

# STATE OF NEW YORK

9376

## IN ASSEMBLY

March 6, 2024

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

AN ACT to amend the civil service law, in relation to the rights of  
public employees and employee organizations to strike; and to repeal  
certain provisions of the civil service law and the judiciary law  
relating thereto

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

1 Section 1. Subdivisions 1, 2, 3 and 4 of section 210 of the civil  
2 service law, as amended by chapter 24 of the laws of 1969, paragraph (f)  
3 of subdivision 2 and paragraph (a) of subdivision 3 as amended and  
4 subdivision 4 as renumbered by chapter 503 of the laws of 1971, para-  
5 graph (f) of subdivision 2 as relettered and paragraphs (e) and (g) of  
6 subdivision 2 as amended by chapter 254 of the laws of 1983, and para-  
7 graphs (f) and (g) of subdivision 3 as amended by chapter 677 of the  
8 laws of 1977, are amended to read as follows:  
9 1. No public employee or employee organization shall engage in a  
10 strike~~[, and no public employee or employee organization shall cause,~~  
11 ~~instigate, encourage, or condone a strike]~~.  
12 2. Violations and penalties; [~~presumption,~~] prohibition against  
13 consent to strike; determination; notice; [~~probation, payroll~~  
14 ~~deductions,~~] objections; and restoration. (a) Violations and penalties.  
15 A public employee shall violate this subdivision by engaging in a strike  
16 or violating paragraph [~~(e)~~] (b) of this subdivision and shall be liable  
17 as provided in this subdivision pursuant to the procedures contained  
18 herein. In addition, any public employee who violates subdivision one of  
19 this section may be subject to [~~removal or~~] other disciplinary action  
20 provided by law [~~for misconduct~~].  
21 (b) [~~Presumption. For purposes of this subdivision an employee who is~~  
22 ~~absent from work without permission, or who abstains wholly or in part~~  
23 ~~from the full performance of his duties in his normal manner without~~  
24 ~~permission, on the date or dates when a strike occurs, shall be presumed~~  
25 ~~to have engaged in such strike on such date or dates.~~

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

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1 ~~(e)~~] Prohibition against consent to strike. No person exercising on  
2 behalf of any public employer any authority, supervision or direction  
3 over any public employee shall have the power to authorize, approve,  
4 condone or consent to a strike, or the engaging in a strike, by one or  
5 more public employees, and such person shall not authorize, approve,  
6 condone or consent to such strike or engagement. Nothing in this para-  
7 graph, however, shall be construed to prohibit any public employer from  
8 negotiating or entering into an agreement with an employee organization,  
9 nor shall a public employer's failure to pursue adverse action against  
10 an employee organization or public employee in response to a strike be  
11 construed as a violation of this paragraph.

12 ~~(d)~~ (c) Determination. In the event that it appears that a violation  
13 of this subdivision may have occurred, the chief executive officer of  
14 the government involved ~~shall~~ may, on the basis of such investigation  
15 and affidavits as he or she may deem appropriate, determine whether or  
16 not such violation has occurred and the date or dates of such violation.  
17 If the chief executive officer determines that such violation has  
18 occurred, he ~~shall~~ or she may further determine, on the basis of such  
19 further investigation and affidavits as he or she may deem appropriate,  
20 the names of employees who committed such violation and the date or  
21 dates thereof. Such determination shall not be deemed to be final until  
22 the completion of the procedures provided for in this subdivision.

23 ~~(e)~~ (d) Notice. The chief executive officer shall forthwith notify  
24 each employee that he or she has been found to have committed such  
25 violation, the date or dates thereof and of his or her right to object  
26 to such determination pursuant to paragraph ~~(g)~~ (e) of this subdivi-  
27 sion; he or she shall also notify the chief fiscal officer of the names  
28 of all such employees and of the total number of days, or part thereof,  
29 on which it has been determined that such violation occurred. Notice to  
30 each employee shall be by personal service or by certified mail to ~~his~~  
31 the last address filed by ~~him~~ such employee with ~~his~~ the employer.

32 ~~(f) Payroll deductions. Not earlier than thirty nor later than ninety~~  
33 ~~days following the date of such determination, the chief fiscal officer~~  
34 ~~of the government involved shall deduct from the compensation of each~~  
35 ~~such public employee an amount equal to twice his daily rate of pay for~~  
36 ~~each day or part thereof that it was determined that he had violated~~  
37 ~~this subdivision; such rate of pay to be computed as of the time of such~~  
38 ~~violation. In computing such deduction, credit shall be allowed for~~  
39 ~~amounts already withheld from such employee's compensation on account of~~  
40 ~~his absence from work or other withholding of services on such day or~~  
41 ~~days. In computing the aforesaid thirty to ninety day period of time~~  
42 ~~following the determination of a violation pursuant to subdivision (d)~~  
43 ~~of paragraph two of this section and where the employee's annual compen-~~  
44 ~~sation is paid over a period of time which is less than fifty-two weeks,~~  
45 ~~that period of time between the last day of the last payroll period of~~  
46 ~~the employment term in which the violation occurred and the first day of~~  
47 ~~the first payroll period of the next succeeding employment term shall be~~  
48 ~~disregarded and not counted.~~

49 ~~(g)~~ (e) Objections and restoration. Any employee determined to have  
50 violated this subdivision may object to such determination by filing  
51 with the chief executive officer, (within twenty days of the date on  
52 which notice was served or mailed to him or her pursuant to paragraph  
53 ~~(e)~~ (d) of this subdivision) ~~his sworn affidavit, supported by avail-~~  
54 ~~able documentary proof, containing~~ a short and plain statement ~~[of the~~  
55 ~~facts upon which he relies to show]~~ that such determination was incor-  
56 rect. ~~[Such affidavit shall be subject to the penalties of perjury. If~~

1 ~~the chief executive officer shall determine that the affidavit and~~  
2 ~~supporting proof establishes that the employee did not violate this~~  
3 ~~subdivision, he shall sustain the objection. If the chief executive~~  
4 ~~officer shall determine that the affidavit and supporting proof fails to~~  
5 ~~establish that the employee did not violate this subdivision, he shall~~  
6 ~~dismiss the objection and so notify the employee. If] Upon receipt of~~  
7 ~~such statement,~~ the chief executive officer [~~shall determine that the~~  
8 ~~affidavit and supporting proof raises a question of fact which, if~~  
9 ~~resolved in favor of the employee, would establish that the employee did~~  
10 ~~not violate this subdivision, he shall] may appoint a hearing officer to  
11 determine whether in fact the employee did violate this subdivision  
12 after a hearing at which such [~~employee~~] employee's employer shall bear  
13 the burden of proof. If the hearing officer shall determine that the  
14 [~~employee failed to establish~~] employer established that [~~he~~] such  
15 employee did [~~not~~] violate this subdivision, the chief executive officer  
16 shall so notify the employee. If the chief executive officer sustains  
17 an objection or the hearing officer determines on a preponderance of the  
18 evidence that such employer failed to establish that such employee [~~did~~  
19 ~~not violate~~] violated this subdivision, the chief executive officer  
20 shall forthwith notify the chief fiscal officer who shall thereupon  
21 cease all further deductions and refund any deductions previously made  
22 pursuant to this [~~subdivision~~] section. The determinations provided in  
23 this paragraph shall be reviewable pursuant to article seventy-eight of  
24 the civil practice law and rules.~~

25 3. (a) [~~An employee organization which is determined by the board to~~  
26 ~~have violated the provisions of subdivision one of this section shall,~~  
27 ~~in accordance with the provisions of this section, lose the rights~~  
28 ~~granted pursuant to the provisions of paragraph (b) of subdivision one~~  
29 ~~of section two hundred eight of this chapter.~~

30 ~~(b)]~~ In the event that it appears that a violation of subdivision one  
31 of this section may have occurred, [~~it shall be the duty of~~] the chief  
32 executive officer of the public employer involved may (i) [~~forthwith to~~  
33 ~~so~~] notify the board and the chief legal officer of the government  
34 involved, and (ii) [~~to~~] provide the board and such chief legal officer  
35 with such facilities, assistance and data as will enable the board and  
36 such chief legal officer to carry out their duties under this section.

37 [~~(e)]~~ (b) In the event that it appears that a violation of subdivision  
38 one of this section may have occurred, the chief legal officer of the  
39 government involved[, ~~or the board on its own motion, shall forthwith~~  
40 may institute proceedings before the board to determine whether such  
41 employee organization has violated the provisions of subdivision one of  
42 this section.

43 [~~(d)]~~ (c) Proceedings against an employee organization under this  
44 section shall be commenced by service upon it of a written notice,  
45 together with a copy of the charges. A copy of such notice and charges  
46 shall also be served, for their information, upon the appropriate  
47 government officials who recognize such employee organization and grant  
48 to it the rights accompanying such recognition. The employee organiza-  
49 tion shall have eight days within which to serve its written answer to  
50 such charges. The board's hearing shall be held promptly thereafter and  
51 at such hearing, the parties shall be permitted to be represented by  
52 counsel and to summon witnesses in their behalf. Compliance with the  
53 technical rules of evidence shall not be required.

54 [~~(e)]~~ (d) In determining whether an employee organization has violated  
55 subdivision one of this section, the board shall consider [~~(i)]~~ only  
56 whether the employee organization called the strike [~~or tried to prevent~~

1 ~~it, and (ii) whether the employee organization made or was making good~~  
2 ~~faith efforts to terminate the strike].~~

3 [~~(f)~~] (e) If the board determines that an employee organization has  
4 violated the provisions of subdivision one of this section, the board  
5 shall order [~~forfeiture of the rights granted pursuant to the provisions~~  
6 ~~of paragraph (b) of subdivision one, and subdivision three of section~~  
7 ~~two hundred eight of this chapter, for such specified period of time as~~  
8 ~~the board shall determine, or, in the discretion of the board, for an~~  
9 ~~indefinite period of time subject to restoration upon application, with~~  
10 ~~notice to all interested parties, supported by proof of good faith~~  
11 ~~compliance with the requirements of subdivision one of this section~~  
12 ~~since the date of such violation, such proof to include, for example,~~  
13 ~~the successful negotiation, without a violation of subdivision one of~~  
14 ~~this section, of a contract covering the employees in the unit affected~~  
15 ~~by such violation; provided, however, that where a fine imposed on an~~  
16 ~~employee organization pursuant to subdivision two of section seven~~  
17 ~~hundred fifty one of the judiciary law remains wholly or partly unpaid,~~  
18 ~~after the exhaustion of the cash and securities of the employee organ-~~  
19 ~~ization, the board shall direct that, notwithstanding such forfeiture,~~  
20 ~~such membership dues deduction shall be continued to the extent neces-~~  
21 ~~sary to pay such fine and such public employer shall transmit such~~  
22 ~~moneys to the court. In fixing the duration of the forfeiture, the board~~  
23 ~~shall consider all the relevant facts and circumstances, including but~~  
24 ~~not limited to: (i) the extent of any wilful defiance of subdivision one~~  
25 ~~of this section (ii) the impact of the strike on the public health,~~  
26 ~~safety, and welfare of the community and (iii) the financial resources~~  
27 ~~of the employee organization; and the board may consider (i) the refusal~~  
28 ~~of the employee organization or the appropriate public employer or the~~  
29 ~~representative thereof, to submit to the mediation and fact-finding~~  
30 ~~procedures provided in section two hundred nine and (ii) whether, if so~~  
31 ~~alleged by the employee organization, the appropriate public employer or~~  
32 ~~its representatives engaged in such acts of extreme provocation as to~~  
33 ~~detract from the responsibility of the employee organization for the~~  
34 ~~strike. In determining the financial resources of the employee organiza-~~  
35 ~~tion, the board shall consider both the income and the assets of such~~  
36 ~~employee organization. In the event membership dues are collected by the~~  
37 ~~public employer as provided in paragraph (b) of subdivision one of~~  
38 ~~section two hundred eight of this chapter, the books and records of such~~  
39 ~~public employer shall be prima facie evidence of the amount so~~  
40 ~~collected.~~

41 ~~(g) An employee organization whose rights granted pursuant to the~~  
42 ~~provisions of paragraph (b) of subdivision one, and subdivision three of~~  
43 ~~section two hundred eight of this article have been ordered forfeited~~  
44 ~~pursuant to this section may be granted such rights after the termi-~~  
45 ~~nation of such forfeiture only after complying with the provisions of~~  
46 ~~clause (b) of subdivision three of section two hundred seven of this~~  
47 ~~article] such employee organization to pay a fine of not more than fifty  
48 dollars per day for the duration of the strike.~~

49 [~~(h)~~] (f) No compensation shall be paid by a public employer to a  
50 public employee with respect to any day or part thereof when such  
51 employee is engaged in a strike against such employer. The chief fiscal  
52 officer of the government involved shall withhold such compensation upon  
53 receipt of the notice provided by paragraph [~~(e)~~] (d) of subdivision two  
54 of this section [~~two hundred ten~~]; notwithstanding the failure to have  
55 received such notice, no public employee or officer having knowledge  
56 that such employee has so engaged in such a strike shall deliver or

1 caused to be delivered to such employee any cash, check or payment  
2 which, in whole or in part, represents such compensation.

3 (g) The foregoing penalties shall be the sole and exclusive remedies  
4 available for any violation of subdivision one or two of this section.  
5 No public employee shall be compelled by any legal action to work  
6 against such employee's will in any matter arising out of a violation of  
7 subdivision one or two of this section. No additional penalties for  
8 violations of subdivision one or two of this section may be imposed by  
9 court order against an employee organization or public employee, includ-  
10 ing but not limited to incarceration or fines secured through contempt  
11 proceedings.

12 4. Within sixty days of the termination of a strike, the chief execu-  
13 tive officer of the government involved shall prepare and make public a  
14 report in writing, which shall contain the following information: (a)  
15 the circumstances surrounding the commencement of the strike, (b) the  
16 efforts used to terminate the strike, and (c) [~~the names of those public~~  
17 ~~employees whom the public officer or body had reason to believe were~~  
18 ~~responsible for causing, instigating or encouraging the strike and (d)~~  
19 ~~related to the varying degrees of individual responsibility,~~] the sanc-  
20 tions imposed [~~or proceedings pending against each such individual~~  
21 ~~public employee~~].

22 § 2. Section 211 of the civil service law is REPEALED.

23 § 3. Subdivision 2 of section 751 of the judiciary law is REPEALED.

24 § 4. This act shall take effect immediately.