

STATE OF NEW YORK

388

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. ABINANTI
-- read once and referred 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 Assem-
bly, 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,

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

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

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

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

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