

STATE OF NEW YORK

10035

IN ASSEMBLY

March 4, 2020

Introduced by M. of A. SANTABARBARA -- 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
26 whole for the loss of pay and/or benefits resulting from the violation
27 of the cease and desist order and the underlying unfair labor practice
28 by providing that any agreement between the parties be given retroactive

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

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1 effect to the date on which the unfair labor practice was found to have
2 commenced and by providing for appropriate interest from that date,
3 calculated using the short-term federal rate for the underpayment of
4 taxes as set out in 26 U.S.C. 6621.14, except that the make whole relief
5 provided for under this paragraph shall not be ordered when and to the
6 extent that the employee organization is also found to have refused to
7 bargain in good faith. When the board has determined that a duly recog-
8 nized or certified employee organization representing public employees
9 has breached its duty of fair representation in the processing or fail-
10 ure to process a claim alleging that a public employer has breached its
11 agreement with such employee organization, the board may direct the
12 employee organization and the public employer to process the contract
13 claim in accordance with the parties' grievance procedure. The board
14 may, in its discretion, retain jurisdiction to apportion between such
15 employee organization and public employer any damages assessed as a
16 result of such grievance procedure. The pendency of proceedings under
17 this paragraph shall not be used as the basis to delay or interfere with
18 determination of representation status pursuant to section two hundred
19 seven of this article or with collective negotiations. The board shall
20 exercise exclusive nondelegable jurisdiction of the powers granted to it
21 by this paragraph, in which connection, no finding of fact or law
22 contained in a report and recommendation of a hearing officer appointed
23 pursuant to subdivision two of section seventy-five of this chapter
24 shall preclude the resolution of any issue of fact or law in a subse-
25 quent proceeding held under procedures established by the board under
26 this paragraph; provided, however, that this sentence shall not apply to
27 the city of New York. The board of collective bargaining established by
28 section eleven hundred seventy-one of the New York city charter shall
29 establish procedures for the prevention of improper employer and employ-
30 ee organization practices as provided in section 12-306 of the adminis-
31 trative code of the city of New York, provided, however, that a party
32 aggrieved by a final order issued by the board of collective bargaining
33 in an improper practice proceeding may, within ten days after service of
34 the final order, petition the board for review thereof. Within twenty
35 days thereafter, the board, in its discretion, may assert jurisdiction
36 to review such final order. The failure or refusal of the board to
37 assert jurisdiction shall not be subject to judicial review. Upon the
38 refusal of the board to assert jurisdiction, an aggrieved party shall
39 have the right to seek review of the final order of the board of collec-
40 tive bargaining. Such proceeding to review shall be brought within thir-
41 ty days of the board's refusal and shall otherwise conform to the
42 requirements of article seventy-eight of the civil practice law and
43 rules. If the board shall choose to review, it may affirm, or reverse in
44 whole or in part, or modify the final order, or remand the matter for
45 further proceedings, or make such other order as it may deem appropri-
46 ate, provided, however, that findings by the board of collective
47 bargaining regarding evidentiary matters and issues of credibility
48 regarding testimony of witnesses shall be final and not subject to board
49 review.

50 § 2. This act shall take effect immediately.