

STATE OF NEW YORK

9971

IN ASSEMBLY

May 1, 2024

Introduced by M. of A. BRONSON -- 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:

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:
25 3. certify or recognize an employee organization upon (a) the determi-
26 nation that such organization represents that group of public employees
27 it claims to represent, and (b) the affirmation by such organization
28 that it does not assert the right to engage in an unlawful strike

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

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1 against any government, to assist or participate in any such unlawful
2 strike, or to impose an obligation to conduct, assist or participate in
3 such [a] an unlawful strike.

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

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

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

47 (c) Where the parties have voluntarily agreed to submit their contro-
48 versy to arbitration, the board shall refer the dispute to a public
49 arbitration panel, consisting of one member appointed by the public
50 employer, one member appointed by the employee organization and one
51 public member appointed jointly by the public employer and employee
52 organization who shall be selected within ten days after receipt by the
53 board of a petition for creation of the arbitration panel. If either
54 party fails to designate its member to the public arbitration panel, the
55 board shall promptly, upon receipt of a request by either party, desig-
56 nate a member associated in interest with the public employer or employ-

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

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

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

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

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

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

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

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

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

52 (f) The panel shall have full authority to resolve the matters in
53 dispute before it and issue a determination which shall be final and
54 binding upon the parties, notwithstanding any other provision of this
55 article. Except for the purposes of judicial review, any provision of a
56 determination of the arbitration panel, the implementation of which

1 requires an enactment of law, shall not become binding until the appro-
2 appropriate legislative body enacts such law.

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

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

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

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

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

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

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

52 § 6. The subdivision heading and paragraphs (a), (b) and (c) of subdivi-
53 sion 2 of section 210 of the civil service law, as amended by chapter
54 24 of the laws of 1969, are amended to read as follows:

55 Violations and penalties; presumption; prohibition against consent to
56 unlawful strike; determination; notice; probation; payroll deductions;

1 objections; and restoration. (a) Violations and penalties. A public
2 employee shall violate this subdivision by engaging in [~~a~~] an unlawful
3 strike or violating paragraph (c) of this subdivision and shall be
4 liable as provided in this subdivision pursuant to the procedures
5 contained herein. In addition, any public employee who violates subdivi-
6 sion one of this section may be subject to removal or other disciplinary
7 action provided by law for misconduct.

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

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

21 § 7. Paragraphs (e) and (f) of subdivision 3 of section 210 of the
22 civil service law, paragraph (e) as amended by chapter 24 of the laws of
23 1969 and paragraph (f) as amended by chapter 677 of the laws of 1977,
24 are amended to read as follows:

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

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

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

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

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

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

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

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

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