

STATE OF NEW YORK

5878

2023-2024 Regular Sessions

IN ASSEMBLY

March 23, 2023

Introduced by M. of A. PHEFFER AMATO -- read once and referred to the
Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to unlawful strikes
by public employees

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Section 200 of the civil service law, as amended by chapter
2 24 of the laws of 1969, is amended to read as follows:

3 § 200. Statement of policy. The legislature of the state of New York
4 declares that it is the public policy of the state and the purpose of
5 this act to promote harmonious and cooperative relationships between
6 government and its employees and to protect the public by assuring[~~at~~
7 ~~all times,~~] the orderly and uninterrupted operations and functions of
8 government. These policies are best effectuated by (a) granting to
9 public employees the right of organization and representation, (b)
10 requiring the state, local governments and other political subdivisions
11 to negotiate with, and enter into written agreements with employee
12 organizations representing public employees which have been certified or
13 recognized, (c) encouraging such public employers and such employee
14 organizations to agree upon procedures for resolving disputes, (d)
15 creating a public employment relations board to assist in resolving
16 disputes between public employees and public employers, and (e) continu-
17 ing the prohibition against unlawful strikes by public employees and
18 providing remedies for violations of such prohibition.

19 § 2. Section 201 of the civil service law is amended by adding a new
20 subdivision 9-a to read as follows:

21 9-a. The term "unlawful strike" means any strike not authorized by
22 subdivision five of section two hundred nine of this article.

23 § 3. Subdivision 3 of section 207 of the civil service law, as added
24 by chapter 392 of the laws of 1967, is amended to read as follows:

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

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1 3. certify or recognize an employee organization upon (a) the determi-
2 nation that such organization represents that group of public employees
3 it claims to represent, and (b) the affirmation by such organization
4 that it does not assert the right to engage in an unlawful strike
5 against any government, to assist or participate in any such unlawful
6 strike, or to impose an obligation to conduct, assist or participate in
7 such [a] an unlawful strike.

8 § 4. Section 209 of the civil service law is amended by adding a new
9 subdivision 5 to read as follows:

10 5. (a) It shall be the duty of the metropolitan transportation author-
11 ity, including its subsidiaries, the New York city transit authority,
12 including its subsidiaries, and the Triborough bridge and tunnel author-
13 ity, the Niagara Frontier transportation authority, the Rochester-Gene-
14 see regional transportation authority, the capital district transporta-
15 tion authority and the central New York regional transportation
16 authority (all hereinafter referred to as TA-public employers), their
17 officers, agents, and employees to exert every reasonable effort to make
18 and maintain agreements concerning salaries, wages, hours and other
19 terms and conditions of employment, and to settle all disputes, whether
20 arising out of the application of such agreements or otherwise, in order
21 to avoid any interruption to the operations and functions of government.
22 No TA-public employer, its officers, or agents shall change the sala-
23 ries, wages, hours and other terms and conditions of employment of its
24 employees as embodied in agreements except in the manner prescribed in
25 such agreements or in paragraph (b) of this subdivision.

26 (b) TA-public employers and employee organizations shall give at least
27 one hundred twenty days' written notice of an intended change to agree-
28 ments affecting salaries, wages, hours and other terms and conditions of
29 employment, and the time and place for the beginning of negotiations
30 between the representatives of the parties shall be agreed upon within
31 ten days after the receipt of such notice, and such time shall be within
32 thirty days of the provision of such notice. In every case where such
33 notice of intended change has been given, or negotiations are being held
34 with reference thereto, or the services of the board have been requested
35 by either party, or such board has proffered its services, salaries,
36 wages, hours and other terms and conditions of employment shall not be
37 altered by the TA-public employer until the controversy has been finally
38 acted upon. If ninety days prior to the intended change in an agreement,
39 the parties have been unable to reach a new agreement, the board, if it
40 has not already done so, shall appoint a mediator or mediators represen-
41 tative of the public from a list of qualified persons maintained by the
42 board to assist the parties to effect a voluntary resolution of the
43 dispute. The board shall promptly put itself in communication with the
44 parties to such controversy, and shall use its best efforts, by medi-
45 ation, to bring them to agreement. If, after sixty days, such efforts to
46 bring about an amicable settlement through mediation shall be unsuccess-
47 ful, such board shall at once endeavor as its final required action
48 (except as provided in paragraphs (c), (g) and (h) of this subdivision)
49 to induce the parties to submit their controversy to arbitration, in
50 accordance with the provisions of paragraph (c) of this subdivision.

51 (c) Where the parties have voluntarily agreed to submit their contro-
52 versy to arbitration, the board shall refer the dispute to a public
53 arbitration panel, consisting of one member appointed by the public
54 employer, one member appointed by the employee organization and one
55 public member appointed jointly by the public employer and employee
56 organization who shall be selected within ten days after receipt by the

1 board of a petition for creation of the arbitration panel. If either
2 party fails to designate its member to the public arbitration panel, the
3 board shall promptly, upon receipt of a request by either party, desig-
4 nate a member associated in interest with the public employer or employ-
5 ee organization such member is to represent. Each of the respective
6 parties is to bear the cost of its member appointed or designated to the
7 arbitration panel and each of the respective parties is to share equally
8 the cost of the public member. If, within seven days after the mailing
9 date, the parties are unable to agree upon the one public member, the
10 board shall submit to the parties a list of qualified, disinterested
11 persons for the selection of the public member. Each party shall alter-
12 nately strike from the list one of the names with the order of striking
13 determined by lot, until the remaining one person shall be designated as
14 public member. This process shall be completed within five days of
15 receipt of this list. The parties shall notify the board of the desig-
16 nated public member. The public member shall be chosen as chairman. The
17 arbitration panel shall hold hearings on all matters within the scope of
18 negotiations related to the dispute for which the panel was appointed.
19 The parties may be heard either in person, by counsel or by other repre-
20 sentatives as they may respectively designate. The parties may present,
21 either orally or in writing or both, statement of fact, supporting
22 witnesses and other evidence and argument of their respective position
23 with respect to each case. The panel shall have authority to require the
24 production of such additional evidence, either oral or written, as it
25 may desire from the parties and shall provide at the request of either
26 party that a full and complete record be kept of any such hearings, the
27 cost of such record to be shared equally by the parties.

28 (d) All matters presented to such panel for its determination shall be
29 decided by a majority vote of the members of the panel. The panel, prior
30 to a vote on any issue in dispute before it, may refer the issue back to
31 the parties for further negotiations.

32 (e) Such panel shall make a just and reasonable determination of
33 matters in dispute. In arriving at such determination, the panel shall
34 specify the basis for its findings, taking into consideration, in addi-
35 tion to any other relevant factors, the following:

36 (i) comparison of the wages, hours, fringe benefits, conditions and
37 characteristics of employment of the public employees involved in the
38 impasse proceeding with the wages, hours, fringe benefits, conditions
39 and characteristics of employment of other employees performing similar
40 work and other employees generally in public or private employment in
41 New York city or comparable communities;

42 (ii) the overall compensation paid to the employees involved in the
43 impasse proceeding, including direct wage compensation, overtime and
44 premium pay, vacations, holidays and other excused time, insurance,
45 pensions, medical and hospitalization benefits, food and apparel
46 furnished, and all other benefits received;

47 (iii) the impact of the panel's award on the financial ability of the
48 public employer to pay, on the present fares and on the continued
49 provision of services to the public;

50 (iv) changes in the average consumer prices for goods and services,
51 commonly known as the cost of living;

52 (v) the interest and welfare of the public; and

53 (vi) such other factors as are normally and customarily considered in
54 the determination of wages, hours, fringe benefits and other working
55 conditions in collective negotiations or impasse panel proceedings.

1 (f) The panel shall have full authority to resolve the matters in
2 dispute before it and issue a determination which shall be final and
3 binding upon the parties, notwithstanding any other provision of this
4 article. Except for the purposes of judicial review, any provision of a
5 determination of the arbitration panel, the implementation of which
6 requires an enactment of law, shall not become binding until the appro-
7 priate legislative body enacts such law.

8 (g) If arbitration at the request of the board shall be refused by one
9 or both parties, the board shall at once notify both parties in writing
10 that its mediatory efforts have failed and for thirty days thereafter,
11 unless in the intervening period the parties agree to arbitration, or an
12 emergency board shall be created under paragraph (h) of this subdivi-
13 sion, no change shall be made in the salaries, wages, hours and other
14 terms and conditions of employment or established practices in effect
15 prior to the time the dispute arose.

16 (h) If a dispute between a TA-public employer and its employees be not
17 resolved under the foregoing provisions of this subdivision and should,
18 in the judgment of the board, threaten substantially to interrupt
19 governmental operations and functions to a degree such as to deprive any
20 section of the state of essential transportation service, the board
21 shall notify the governor, who may thereupon, in their discretion,
22 create an emergency board to investigate and report respecting such
23 dispute. Such emergency board shall be composed of such number of
24 persons as to the governor may seem desirable; provided, however, that
25 no member appointed shall be pecuniarily or otherwise interested in any
26 employee organization or any TA-public employer. The compensation of the
27 members of any such emergency board shall be fixed by the governor. Such
28 emergency board shall be created separately in each instance and shall
29 investigate promptly the facts as to the dispute and make a report ther-
30 eon to the governor within thirty days from the date of its creation.

31 After the creation of such emergency board and for thirty days after
32 such emergency board has made its report to the governor, no change,
33 except by agreement, shall be made by the parties to the controversy in
34 the conditions out of which the dispute arose.

35 (i) If, thirty days after the emergency board established pursuant to
36 paragraph (h) of this subdivision submits its report to the governor, or
37 where no emergency board has been created, thirty days after the board
38 has notified both parties in writing that its mediatory efforts have
39 failed, the parties' dispute still has not been resolved, the TA-public
40 employer may implement its last, best and final offer to resolve the
41 dispute. Employees of such TA-public employer who engage in any work
42 stoppage arising out of the dispute shall not be considered engaged in
43 an unlawful strike.

44 (j) This subdivision shall not apply to a certified or recognized
45 public employee organization which represents any public employees
46 described in subdivision sixteen of section twelve hundred four of the
47 public authorities law and nothing contained within this section shall
48 be construed to divest the public employment relations board or any
49 court of competent jurisdiction of the full power or authority to
50 enforce any order made by the board or such court prior to the effective
51 date of this subdivision.

52 § 5. Subdivision 1 of section 210 of the civil service law, as amended
53 by chapter 24 of the laws of 1969, is amended to read as follows:

54 1. No public employee or employee organization shall engage in [~~a~~] an
55 unlawful strike, and no public employee or employee organization shall
56 cause, instigate, encourage, or condone [~~a~~] an unlawful strike.

1 § 6. The subdivision heading and paragraphs (a), (b) and (c) of subdivi-
2 vision 2 of section 210 of the civil service law, as amended by chapter
3 24 of the laws of 1969, are amended to read as follows:

4 Violations and penalties; presumption; prohibition against consent to
5 unlawful strike; determination; notice; probation; payroll deductions;
6 objections; and restoration. (a) Violations and penalties. A public
7 employee shall violate this subdivision by engaging in [a] an unlawful
8 strike or violating paragraph (c) of this subdivision and shall be
9 liable as provided in this subdivision pursuant to the procedures
10 contained herein. In addition, any public employee who violates subdivi-
11 sion one of this section may be subject to removal or other disciplinary
12 action provided by law for misconduct.

13 (b) Presumption. For purposes of this subdivision an employee who is
14 absent from work without permission, or who abstains wholly or in part
15 from the full performance of his duties in his normal manner without
16 permission, on the date or dates when [a] an unlawful strike occurs,
17 shall be presumed to have engaged in such unlawful strike on such date
18 or dates.

19 (c) Prohibition against consent to unlawful strike. No person exercis-
20 ing on behalf of any public employer any authority, supervision or
21 direction over any public employee shall have the power to authorize,
22 approve, condone or consent to [a] an unlawful strike, or the engaging
23 in [a] an unlawful strike, by one or more public employees, and such
24 person shall not authorize, approve, condone or consent to such unlawful
25 strike or engagement.

26 § 7. Paragraphs (e) and (f) of subdivision 3 of section 210 of the
27 civil service law, paragraph (e) as amended by chapter 24 of the laws of
28 1969 and paragraph (f) as amended by chapter 677 of the laws of 1977,
29 are amended to read as follows:

30 (e) In determining whether an employee organization has violated
31 subdivision one of this section, the board shall consider (i) whether
32 the employee organization called the unlawful strike or tried to prevent
33 it, and (ii) whether the employee organization made or was making good
34 faith efforts to terminate the unlawful strike.

35 (f) If the board determines that an employee organization has violated
36 the provisions of subdivision one of this section, the board shall order
37 forfeiture of the rights granted pursuant to the provisions of paragraph
38 (b) of subdivision one, and subdivision three of section two hundred
39 eight of this [~~chapter~~] article, for such specified period of time as
40 the board shall determine, or, in the discretion of the board, for an
41 indefinite period of time subject to restoration upon application, with
42 notice to all interested parties, supported by proof of good faith
43 compliance with the requirements of subdivision one of this section
44 since the date of such violation, such proof to include, for example,
45 the successful negotiation, without a violation of subdivision one of
46 this section, of a contract covering the employees in the unit affected
47 by such violation; provided, however, that where a fine imposed on an
48 employee organization pursuant to subdivision two of section seven
49 hundred fifty-one of the judiciary law remains wholly or partly unpaid,
50 after the exhaustion of the cash and securities of the employee organ-
51 ization, the board shall direct that, notwithstanding such forfeiture,
52 such membership dues deduction shall be continued to the extent neces-
53 sary to pay such fine and such public employer shall transmit such
54 moneys to the court. In fixing the duration of the forfeiture, the board
55 shall consider all the relevant facts and circumstances, including but
56 not limited to: (i) the extent of any wilful defiance of subdivision one

1 of this section (ii) the impact of the unlawful strike on the public
2 health, safety, and welfare of the community and (iii) the financial
3 resources of the employee organization; and the board may consider (i)
4 the refusal of the employee organization or the appropriate public
5 employer or the representative thereof, to submit to the mediation and
6 fact-finding procedures provided in section two hundred nine of this
7 article and (ii) whether, if so alleged by the employee organization,
8 the appropriate public employer or its representatives engaged in such
9 acts of extreme provocation as to detract from the responsibility of the
10 employee organization for the unlawful strike. In determining the
11 financial resources of the employee organization, the board shall
12 consider both the income and the assets of such employee organization.
13 In the event membership dues are collected by the public employer as
14 provided in paragraph (b) of subdivision one of section two hundred
15 eight of this [~~chapter~~] article, the books and records of such public
16 employer shall be prima facie evidence of the amount so collected.

17 § 8. Subdivision 4 of section 210 of the civil service law, as amended
18 by chapter 24 of the laws of 1969 and as renumbered by chapter 503 of
19 the laws of 1971, is amended to read as follows:

20 4. Within sixty days of the termination of [~~a~~] an unlawful strike, the
21 chief executive officer of the government involved shall prepare and
22 make public a report in writing, which shall contain the following
23 information: (a) the circumstances surrounding the commencement of the
24 unlawful strike, (b) the efforts used to terminate the unlawful strike,
25 (c) the names of those public employees whom the public officer or body
26 had reason to believe were responsible for causing, instigating or
27 encouraging the unlawful strike and (d) related to the varying degrees
28 of individual responsibility, the sanctions imposed or proceedings pend-
29 ing against each such individual public employee.

30 § 9. Section 211 of the civil service law, as added by chapter 392 of
31 the laws of 1967, is amended to read as follows:

32 § 211. Application for injunctive relief. 1. Pursuant to section
33 eight hundred seven of the labor law, a party subject to subdivision
34 five of section two hundred nine of this article may apply to the
35 supreme court for an injunction to preserve the status quo upon a show-
36 ing that (a) there is reasonable cause to believe a violation of subdi-
37 vision five of section two hundred nine of this article has occurred,
38 and (b) where it appears that immediate and irreparable injury, loss or
39 damage will result thereby rendering a resulting judgment on the merits
40 ineffectual necessitating the maintenance of, or return to, the status
41 quo to provide meaningful relief.

42 2. Notwithstanding the provisions of section eight hundred seven of
43 the labor law, where it appears that public employees or an employee
44 organization threaten or are about to do, or are doing, an act in
45 violation of section two hundred ten of this article, the chief execu-
46 tive officer of the government involved shall (a) forthwith notify the
47 chief legal officer of the government involved, and (b) provide such
48 chief legal officer with such facilities, assistance and data as will
49 enable the chief legal officer to carry out his or her duties under this
50 section, and, notwithstanding the failure or refusal of the chief execu-
51 tive officer to act as aforesaid, the chief legal officer of the govern-
52 ment involved shall forthwith apply to the supreme court for an injunc-
53 tion against such violation. If an order of the court enjoining or
54 restraining such violation does not receive compliance, such chief legal
55 officer shall forthwith apply to the supreme court to punish such
56 violation under section seven hundred fifty of the judiciary law.

1 § 10. This act shall take effect immediately; provided, however, that
2 section four of this act shall take effect on the same date as the expi-
3 ration of subdivision 5 of section 209 of the civil service law as
4 provided in section 45 of chapter 929 of the laws of 1986, as amended.