OR DISCIPLINARY INTERVIEWS WITH THE EMPLOYER ON BEHALF OF EMPLOYEES NOT COVERED BY THIS ARTICLE.

2. THE TERM "EXCLUDED EMPLOYEE ORGANIZATION" MEANS AN ORGANIZATION THAT REPRESENTS EXCLUDED EMPLOYEES BEFORE THE STATE EMPLOYER TO MEET AND CONFER REGARDING TERMS AND CONDITIONS OF EMPLOYMENT.

3. THE TERM "STATE EMPLOYER" OR "EMPLOYER" MEANS THE GOVERNOR OR HIS OR HER DESIGNATED REPRESENTATIVE.

4. THE TERM "MEET AND CONFER" MEANS THE EMPLOYER SHALL FULLY CONSIDER SUCH PRESENTATIONS MADE BY THE EXCLUDED EMPLOYEE ORGANIZATION ON BEHALF OF ITS MEMBERS PRIOR TO ARRIVING AT A DETERMINATION OF ANY POLICY OR COURSE OF ACTION WITH RESPECT TO SUCH EMPLOYEES.

5. THE TERM "TERMS AND CONDITIONS OF EMPLOYMENT" MEANS WAGES, SALARIES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT; PROVIDED, HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE ANY BENEFITS PROVIDED BY OR TO BE PROVIDED BY A PUBLIC RETIREMENT SYSTEM, OR PAYMENTS TO A FUND OR INSURER TO PROVIDE AN INCOME FOR RETIREES, OR PAYMENTS TO RETIREES OR THEIR BENEFICIARIES. NO RETIREMENT BENEFITS SHALL BE DISCUSSED OR PROVIDED FOR PURSUANT TO THIS ARTICLE, AND ANY SUCH BENEFITS PROVIDED SHALL BE VOID.

S 302. RIGHT OF ORGANIZATION. NOTWITHSTANDING SECTION TWO HUNDRED FOURTEEN OF THIS CHAPTER, EXCLUDED EMPLOYEES SHALL HAVE THE RIGHT TO JOIN AND PARTICIPATE IN, OR REFRAIN FROM JOINING OR PARTICIPATING IN, THE RECOGNIZED EXCLUDED EMPLOYEE ORGANIZATION OF THEIR CHOOSING.

S 303. ELECTION OF EXCLUDED EMPLOYEE ORGANIZATION. THE PUBLIC EMPLOYMENT RELATIONS BOARD SHALL DESIGNATE A REPRESENTATIVE FOR MEET AND CONFER PURPOSES OF EMPLOYEES COVERED BY THIS ARTICLE WHEN SUCH REPRESENTATIVE DEMONSTRATES A SHOWING OF MAJORITY INTEREST BY EMPLOYEES AS DEFINED BY THIS ARTICLE. IN CASES WHERE THE PARTIES TO A DISPUTE ARE WITHOUT AGREEMENT ON THE MEANS TO ASCERTAIN THE CHOICE, IF ANY, OF THE EXCLUDED EMPLOYEE ORGANIZATION AS THEIR REPRESENTATIVE, THE BOARD SHALL ASCERTAIN SUCH EMPLOYEES' CHOICE OF EMPLOYEE ORGANIZATION, ON THE BASIS OF DUES DEDUCTION AUTHORIZATION AND OTHER EVIDENCE, OR IF NECESSARY, BY CONDUCTING AN ELECTION. IN THE EVENT THAT EITHER PARTY PROVIDES TO THE BOARD, PRIOR TO THE DESIGNATION OF A REPRESENTATIVE, CLEAR AND CONVINCING EVIDENCE THAT THE DUES DEDUCTION AUTHORIZATIONS, AND OTHER EVIDENCE UPON WHICH THE BOARD WOULD OTHERWISE RELY TO ASCERTAIN THE EMPLOYEES' CHOICE OF REPRESENTATIVE, ARE FRAUDULENT OR WERE OBTAINED THROUGH COER-

CION, THE BOARD SHALL PROMPTLY THEREAFTER CONDUCT AN ELECTION. THE BOARD SHALL ALSO INVESTIGATE AND CONSIDER A PARTY'S ALLEGATIONS THAT THE DUES DEDUCTION AUTHORIZATIONS AND OTHER EVIDENCE SUBMITTED IN SUPPORT OF A DESIGNATION FOR REPRESENTATIVE WITHOUT AN ELECTION WERE SUBSEQUENTLY CHANGED, ALTERED, WITHDRAWN OR WITHHELD AS A RESULT OF EMPLOYER FRAUD, COERCION OR ANY OTHER UNFAIR EMPLOYER LABOR PRACTICE, IT SHALL DESIGNATE THE REPRESENTATIVE WITHOUT THE CONDUCT OF AN ELECTION.

S 304. RIGHT OF REPRESENTATION. EXCLUDED EMPLOYEES SHALL HAVE THE RIGHT TO BE REPRESENTED BY THE EXCLUDED EMPLOYEE ORGANIZATION, TO MEET AND CONFER WITH THE STATE EMPLOYER IN DETERMINATION OF TERMS AND CONDITIONS OF EMPLOYMENT, EXCEPT THAT NOTHING IN THIS ARTICLE SHALL AUTHORIZE SUCH ORGANIZATION TO BARGAIN COLLECTIVELY WITH THE STATE.

S 305. RECOGNITION OF THE EXCLUDED EMPLOYEE ORGANIZATION. THE STATE EMPLOYER IS HEREBY EMPOWERED TO RECOGNIZE THE EXCLUDED EMPLOYEE ORGANIZATION AS THE EXCLUSIVE REPRESENTATIVE FOR THE PURPOSE OF THIS ARTICLE FOR MEETING AND CONFERRING ON MATTERS RELATED TO THE TERMS AND CONDITIONS OF EMPLOYMENT. IT IS THE MUTUAL OBLIGATION OF THE STATE EMPLOYER AND THE RECOGNIZED EXCLUDED EMPLOYEE ORGANIZATION TO MEET AT REASONABLE TIMES AND CONFER IN GOOD FAITH WITH RESPECT TO WAGES, HOURS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT OR ANY QUESTION ARISING THEREUNDER, BUT SUCH OBLIGATION DOES NOT COMPEL EITHER PARTY TO AGREE TO A PROPOSAL OR REQUIRE THE MAKING OF A CONCESSION.

S 306. MERIT SYSTEM. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO CONTRAVENE THE SPIRIT OR INTENT OF THE MERIT SYSTEM IN STATE GOVERNMENT NOR TO LIMIT THE ENTITLEMENTS OF EACH SUCH EXCLUDED EMPLOYEE.

S 307. RIGHTS OF THE RECOGNIZED EXCLUDED EMPLOYEE ORGANIZATION. THE STATE EMPLOYER SHALL EXTEND TO THE EXCLUDED EMPLOYEE ORGANIZATION THE RIGHT TO REPRESENT THE EXCLUDED EMPLOYEE IN COMMUNICATIONS WITH THE STATE EMPLOYER REGARDING TERMS AND CONDITIONS OF EMPLOYMENT.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.