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I N S E N A T E

June 6, 2014

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the judiciary law and the civil service law, in relation to judicial review of punishment for certain contempt citations

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

1 Section 1. Paragraph (a) of subdivision 2 of section 751 of the judi-
2 ciary law, as amended by chapter 254 of the laws of 1983, is amended to
3 read as follows:
4 (a) Where an employee organization, as defined in section two hundred
5 one of the civil service law, wilfully disobeys a lawful mandate of a
6 court of record, or wilfully offers resistance to such lawful mandate,
7 in a case involving or growing out of a strike in violation of subdivi-
8 sion one of section two hundred ten of the civil service law, the
9 punishment for each day that such contempt persists may be by a fine
10 fixed in the discretion of the court. In the case of a government exempt
11 from certain provisions of article fourteen of the civil service law,
12 pursuant to section two hundred twelve of such law, the court may, as an
13 additional punishment for such contempt, order forfeiture of the rights
14 granted pursuant to the provisions of paragraph (b) of subdivision one,
15 and subdivision three of section two hundred eight of such law, for such
16 specified period of time[, as the court shall determine or, in the
17 discretion of the court, for an indefinite period of time] NOT TO EXCEED
18 THIRTY DAYS, subject to restoration upon application, with notice to all
19 interested parties, supported by proof of good faith compliance with the
20 requirements of subdivision one of section two hundred ten of the civil
21 service law since the date of such violation, such proof to include, for
22 example, the successful negotiation, without a violation of subdivision
23 one of section two hundred ten of the civil service law, of a contract
24 covering the employees in the unit affected by such violation; provided,
25 however, that where a fine imposed pursuant to this subdivision remains
26 wholly or partly unpaid, after the exhaustion of the cash and securities
27 of the employee organization, such forfeiture shall be suspended to the
28 extent necessary for the unpaid portion of such fine to be accumulated

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

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1 by the public employer and transmitted to the court. In fixing the
2 amount of the fine and/or duration of the forfeiture, the court shall
3 consider all the facts and circumstances directly related to the
4 contempt, including, but not limited to: (i) the extent of the wilful
5 defiance of or a resistance to the court's mandate (ii) the impact of
6 the strike on the public health, safety, and welfare of the community
7 and (iii) the ability of the employee organization to pay the fine
8 imposed; and the court may consider (i) the refusal of the employee
9 organization or the appropriate public employer, as defined in section
10 two hundred one of the civil service law, or the representatives there-
11 of, to submit to the mediation and fact-finding procedures provided in
12 section two hundred nine of the civil service law and (ii) whether, if
13 so alleged by the employee organization AND WHEN VIEWED IN A LIGHT MOST
14 FAVORABLE TO SUCH EMPLOYEE ORGANIZATION, the appropriate public employer
15 or its representatives engaged in such acts of extreme provocation as to
16 detract from the responsibility of the employee organization for the
17 strike. In determining the ability of the employee organization to pay
18 the fine imposed, the court shall consider both the income and the
19 assets of such employee organization.

20 S 2. Paragraph (f) of subdivision 3 of section 210 of the civil
21 service law, as amended by chapter 677 of the laws of 1977, is amended
22 to read as follows:

23 (f) If the board determines that an employee organization has violated
24 the provisions of subdivision one of this section, the board shall order
25 forfeiture of the rights granted pursuant to the provisions of paragraph
26 (b) of subdivision one, and subdivision three of section two hundred
27 eight of this chapter, for such specified period of time [as the board
28 shall determine, or, in the discretion of the board, for an indefinite
29 period of time] NOT TO EXCEED THIRTY DAYS subject to restoration upon
30 application, with notice to all interested parties, supported by proof
31 of good faith compliance with the requirements of subdivision one of
32 this section since the date of such violation, such proof to include,
33 for example, the successful negotiation, without a violation of subdivi-
34 sion one of this section, of a contract covering the employees in the
35 unit affected by such violation; provided, however, that where a fine
36 imposed on an employee organization pursuant to subdivision two of
37 section seven hundred fifty-one of the judiciary law remains wholly or
38 partly unpaid, after the exhaustion of the cash and securities of the
39 employee organization, the board shall direct that, notwithstanding such
40 forfeiture, such membership dues deduction shall be continued to the
41 extent necessary to pay such fine and such public employer shall trans-
42 mit such moneys to the court. In fixing the duration of the forfeiture,
43 the board shall consider all the relevant facts and circumstances,
44 including but not limited to: (i) the extent of any wilful defiance of
45 subdivision one of this section (ii) the impact of the strike on the
46 public health, safety, and welfare of the community and (iii) the finan-
47 cial resources of the employee organization; and the board may consider
48 (i) the refusal of the employee organization or the appropriate public
49 employer or the representative thereof, to submit to the mediation and
50 fact-finding procedures provided in section two hundred nine and (ii)
51 whether, if so alleged by the employee organization AND WHEN VIEWED IN A
52 LIGHT MOST FAVORABLE TO SUCH EMPLOYEE ORGANIZATION, the appropriate
53 public employer or its representatives engaged in such acts of extreme
54 provocation as to detract from the responsibility of the employee organ-
55 ization for the strike. In determining the financial resources of the
56 employee organization, the board shall consider both the income and the

1 assets of such employee organization. In the event membership dues are
2 collected by the public employer as provided in paragraph (b) of subdi-
3 vision one of section two hundred eight of this chapter, the books and
4 records of such public employer shall be prima facie evidence of the
5 amount so collected.
6 S 3. This act shall take effect immediately.