§ 205. Public employment relations board. 1. There is hereby created in the department a board, to be known as the public employment relations board, which shall consist of three members appointed by the governor, by and with the advice and consent of the senate from persons representative of the public. Not more than two members of the board shall be members of the same political party. Each member shall be appointed for a term of six years, except that of the members first appointed, one shall be appointed for a term to expire on May thirty-first, nineteen hundred sixty-nine, one for a term to expire on May thirty-first, nineteen hundred seventy-one, and one for a term to expire on May thirty-first, nineteen hundred seventy-three. The governor shall designate one member who shall serve as chairperson of the board until the expiration of his or her term. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he or she is to succeed.

2. Members of the board shall hold no other public office or public employment in the state. The chairperson shall give his or her whole time to his or her duties.

3. Members of the board other than the chairperson shall, when performing the work of the board, be compensated at the rate of two hundred fifty dollars per day, together with an allowance for actual and necessary expenses incurred in the discharge of their duties hereunder. The chairperson shall receive an annual salary to be fixed within the amount available therefor by appropriation, in addition to an allowance for expenses actually and necessarily incurred by him or her in the performance of his or her duties.

4. (a) The chairperson of the board may appoint an executive director and such other persons, including but not limited to attorneys, mediators, members of fact-finding boards and representatives of employee organizations and public employers to serve as technical advisers to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions, prescribe their duties, fix their compensation and provide for reimbursement of their expenses within the amounts made available therefor by appropriation. Attorneys

appointed under this section may, at the direction of the chairperson of the board, appear for and represent the board in any case in court.

(b) No member of the board or its appointees pursuant to this subdivision, including without limitation any mediator or fact-finder employed or retained by the board, shall, except as required by this article, be compelled to nor shall he or she voluntarily disclose to any administrative or judicial tribunal or at the legislative hearing, held pursuant to subparagraph (iii) of paragraph (e) of subdivision three of section two hundred nine of this article, any information relating to the resolution of a particular dispute in the course of collective negotiations acquired in the course of his or her official activities under this article, nor shall any reports, minutes, written communications, or other documents pertaining to such information and acquired in the course of his or her official activities under this article be subject to subpoena or voluntarily disclosed; except that where the information so required indicates that the person appearing or who has appeared before the board has been the victim of, or otherwise involved in, a crime, other than a criminal contempt in a case involving or growing out of a violation of this article, said members of the board and its appointees may be required to testify fully in relation thereto upon any examination, trial, or other proceeding in which the commission of such crime is the subject of inquiry.

5. In addition to the powers and functions provided in other sections of this article, the board shall have the following powers and functions:

(a) To establish procedures consistent with the provisions of section two hundred seven of this article and after consultation with interested parties, to resolve disputes concerning the representation status of employee organizations.

(b) To resolve, pursuant to such procedures, disputes concerning the representation status of employee organizations of employees of the state and state public authorities upon request of any employee organization, state department or agency or state public authority involved.

(c) To resolve, pursuant to such procedures but only in the absence of applicable procedures established pursuant to section two hundred six of

this article, disputes concerning the representation status of other employee organizations, upon request of any employee organization or other government or public employer involved.

(d) To establish procedures for the prevention of improper employer and employee organization practices as provided in section two hundred nine-a of this article, and to issue a decision and order directing an offending party to cease and desist from any improper practice, and to take such affirmative action as will effectuate the policies of this article (but not to assess exemplary damages), including but not limited to the reinstatement of employees with or without back pay; provided, however, that except as appropriate to effectuate the policies of subdivision three of section two hundred nine-a of this article, the board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice; provided further that, without limiting in any way the board's general power to take affirmative action, including the provision to make whole relief, the board's power to address employer violations of cease and desist orders issued pursuant to this section in connection with charges of unfair labor practices under paragraph (d) of subdivision one of section two hundred nine-a of this article shall include, to the extent the board deems appropriate, the authority to make employees whole for the loss of pay and/or benefits resulting from the violation of the cease and desist order and the underlying unfair labor practice by providing that any agreement between the parties be given retroactive effect to the date on which the unfair labor practice was found to have commenced and by providing for appropriate interest from that date, calculated using the short-term federal rate for the underpayment of taxes as set out in 26 U.S.C. 6621.14, except that the make whole relief provided for under this paragraph shall not be ordered when and to the extent that the employee organization is also found to have refused to bargain in good faith. When the board has determined that a duly recognized or certified employee organization representing public employees has breached its duty of fair representation in the processing or failure to process a claim alleging that a public employer has breached its agreement with such employee organization, the board

may direct the employee organization and the public employer to process the contract claim in accordance with the parties' grievance procedure. The board may, in its discretion, retain jurisdiction to apportion between such employee organization and public employer any damages assessed as a result of such grievance procedure. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to section two hundred seven of this article or with collective negotiations. The board shall exercise exclusive nondelegable jurisdiction of the powers granted to it by this paragraph, in which connection, no finding of fact or law contained in a report and recommendation of a hearing officer appointed pursuant to subdivision two of section seventy-five of this chapter shall preclude the resolution of any issue of fact or law in a subsequent proceeding held under procedures established by the board under this paragraph; provided, however, that this sentence shall not apply to the city of New York. The board of collective bargaining established by section eleven hundred seventy-one of the New York city charter shall establish procedures for the prevention of improper employer and employee organization practices as provided in section 12-306 of the administrative code of the city of New York, provided, however, that a party aggrieved by a final order issued by the board of collective bargaining in an improper practice proceeding may, within ten days after service of the final order, petition the board for review thereof. Within twenty days thereafter, the board, in its discretion, may assert jurisdiction to review such final order. The failure or refusal of the board to assert jurisdiction shall not be subject to judicial review. Upon the refusal of the board to assert jurisdiction, an aggrieved party shall have the right to seek review of the final order of the board of collective bargaining. Such proceeding to review shall be brought within thirty days of the board's refusal and shall otherwise conform to the requirements of article seventy-eight of the civil practice law and rules. If the board shall choose to review, it may affirm, or reverse in whole or in part, or modify the final order, or remand the matter for further proceedings, or make such other order as it may deem appropriate, provided, however, that findings by the board of collective bargaining regarding evidentiary matters and issues of credibility

regarding testimony of witnesses shall be final and not subject to board review.

(e) To make studies and analyses of, and act as a clearing house of information relating to, conditions of employment of public employees throughout the state.

(f) To request from any government, and such governments are authorized to provide, such assistance, services and data as will enable the board properly to carry out its functions and powers.

(g) To conduct studies of problems involved in representation and negotiation, including, but not limited to (i) the problems of unit determination, (ii) those subjects which are open to negotiation in whole or in part, (iii) those subjects which require administrative or legislative approval of modifications agreed upon by the parties, and (iv) those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies.

(h) To make available to employee organizations, governments, mediators, fact-finding boards and joint study committees established by governments and employee organizations statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations.

(i) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, arbitrators or members of fact-finding boards.

(j) To hold such hearings and make such inquiries as it deems necessary for it properly to carry out its functions and powers. At any conference, hearing, investigation, inquiry or other proceeding before the board or any agent thereof, a party shall have the right to appear in person, by counsel or by other authorized representative. Nothing contained herein shall restrict the right of the board to exclude, suspend or disbar any representative for misconduct in accordance with the board's rules.

(k) For the purpose of such hearings and inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel the attendance of witnesses and the

production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions. Such subpoenas shall be regulated and enforced under the civil practice law and rules.

(l) To make, amend and rescind, from time to time, such rules and regulations, including but not limited to those governing its internal organization and conduct of its affairs, and to exercise such other powers, as may be appropriate to effectuate the purposes and provisions of this article.

(m) To administer the provisions of article twenty of the labor law to the extent provided for in such article, and to serve all the functions of the board as defined in section seven hundred one of the labor law, including to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of such article.

6. Notwithstanding any other provisions of law, neither the president of the civil service commission nor the civil service commission or any other officer, employer, board or agency of the department of civil service shall supervise, direct or control the board in the performance of any of its functions or the exercise of any of its powers under this article; provided, however, that nothing herein shall be construed to exempt employees of the board from the provisions of the civil service law.