

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (d) of subdivision 5 of section 205 of the civil
2 service law, as amended by chapter 83 of the laws of 2006, is amended to
3 read as follows:
4 (d) To establish procedures for the prevention of improper employer
5 and employee organization practices as provided in section two hundred
6 nine-a of this article, and to issue a decision and order directing an
7 offending party to cease and desist from any improper practice, and to
8 take such affirmative action as will effectuate the policies of this
9 article [(but not to assess exemplary damages)], including but not
10 limited to the reinstatement of employees with or without back pay AND
11 THE ASSESSMENT OF EXEMPLARY DAMAGES UPON A FINDING THAT AN OFFENDING
12 PARTY HAS COMMITTED REPEATED IMPROPER PRACTICES OR AN EGREGIOUS
13 PRACTICE; provided, however, that except as appropriate to effectuate
14 the policies of subdivision three of section two hundred nine-a of this
15 article, the board shall not have authority to enforce an agreement
16 between an employer and an employee organization and shall not exercise
17 jurisdiction over an alleged violation of such an agreement that would
18 not otherwise constitute an improper employer or employee organization
19 practice; provided further that, without limiting in any way the board's
20 general power to take affirmative action, including the provision to
21 make whole relief, the board's power to address employer violations of
22 cease and desist orders issued pursuant to this section in connection
23 with charges of unfair labor practices under paragraph (d) of subdivi-
24 sion one of section two hundred nine-a of this article shall include, to
25 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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1 whole for the loss of pay and/or benefits resulting from the violation
2 of the cease and desist order and the underlying unfair labor practice
3 by providing that any agreement between the parties be given retroactive
4 effect to the date on which the unfair labor practice was found to have
5 commenced and by providing for appropriate interest from that date,
6 calculated using the short-term federal rate for the underpayment of
7 taxes as set out in 26 U.S.C. 6621.14, except that the make whole relief
8 provided for under this paragraph shall not be ordered when and to the
9 extent that the employee organization is also found to have refused to
10 bargain in good faith. When the board has determined that a duly recog-
11 nized or certified employee organization representing public employees
12 has breached its duty of fair representation in the processing or fail-
13 ure to process a claim alleging that a public employer has breached its
14 agreement with such employee organization, the board may direct the
15 employee organization and the public employer to process the contract
16 claim in accordance with the parties' grievance procedure. The board
17 may, in its discretion, retain jurisdiction to apportion between such
18 employee organization and public employer any damages assessed as a
19 result of such grievance procedure. The pendency of proceedings under
20 this paragraph shall not be used as the basis to delay or interfere with
21 determination of representation status pursuant to section two hundred
22 seven of this article or with collective negotiations. The board shall
23 exercise exclusive nondelegable jurisdiction of the powers granted to it
24 by this paragraph, in which connection, no finding of fact or law
25 contained in a report and recommendation of a hearing officer appointed
26 pursuant to subdivision two of section seventy-five of this chapter
27 shall preclude the resolution of any issue of fact or law in a subse-
28 quent proceeding held under procedures established by the board under
29 this paragraph; provided, however, that this sentence shall not apply to
30 the city of New York. The board of collective bargaining established by
31 section eleven hundred seventy-one of the New York city charter shall
32 establish procedures for the prevention of improper employer and employ-
33 ee organization practices as provided in section 12-306 of the adminis-
34 trative code of the city of New York, provided, however, that a party
35 aggrieved by a final order issued by the board of collective bargaining
36 in an improper practice proceeding may, within ten days after service of
37 the final order, petition the board for review thereof. Within twenty
38 days thereafter, the board, in its discretion, may assert jurisdiction
39 to review such final order. The failure or refusal of the board to
40 assert jurisdiction shall not be subject to judicial review. Upon the
41 refusal of the board to assert jurisdiction, an aggrieved party shall
42 have the right to seek review of the final order of the board of collec-
43 tive bargaining. Such proceeding to review shall be brought within thir-
44 ty days of the board's refusal and shall otherwise conform to the
45 requirements of article seventy-eight of the civil practice law and
46 rules. If the board shall choose to review, it may affirm, or reverse in
47 whole or in part, or modify the final order, or remand the matter for
48 further proceedings, or make such other order as it may deem appropri-
49 ate, provided, however, that findings by the board of collective
50 bargaining regarding evidentiary matters and issues of credibility
51 regarding testimony of witnesses shall be final and not subject to board
52 review.

53 S 2. This act shall take effect immediately.