

STATE OF NEW YORK

1590

2017-2018 Regular Sessions

IN SENATE

January 10, 2017

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 judiciary law, as amended by chapter 254 of the laws of 1983, is amended to read as follows:

2 (a) Where an employee organization, as defined in section two hundred
3 one of the civil service law, wilfully disobeys a lawful mandate of a
4 court of record, or wilfully offers resistance to such lawful mandate,
5 in a case involving or growing out of a strike in violation of subdivi-
6 sion one of section two hundred ten of the civil service law, the
7 punishment for each day that such contempt persists may be by a fine
8 fixed in the discretion of the court. In the case of a government exempt
9 from certain provisions of article fourteen of the civil service law,
10 pursuant to section two hundred twelve of such law, the court may, as an
11 additional punishment for such contempt, order forfeiture of the rights
12 granted pursuant to the provisions of paragraph (b) of subdivision one,
13 and subdivision three of section two hundred eight of such law, for such
14 specified period of time~~[, as the court shall determine or, in the~~
15 ~~discretion of the court, for an indefinite period of time]~~ not to exceed
16 thirty days, subject to restoration upon application, with notice to all
17 interested parties, supported by proof of good faith compliance with the
18 requirements of subdivision one of section two hundred ten of the civil
19 service law since the date of such violation, such proof to include, for
20 example, the successful negotiation, without a violation of subdivision
21 one of section two hundred ten of the civil service law, of a contract
22 covering the employees in the unit affected by such violation; provided,
23 however, that where a fine imposed pursuant to this subdivision remains
24

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

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1 wholly or partly unpaid, after the exhaustion of the cash and securities
2 of the employee organization, such forfeiture shall be suspended to the
3 extent necessary for the unpaid portion of such fine to be accumulated
4 by the public employer and transmitted to the court. In fixing the
5 amount of the fine and/or duration of the forfeiture, the court shall
6 consider all the facts and circumstances directly related to the
7 contempt, including, but not limited to: (i) the extent of the wilful
8 defiance of or a resistance to the court's mandate (ii) the impact of
9 the strike on the public health, safety, and welfare of the community
10 and (iii) the ability of the employee organization to pay the fine
11 imposed; and the court may consider (i) the refusal of the employee
12 organization or the appropriate public employer, as defined in section
13 two hundred one of the civil service law, or the representatives there-
14 of, to submit to the mediation and fact-finding procedures provided in
15 section two hundred nine of the civil service law and (ii) whether, if
16 so alleged by the employee organization and when viewed in a light most
17 favorable to such employee organization, the appropriate public employer
18 or its representatives engaged in such acts of extreme provocation as to
19 detract from the responsibility of the employee organization for the
20 strike. In determining the ability of the employee organization to pay
21 the fine imposed, the court shall consider both the income and the
22 assets of such employee organization.

23 § 2. Paragraph (f) of subdivision 3 of section 210 of the civil
24 service law, as amended by chapter 677 of the laws of 1977, is amended
25 to read as follows:

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

1 of extreme provocation as to detract from the responsibility of the
2 employee organization for the strike. In determining the financial
3 resources of the employee organization, the board shall consider both
4 the income and the assets of such employee organization. In the event
5 membership dues are collected by the public employer as provided in
6 paragraph (b) of subdivision one of section two hundred eight of this
7 [~~chapter~~] article, the books and records of such public employer shall
8 be prima facie evidence of the amount so collected.
9 § 3. This act shall take effect immediately.