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 Assembly, do enact as follows:

Section 1. Subdivisions 1, 2, 3 and 4 of section 210 of the civil service law, as amended by chapter 24 of the laws of 1969, paragraph (f) of subdivision 2 and paragraph (a) of subdivision 3 as amended and subdivision 4 as renumbered by chapter 503 of the laws of 1971, paragraph (f) of subdivision 2 as relettered and paragraphs (e) and (g) of subdivision 2 as amended by chapter 254 of the laws of 1983, and paragraphs (f) and (g) of subdivision 3 as amended by chapter 677 of the laws of 1977, are amended to read as follows:

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

2. Violations and penalties; [~~presumption;~~] prohibition against consent to strike; determination; notice; [~~probation; payroll deductions;~~] objections; and restoration. (a) Violations and penalties. A public employee shall violate this subdivision by engaging in a strike or violating paragraph [~~(c)~~] **(b)** 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 strike occurs, shall be presumed 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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~~(c)~~] Prohibition against consent to 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 strike, or the engaging in a strike, by one or more public employees, and such person shall not authorize, approve, condone or consent to such strike or engagement**. Nothing in this paragraph, however, shall be construed to prohibit any public employer from negotiating or entering into an agreement with an employee organization, nor shall a public employer's failure to pursue adverse action against an employee organization or public employee in response to a strike be construed as a violation of this paragraph**.

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

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

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

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

~~the chief executive officer shall determine that the affidavit and supporting proof establishes that the employee did not violate this subdivision, he shall sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to establish that the employee did not violate this subdivision, he shall dismiss the objection and so notify the employee. If~~] **Upon receipt of such statement,** the chief executive officer [~~shall determine that the affidavit and supporting proof raises a question of fact which, if resolved in favor of the employee, would establish that the employee did not violate this subdivision, he shall~~] **may** appoint a hearing officer to determine whether in fact the employee did violate this subdivision after a hearing at which such [~~employee~~] **employee's employer** shall bear the burden of proof. If the hearing officer shall determine that the [~~employee failed to establish~~] **employer established** that [~~he~~] **such employee** did [~~not~~] violate this subdivision, the chief executive officer shall so notify the employee. If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that such **employer failed to establish that such** employee [~~did not violate~~] **violated** this subdivision, the chief executive officer shall forthwith notify the chief fiscal officer who shall thereupon cease all further deductions and refund any deductions previously made pursuant to this [~~subdivision~~] **section**. The determinations provided in this paragraph shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

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

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

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

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

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

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

[~~(f)~~] (e) 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, 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 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 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 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, the books and records of such public employer shall be prima facie evidence of the amount so collected.~~

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

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

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

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

4. Within sixty days of the termination of a 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 strike, (b) the efforts used to terminate the strike, **and** (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 strike and (d) related to the varying degrees of individual responsibility,**~~] the sanctions imposed [~~**or proceedings pending against each such individual public employee**~~].

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

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

§ 4. This act shall take effect immediately.