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 Assembly, do enact as follows:

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

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

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

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

§ 3. Subdivision 3 of section 207 of the civil service law, as added 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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3. certify or recognize an employee organization upon (a) the determination that such organization represents that group of public employees it claims to represent, and (b) the affirmation by such organization that it does not assert the right to **engage in an unlawful** strike against any government, to assist or participate in any such **unlawful** strike, or to impose an obligation to conduct, assist or participate in such [~~a~~] **an unlawful** strike.

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

5. (a) It shall be the duty of the metropolitan transportation authority, including its subsidiaries, the New York city transit authority, including its subsidiaries, and the Triborough bridge and tunnel authority, the Niagara Frontier transportation authority, the Rochester-Genesee regional transportation authority, the capital district transportation authority and the central New York regional transportation authority (all hereinafter referred to as TA-public employers), their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning salaries, wages, hours and other terms and conditions of employment, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to the operations and functions of government. No TA-public employer, its officers, or agents shall change the salaries, wages, hours and other terms and conditions of employment of its employees as embodied in agreements except in the manner prescribed in such agreements or in paragraph (b) of this subdivision.

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

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

board of a petition for creation of the arbitration panel. If either party fails to designate its member to the public arbitration panel, the board shall promptly, upon receipt of a request by either party, designate a member associated in interest with the public employer or employee organization such member is to represent. Each of the respective parties is to bear the cost of its member appointed or designated to the arbitration panel and each of the respective parties is to share equally the cost of the public member. If, within seven days after the mailing date, the parties are unable to agree upon the one public member, the board shall submit to the parties a list of qualified, disinterested persons for the selection of the public member. Each party shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as public member. This process shall be completed within five days of receipt of this list. The parties shall notify the board of the designated public member. The public member shall be chosen as chairman. The arbitration panel shall hold hearings on all matters within the scope of negotiations related to the dispute for which the panel was appointed. The parties may be heard either in person, by counsel or by other representatives as they may respectively designate. The parties may present, either orally or in writing or both, statement of fact, supporting witnesses and other evidence and argument of their respective position with respect to each case. The panel shall have authority to require the production of such additional evidence, either oral or written, as it may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Prohibition against consent to **unlawful** strike. No person exercising on behalf of any public employer any authority, supervision or direction over any public employee shall have the power to authorize, approve, condone or consent to [~~a~~] **an unlawful** strike, or the engaging in [~~a~~] **an unlawful** strike, by one or more public employees, and such person shall not authorize, approve, condone or consent to such **unlawful** strike or engagement.

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

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

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

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

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

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

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

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

2. Notwithstanding the provisions of section eight hundred seven of the labor law, where it appears that public employees or an employee organization threaten or are about to do, or are doing, an act in violation of section two hundred ten of this article, the chief executive officer of the government involved shall (a) forthwith notify the chief legal officer of the government involved, and (b) provide such chief legal officer with such facilities, assistance and data as will enable the chief legal officer to carry out his **or her** duties under this section, and, notwithstanding the failure or refusal of the chief executive officer to act as aforesaid, the chief legal officer of the government involved shall forthwith apply to the supreme court for an injunction against such violation. If an order of the court enjoining or restraining such violation does not receive compliance, such chief legal officer shall forthwith apply to the supreme court to punish such violation under section seven hundred fifty of the judiciary law.

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