The Taylor Law

(Public Employees' Fair Employment Act)

Civil Service Law, Article 14

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§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 strikes by public employees and providing remedies for violations of

such prohibition.

§201
Definitions

As used in this article:

1. The term "board" means the public employment relations board created by section two hundred five of this article.

2.(a) The term "membership dues deduction" means the obligation or practice of a government to deduct from the salary of a public employee with his consent an amount for the payment of his membership dues in an employee organization. Such term also means the obligation or practice of a government to transmit the sums so deducted to an employee organization.

(b) The term "agency shop fee deduction" means the obligation or practice of a government to deduct from the salary of a public employee who is not a member of the certified or recognized employee organization which represents such employee for the purpose of collective negotiations conducted pursuant to this article, an amount equivalent to the amount of dues payable by a member. Such term also means the obligation or practice of a government to transmit the sums so deducted to an employee organization.

3. The term "chief legal officer" means (a) in the case of the state of New York or a state public authority, the attorney general of the state of New York, (b) in the case of a county, city, town, village or school district, the county attorney, corporation counsel, town attorney, village attorney or school district attorney, as the case may be, and (c) in the case of any such government not having its own attorney, or any other government or public employer, the corporation counsel of the city in which such government or public employer has its principal office, and if such principal office is not located in a city, the county attorney of the county in which such government or public employer has its principal office.

4. The term "terms and conditions of employment" means salaries, wages, hours and other terms and conditions of employment provided, however, that such term shall not include any benefits provided by or to be provided by a public retirement system, or payments to a fund or insurer to provide an income for retirees, or payment to retirees or their beneficiaries. No such retirement benefits shall be negotiated pursuant to this article, and any benefits so negotiated shall be void.

5. The term "employee organization" means an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees, except that such term shall not include an organization (a) membership in

which is prohibited by section one hundred five of this chapter, (b) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin, or (c) which, in the case of public employees who hold positions by appointment or employment in the service of the board and who are excluded from the application of this article by rules and regulations of the board, admits to membership or is affiliated directly or indirectly with an organization which admits to membership persons not in the service of the board, for purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article.

6. (a) The term "government" or "public employer" means (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission, or public benefit corporation, or (vi) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state.

(b) Upon the application of any government, the board may determine that the applicant shall be deemed to be a joint public employer of public employees in an employer-employee negotiating unit determined pursuant to section two hundred seven of this chapter when such determination would best effectuate the purposes of this chapter.

7. (a) The term "public employee" means any person holding a position by appointment or employment in the service of a public employer, except that such term shall not include for the purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article, judges and justices of the unified court system, persons holding positions by appointment or employment in the organized militia of the state and persons who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board in accordance with procedures established pursuant to section two hundred five or two hundred twelve of this article, which procedures shall provide that any such designations made during a period of unchallenged representation pursuant to subdivision two of section two hundred eight of this chapter shall only become effective upon the termination of such period of unchallenged representation. Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

(b) For the purposes of this article, assistant attorneys general, assistant district attorneys, and law school graduates employed in titles which promote to assistant district attorney upon admission to the bar of the state of New York shall be designated managerial

employees, and confidential investigators employed in the department of law shall be designated confidential employees.

(c) Notwithstanding the provisions of any general, special or local law or code to the contrary, for the purposes of this article and with respect to the officers of a paid city fire department in a city of one million or more inhabitants, members in the rank of deputy chief designated as deputy assistant chief and higher shall be designated as managerial and confidential employees and members in the rank of deputy chief or lower shall not be so designated.

(d) A substitute teacher or a person employed in a nonpedagogical position who has received a reasonable assurance of continuing employment in accordance with subdivision ten or eleven of section five hundred ninety of the labor law which is sufficient to disqualify the substitute teacher or person employed in a nonpedagogical position from receiving unemployment insurance benefits shall be deemed to be an employee of the school district or board of cooperative educational services that has furnished such reasonable assurance of continuing employment; provided however that for the purposes of this article only, the determination of whether such reasonable assurance was furnished shall be made as if such determination were made prior to the promulgation by the United States department of labor of program letter number 4-87, dated December twenty-fourth, nineteen hundred eighty-six.

(e) Notwithstanding the provisions of any general, special or local law or code to the contrary, for the purposes of this article and with respect to the officers of a paid city police department, in a city of one million or more inhabitants, members in the rank of captain designated as assistant chief and higher shall be designated as managerial and confidential employees; members in the rank of captain, deputy inspector, inspector and deputy chief or lower shall not be so designated, unless a final determination to the contrary results from a petition to decertify (or from an action to otherwise designate any or all such members as managerial or confidential employees), which petition or action is or was initiated at any time prior to October first, nineteen hundred eighty-four and such petition or action is not withdrawn or otherwise discontinued.

(f) The term "public employee" means any person employed by a school district or board of cooperative educational services not otherwise deemed to be a public employee pursuant to the provisions of this subdivision, but who would be deemed a public employee under precedents or standards utilized or promulgated by the board for determining whether a person employed in a part-time, seasonal or casual position by a public employer other than a school district or board of cooperative educational services would be a public employee under paragraph (a) of this subdivision, taking into account the length of the school day and school year.

(g) Notwithstanding the provisions of any general, special or local law or code to the contrary, for the purposes of this article and with respect to employees of a city school district having a population of one million or more inhabitants, members in a title of

school plant manager shall be designated as managerial and confidential employees in the noncompetitive classification.

8. The term "state public authority" means a public benefit corporation or public corporation, a majority of the members of which are (i) appointed by the governor or by another state officer or body, (ii) designated as members by virtue of their state office, or (iii) appointed or designated by any combination of the foregoing.

9. The term "strike" means any strike or other concerted stoppage of work or slowdown by public employees.

10. The term "chief executive officer" in the case of school districts, means the superintendent of schools in school districts employing their own superintendents, and in school districts under the jurisdiction of a district superintendent of schools, shall mean the principal of the district.

11. The term "legislative body of the government," in the case of school districts, means the board of education, board of trustees or sole trustee, as the case may be.

12. The term "agreement" means the result of the exchange of mutual promises between the chief executive officer of a public employer and an employee organization which becomes a binding contract, for the period set forth therein, except as to any provisions therein which require approval by a legislative body, and as to those provisions, shall become binding when the appropriate legislative body gives its approval.

§202
Right of Organization

Public employees shall have the right to form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

§203
Right of Representation

Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder.

§204

Recognition and Certification of Employee Organizations

1. Public employers are hereby empowered to recognize employee organizations for the purpose of negotiating collectively in the determination of, and administration of grievances arising under, the terms and conditions of employment of their public employees as provided in this article, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

2. Where an employee organization has been certified or recognized pursuant to the provisions of this article, it shall be the exclusive representative, for the purposes of this article, of all the employees in the appropriate negotiating unit, and the appropriate public employer shall be, and hereby is, required to negotiate collectively with such employee organization in the determination of, and administration of grievances arising under, the terms and conditions of employment of the public employees as provided in this article, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

3. For the purpose of this article, to negotiate collectively is the performance of the mutual obligation of the public employer and a recognized or certified employee organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

§204-a
Agreements Between Public Employers and Employee Organizations

1. Any written agreement between a public employer and employee organization determining the terms and conditions of employment of public employees shall contain the following notice in type not smaller than the largest type used elsewhere in such agreement:

"It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval."

2. Every employee organization submitting such a written agreement to its members for ratification shall publish such notice, include such notice in the documents accompanying such submission and shall read it aloud at any membership meeting called to consider such ratification.

3. Within sixty days after the effective date of this act, a copy of this section shall be furnished by the chief fiscal officer of each public employer to each public employee. Each public employee employed thereafter shall, upon such employment, be furnished with a copy of the provisions of this section.

§205
Public Employment Relations Board

1. There is hereby created in the state department of civil service 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 chairman of the board until the expiration of his term. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he is to succeed.

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

3. Members of the board other than the chairman shall, when performing the work of the board, be compensated at the rate of two hundred and fifty dollars per day, together with an allowance for actual and necessary expenses incurred in the discharge of their duties hereunder. The chairman 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 in the performance of his duties.

4.(a) 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 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 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, any information relating to the resolution of a particular dispute in the course of collective negotiations acquired in the course of his 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 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. 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; 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 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.

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.

§206
Procedures for Determination of Representation Status of Local Employees

1. Every government (other than the state or a state public authority), acting through its legislative body, is hereby empowered to establish procedures, not inconsistent with the provisions of section two hundred seven of this article and after consultation with interested employee organizations and administrators of public services, to resolve disputes concerning the representation status of employee organizations of employees of such government.

2. In the absence of such procedures, such disputes shall submitted to the board in

accordance with section two hundred five of this article.

§207
Determination of Representation Status

For purposes of resolving disputes concerning representation status, pursuant to section two hundred five or two hundred six of this article, the board or government, as the case may be, shall

1. define the appropriate employer-employee negotiating unit taking into account the following standards:

(a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit;

(b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and

(c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public.

2. ascertain the public employees' choice of employee organization as their representative (in cases where the parties to a dispute have not agreed on the means to ascertain the choice, if any, of the employees in the unit) on the basis of dues deduction authorization and other evidences, or, if necessary, by conducting an election.

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 strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike.

§208
Rights Accompanying Certification or Recognition

1. A public employer shall extend to an employee organization certified or recognized pursuant to this article the following rights:

(a) to represent the employees in negotiations notwithstanding the existence of an

agreement with an employee organization that is no longer certified or recognized, and in the settlement of grievances; and

(b) to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees.

2. An employee organization certified or recognized pursuant to this article shall be entitled to unchallenged representation status until seven months prior to the expiration of a written agreement between the public employer and said employee organization determining terms and conditions of employment. For the purposes of this subdivision, (a) any such agreement for a term covering other than the fiscal year of the public employer shall be deemed to expire with the fiscal year ending immediately prior to the termination date of such agreement, (b) any such agreement having a term in excess of three years shall be treated as an agreement for a term of three years, provided, however, any such agreement between the state and an employee organization representing employees in the executive or judicial branches which commences in the calendar year of nineteen hundred ninety-five having a term in excess of three years shall be treated as an agreement for a term certain specified in such agreement but in no event for a term greater than four years, (c) extensions of any such agreement shall not extend the period of unchallenged representation status, (d) notwithstanding any provision of law to the contrary, the interest arbitration award issued pursuant to the provisions of paragraph (e) of subdivision 4 of section two hundred nine of this article binding the executive branch of the state of New York and the employee organization which represents the collective negotiating unit consisting of troopers and the unit consisting of commissioned and non-commissioned officers in the division of state police, covering a period commencing April first, nineteen hundred ninety-five, shall be treated as a written agreement for the term specified in such award solely for the purposes of this section.

3.(a) Notwithstanding provisions of and restrictions of sections two hundred two and two hundred nine-a of this article, and section two hundred one of the state finance law, every employee organization that has been recognized or certified as the exclusive representative of employees of the state within a negotiating unit of classified civil service employees, employees within a negotiating unit of civilian state employees of the division of military and naval affairs or employees in a collective negotiating unit established pursuant to this article for the professional services in the state university, for the members of the state police or for the members of the capitol buildings police force of the office of general services shall be entitled to have deducted from the wage or salary of the employees in such negotiating unit who are not members of said employee organization the amount equivalent to the dues levied by such employee organization, and the state comptroller shall make such deductions and transmit the sum so deducted to such employee organization. Provided, however, that the foregoing provisions of this subdivision shall only be applicable in the case of an employee organization which has established and maintained a procedure providing for the refund to any employee demanding the return any part [sic] of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes

of a political or ideological nature only incidentally related to terms and conditions of employment. Nothing herein shall be deemed to require an employee to become a member of such employee organization.

(b) Notwithstanding provisions of and restrictions of sections two hundred two and two hundred nine-a of this article and section ninety-three-b of the general municipal law, every employee organization that has been recognized or certified as the exclusive representative of employees within a negotiating unit of other than state employees shall be entitled to have deducted from the wage or salary of employees of such negotiating unit who are not members of said employee organization the amount equivalent to the dues levied by such employee organization and the fiscal or disbursing officer of the local government or authority involved shall make such deductions and transmit the sum so deducted to such employee organization. Provided, however, that the foregoing provisions of this subdivision shall only be applicable in the case of an employee organization which has established and maintained a procedure providing for the refund to any employee demanding the return of any part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment. Nothing herein shall be deemed to require an employee to become a member of such employee organization.

§209
Resolution of Disputes in the Course of Collective Negotiations

1. For purposes of this section, an impasse may be deemed exist if the parties fail to achieve agreement at least one hundred twenty days prior to the end of the fiscal year of the public employer.

2. Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures, public employers and employee organizations may request the board to render assistance as provided in this section, or the board may render such assistance on its own motion, as provided in subdivision three of this section, or, in regard to officers or members of any organized fire department, or any unit of the public employer which previously was a part of an organized fire department whose primary mission includes the prevention and control of aircraft fires, police force or police department of any county, city, town, village or fire or police district, or detective-investigators employed in the office of a district attorney of a county not contained within a city with a population of one million or more, or in regard to any organized unit of troopers, commissioned or noncommissioned officers of the division of state police, or in regard to investigators,

senior investigators and investigator specialists of the division of state police, as provided in subdivision four of this section.

3. On request of either party or upon its own motion, as provided in subdivision two of this section, and in the event the board determines that an impasse exists in collective negotiations between such employee organization and a public employer as to the conditions of employment of public employees, the board shall render assistance as follows:

(a) to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board;

(b) if the impasse continues, the board shall appoint a fact-finding board of not more than three members, each representative of the public, from a list of qualified persons maintained by the board, which fact-finding board shall have, in addition to the powers delegated to it by the board, the power to make public recommendations for the resolution of the dispute;

(c) if the dispute is not resolved at least eighty days prior to the end of the fiscal year of the public employer or by such other date determined by the board to be appropriate, the fact-finding board, acting by a majority of its members, (i) shall immediately transmit its findings of fact and recommendations for resolution of the dispute to the chief executive officer of the government involved and to the employee organization involved, (ii) may thereafter assist the parties to effect a voluntary resolution of the dispute, and (iii) shall within five days of such transmission make public such findings and recommendations;

(d) in the event that the findings of fact and recommendations are made public by a fact-finding board appointed by the board or established pursuant to procedures agreed upon by the parties under subdivision two of this section, and the impasse continues, the public employment relations board shall have the power to take whatever steps it deems appropriate to resolve the dispute, including (i) the making of recommendations after giving due consideration to the findings of fact and recommendations of such fact-finding board, but no further fact-finding board shall be appointed and (ii) upon the request of the parties, assistance in providing for voluntary arbitration;

(e) should either the public employer or the employee organization not accept in whole or in part the recommendations of the fact-finding board, (i), the chief executive officer of the government involved shall, within ten days after receipt of the findings of fact and recommendations of the fact-finding board, submit to the legislative body of the government involved a copy of the findings of fact and recommendations of the fact-finding board, together with his recommendations for settling the dispute; (ii) the employee organization may submit to such legislative body its recommendations for settling the dispute; (iii) the legislative body or a duly authorized committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their

positions with respect to the report of the fact-finding board; and (iv) thereafter, the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved.

(f) where the public employer is a school district, a board of cooperative educational services, a community college, the state university of New York, or the city university of New York, the provisions of subparagraphs (iii) and (iv) of paragraph (e) of this subdivision shall not apply, and (i) the board may afford the parties an opportunity to explain their positions with respect to the report of the fact-finding board at a meeting at which the legislative body, or a duly authorized committee thereof, may be present; (ii) thereafter, the legislative body may take such action as is necessary and appropriate to reach an agreement. The board may provide such assistance as may be appropriate.

4. On request of either party or upon its own motion, as provided in subdivision two of this section, and in the event the board determines that an impasse exists in collective negotiations between such employee organization and a public employer as to the conditions of employment of officers or members of any organized fire department, or any other unit of the public employer which previously was a part of an organized fire department whose primary mission includes the prevention and control of aircraft fires, police force or police department of any county, city, town, village or fire or police district, and detective-investigators or criminal investigators employed in the office of a district attorney of a county not contained within a city with a population of one million or more, or as to the conditions of employment of members of any organized unit of troopers, commissioned or noncommissioned officers of the division of state police or as to the conditions of employment of members of any organized unit of investigators, senior investigators and investigator specialists of the division of state police, the board shall render assistance as follows:

(a) to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator from a list of qualified persons maintained by the board;

(b) if the mediator is unable to effect settlement of the controversy within fifteen days after his appointment, either party may petition the board to refer the dispute to a public arbitration panel;

(c) (i) upon petition of either party, the board shall refer the dispute to a public arbitration panel as hereinafter provided;

(ii) the public arbitration panel shall consist 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 he 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;

(iii) the public arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The panel may grant more than one adjournment each for each party; provided, however, that a second request of either party and any subsequent adjournment may be granted on request of either party, provided that the party which requests the adjournment shall pay the arbitrator's fee. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions 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;

(iv) all matters presented to the public arbitration 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, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(v) the public arbitration panel shall make a just and reasonable determination of the 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:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational

qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority. Notwithstanding the provisions of this subparagraph to the contrary, where the parties to a public arbitration are those anticipated by the provisions of paragraph (e) of this subdivision as established by chapter four hundred thirty-two of the laws of nineteen hundred ninety-five, such parties may agree to confer authority to the public arbitration panel to issue a final and binding determination for a period up to and including four years.

(vii) the determination of the public arbitration panel shall be subject to review by a court of competent jurisdiction in the manner prescribed by law.

(d) The provisions of this subdivision shall expire twenty-four years from July first, nineteen hundred seventy-seven.

(e) [*As added by L.1995, c. 432. See, also, paragraph (e) below.*] With regard to members of any organized unit of troopers, commissioned or non-commissioned officers of the division of state police, the provisions of this section shall only apply to the terms of collective bargaining agreements directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed [sic] by law.

(e) [*As added by L.1995, c. 447. See, also, paragraph (e) above.*] With regard to members of any organized unit of investigators, senior investigators and investigator specialists of the division of state police, the provisions of this section shall only apply to the terms of collective bargaining agreements directly relating to compensation, including but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed [sic] by law.

5. (a) In the event that the board certifies that a voluntary resolution of the contract negotiations between either (i) the New York city transit authority (hereinafter referred to as TA-public employer) and the public employee organization certified or recognized to represent the majority of employees of such TA-public employer, or (ii) the metropolitan transportation authority, including its subsidiaries, the New York city transit authority, including its subsidiary, and the Triborough bridge and tunnel authority (all hereinafter referred to as MTA-public employer) and a public employee organization certified or recognized to represent employees of such MTA-public employer not subject to the jurisdiction of the Federal Railway Labor Act1 and not subject to the provisions of subparagraph (i) hereof, which has made an election pursuant to paragraph (f) of this subdivision, cannot be effected, or upon the joint request of the TA-public employer or the MTA-public employer (hereinafter jointly referred to as public employer) and any such affected employee organization, such 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 he 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 the list. The parties shall notify the board of the designated public member. The public member shall be chosen as chairman.

(b) 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 [sic] of fact, supporting witnesses and other evidence and argument of their respective position [sic] 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.

(c) 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.

(d) 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.

(e) 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.

(f)(i) Within sixty days of the enactment of this provision, and only within such time period, any such public employee organization described in subparagraph (ii) of paragraph (a) of this subdivision may elect to be covered by the provisions of this section by filing in writing a notice of participation with the chairman of the board and the chairman of the metropolitan transportation authority.

(ii) Within sixty days of the enactment of this subparagraph and only within such time period, any such public employee organization certified or recognized to represent employees of an MTA-public employer (described in subparagraph (ii) of paragraph (a) of this subdivision) not subject to the jurisdiction of the Federal Railway Labor Act but

which was subject to such jurisdiction during the sixty-day period set forth in subparagraph (i) of this paragraph may elect to be covered by the provisions of this section by filing in writing a notice of participation with the chairman of the board and the chairman of the metropolitan transportation authority.

(iii) Once such an election is made pursuant to subparagraph (i) or (ii) of this paragraph, any such public employee organization shall thereafter be subject to the provisions of this section unless such organization and the chairman of the metropolitan transportation authority file a joint agreement in writing with the chairman of the board that provides for a rescission of the election made pursuant to this paragraph.

1 45 U.S.C.A. § 3151 et seq.

(g) 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.

§209-a
Improper Employer Practices; Improper Employee Organization Practices; Application

1. Improper employer practices. It shall be an improper practice for public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees; (e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article; or (f) to utilize any state funds appropriated for any purpose to train managers, supervisors, or other administrative personnel regarding methods to discourage union organization or to discourage an employee from participating in a union organizing drive.

2. Improper employee organization practices. It shall be an improper practice for an employee organization or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of the rights granted in section two hundred two, or to cause, or attempt to cause, a public employer to do so; (b) to refuse to negotiate collectively in good faith with a public employer, provided it is the duly recognized or certified representative of the employees of such employer; or (c) to breach its duty of fair representation to public employees under this article.

3. The public employer shall be made a party to any charge filed under subdivision two of this section which alleges that the duly recognized or certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its agreement with such employee organization.

4. **Injunctive relief.** (a) A party filing an improper practice charge under this section may petition the board to obtain injunctive relief, pending a decision on the merits of said charge by an administrative law judge, upon a showing that: (i) there is reasonable cause to believe an improper practice has occurred, and (ii) 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.

(b) Within ten days of the receipt by the board of such petition, if the board determines that a charging party has made a sufficient showing both that there is reasonable cause to believe an improper practice has occurred and it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to the status quo to provide meaningful relief, the board shall petition the supreme court, in Albany county, upon notice to all parties for the necessary injunctive relief or in the alternative may issue an order permitting the charging party to seek injunctive relief by petition to the supreme court, in which case the board must be joined as a necessary party. The board or, where applicable, the charging party, shall not be required to give any undertakings or bond and shall not be liable for any damages or costs which may have been sustained by reason of any injunctive relief ordered. If the board fails to act within ten days as provided herein, the board, for purposes of review, shall be deemed to have made a final order determining not to seek injunctive relief.

(c) If after review, the board determines that a charging party has not made a sufficient showing and that no petition to the court is appropriate under paragraph (b) of this subdivision, such determination shall be deemed a final order and may be immediately reviewed pursuant to and upon the standards provided by article seventy-eight of the civil practice law and rules upon petition by the charging party in supreme court, Albany county.

(d) Injunctive relief may be granted by the court, after hearing all parties, if it determines that there is reasonable cause to believe an improper practice has occurred and that it

appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief. Such relief shall expire on decision by an administrative law judge finding no improper practice to have occurred, successful appeal or motion by respondent to vacate or modify pursuant to the provisions of the civil practice law and rules, or subsequent finding by the board that no improper practice had occurred. The administrative law judge shall conclude the hearing process and issue a decision on the merits within sixty days after the imposition of such injunctive relief unless mutually agreed by the respondent and charging party.

(e) A decision on the merits of the improper practice charge by an administrative law judge finding an improper practice to have occurred shall continue the injunctive relief until either: (i) the respondent fails to file exceptions to the decision and implements the remedy, or (ii) the respondent successfully moves in court, upon notice, to vacate or modify the injunctive relief pursuant to provisions of the civil practice law and rules.

(f) Any injunctive relief in effect pending a decision by the board on exceptions: (i) shall expire upon a decision by the board finding no improper practice to have occurred, of which the board shall notify the court immediately, or (ii) shall remain in effect only to the extent it implements any remedial order issued by the board in its decision, of which the board shall notify the court immediately.

(g) All matters in which the court has granted injunctive relief pursuant to this subdivision shall be given preference in the scheduling, hearing and disposition over all other matters before the board or its administrative law judges.

(h) The appeal of any order granting, denying, modifying or vacating injunctive relief ordered by the court pursuant to this subdivision shall be made in accordance with the provisions of article fifty-five of the civil practice and rules except that where such injunctive relief is stayed pursuant to section fifty-five hundred nineteen of the civil practice law and rules, an appeal for removal of such stay may be given preference in the same manner as provided in rule fifty-five hundred twenty-one of the civil practice law and rules.

(i) Nothing in this section shall be deemed to eliminate or diminish any right that may exist pursuant to any other law.
(j) Pursuant to paragraph (d) of subdivision five of section two hundred five of this article, the board shall make such rules and regulations as may be appropriate to effectuate the purposes and provisions of this subdivision.

5. Injunctive relief before the New York city board of collective bargaining. (a) A party filing an improper practice charge under section 12-306 of the administrative code of the city of New York may petition the board of collective bargaining to obtain injunctive relief before the supreme court, New York county, pending a decision on the merits by the board of collective bargaining, upon a showing that: (i) there is reasonable cause to

believe an improper practice has occurred, and (ii) where it appears that immediate and irreparable injury, loss or damage will result and thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief.

(b) Within ten days of the receipt by the board of such petition, if the board of collective bargaining determines that a charging party has made a sufficient showing both that there is reasonable cause to believe an improper practice has occurred and it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief, said board shall petition the supreme court in New York county, upon notice to all parties, for the necessary injunctive relief, or in the alternative said board may issue an order permitting the charging party to seek injunctive relief by petition to the supreme court, New York county, in which case said board must be joined as a necessary party. Such application shall be in conformance with the civil practice law and rules except that said board, or where applicable, the charging party shall not be required to give any undertaking or land [sic] and shall not be liable for any damages or costs which may have been sustained by reason of any injunctive relief order. If the board of collective bargaining fails to act within ten days as provided in this paragraph, the board of collective bargaining, for purposes of review, shall be deemed to have made a final order determining not to permit the charging party to seek injunctive relief.

(c) If after review, the board of collective bargaining determines that a charging party has not made a sufficient showing and that no petition to the court is appropriate under paragraph (b) of this subdivision, such determination shall be deemed a final order and may be immediately reviewed pursuant to article seventy-eight of the civil practice law and rules upon petition by the charging party to the supreme court, New York county.

(d) Injunctive relief may be granted by the court, after hearing all parties, if it determines that there is reasonable cause to believe an improper practice has occurred and that it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief. Any injunctive relief granted by the court shall expire upon decision of the board of collective bargaining finding no improper practice to have occurred or successful challenge of the said board's decision pursuant to article seventy-eight of the civil practice law and rules. The said board shall conclude the hearing process and issue a decision on the merits within sixty days after the imposition of such injunctive relief unless mutually agreed by the respondent and charging party.

(e) A decision on the merits of the improper practice charge by the board of collective bargaining finding an improper practice to have occurred shall continue the injunctive relief until either: (i) the respondent fails to appeal the decision and implements the remedy, or (ii) the respondent successfully moves in court, upon notice, to vacate or modify the injunctive relief pursuant to provisions of the civil practice law and rules.

(f) Any injunctive relief in effect pending a decision by the board of collective bargaining on appeal: (i) shall expire upon a decision by the said board finding no improper practice to have occurred, of which the said board shall notify the court immediately, or (ii) shall remain in effect only to the extent it implements any remedial order issued by the said board of [sic] its decision, of which the said board shall notify the court immediately.

(g) All matters in which the court has granted injunctive relief upon petition by the charging party pursuant to this subdivision shall be given preference in the scheduling, hearing and disposition over all other matters before the said board. The said board shall establish rules and regulations dealing with the implementation of this section including time limits for its own actions.

(h) The appeal of any order granting, denying, modifying or vacating injunctive relief ordered by the court pursuant to this subdivision shall be made in accordance with the provisions of article fifty-five of the civil practice law and rules except that where such injunctive relief is stayed pursuant to section fifty-five hundred nineteen of the civil practice law and rules, an appeal for removal of such stay may be given preference in the same manner as provided in rule fifty-five hundred twenty-one of the civil practice law and rules.

(i) Nothing in this section shall be deemed to eliminate or diminish any right that may exist pursuant to any other law.
(j) The board of collective bargaining shall make such rules and regulations as may be appropriate to effectuate the purposes and provisions of this subdivision.

6. Application. In applying this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent.

§210
Prohibition of Strikes

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) 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.

(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.

(d) 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, on the basis of such investigation and affidavits as he 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 further determine, on the basis of such further investigation and affidavits as he 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) Notice. The chief executive officer shall forthwith notify each employee that he has been found to have committed such violation, the date or dates thereof and of his right to object to such determination pursuant to paragraph (g) of this subdivision; he 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 last address filed by him with his 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) 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 pursuant to paragraph (e) 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 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 appoint a hearing officer to determine whether in fact the employee did violate this subdivision after a hearing at which such employee shall bear the burden of proof. If the hearing officer shall determine that the employee failed to establish that he 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 employee did not violate 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. 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 (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) 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 institute proceedings before the board to determine whether such employee organization has violated the provisions of subdivision one of this section.

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

(h) 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) of subdivision two of 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 [sic] to be delivered to such employee any cash, check or payment which, in whole or in part, represents such compensation.

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, (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.

§211
Application for Injunctive Relief

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 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.

§212
Local Government Procedures

1. This article, except sections two hundred one, two hundred two, two hundred three, two hundred four, paragraph b of subdivision four and paragraph d of subdivision five of

section two hundred five, paragraph b of subdivision three of section two hundred seven, section two hundred eight, section two hundred nine-a, subdivisions one and two of section two hundred ten, section two hundred eleven, two hundred thirteen and two hundred fourteen, shall be inapplicable to any government (other than the state or a state public authority) which, acting through its legislative body, has adopted by local law, ordinance or resolution, its own provisions and procedures which have been submitted to the board by such government and as to which there is in effect a determination by the board that such provisions and procedures and the continuing implementation thereof are substantially equivalent to the provisions and procedures set forth in this article with respect to the state.

2. With respect to the city of New York, such provisions and procedures need not be related to the end of its fiscal year; and with respect to provisions and procedures adopted by local law by the city of New York no such submission to or determination by the board shall be required, but such provisions and procedures shall be of full force and effect unless and until such provisions and procedures, or the continuing implementation thereof, are found by a court of competent jurisdiction, in an action brought by the board in the county of New York for a declaratory judgment, not to be substantially equivalent to the provisions and procedures set forth in this article.

3. Notwithstanding any other provision of law to the contrary, the resolution of disputes in the course of collective negotiations as provided by section two hundred nine of this article shall apply to any organized fire department, police force, or police department of any government subject to either subdivision one or two of this section. Provided, however, that a recognized or certified employee organization may elect to continue dispute resolution procedures which existed on the day prior to the effective date of this subdivision by notifying the appropriate public employment relations board in writing.

§213
Judicial Review and Enforcement

(a) Final orders of the board made pursuant to this article shall be conclusive against all parties to its proceedings and persons who have had an opportunity to be parties to its proceedings unless reversed or modified in proceedings for enforcement or judicial review as hereinafter provided. Final orders shall be (i) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party, and (ii) enforceable in a special proceeding, upon petition of such board, by the supreme court, provided, however, that an order of the board which determines whether an employer or employee is subject to this article may be deemed final when made.

(b) Orders of the board or its agents made pursuant to subdivisions one and two of section two hundred seven of this chapter shall be reviewable only in a proceeding brought under

article seventy-eight of the civil practice law and rules to review an order of the board made pursuant to subdivision three of section two hundred seven of this chapter.

(c) If a proceeding by the board for enforcement of its order is instituted prior to the expiration of the period within which a party may seek judicial review of such order, the respondent may raise in his answer the questions authorized to be raised by section seven thousand eight hundred three of the civil practice law and rules and thereafter the proceedings shall be governed by the provisions of article seventy-eight of the civil practice law and rules that are not inconsistent herewith, except that if an issue specified in question four of section seven thousand eight hundred three of the civil practice law and rules is raised, the proceeding shall be transferred for disposition to the appellate division of the supreme court. Where an issue specified in question four of section seven thousand eight hundred three of the civil practice law and rules is raised, either in a proceeding to enforce or review an order of the board, the appellate division of the supreme court, upon completion of proceedings before it, shall remit a copy of its judgment or order to the court in which the proceeding was commenced, which court shall have the power to compel compliance with such judgment or order.

(d) In a proceeding to enforce or review an order of the board, the court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment or decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board.

(e) The failure to perform the duties required by subdivisions two and three of section two hundred ten of this chapter and by section two hundred eleven of this chapter shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules by any taxpayer, as defined in section one hundred two of this chapter. Any such taxpayer shall also have standing to institute any action described in subdivisions one and two of section one hundred two of this chapter.

§214
Management and Confidential Employees; Membership and Office in Employee Organizations

No managerial or confidential employee, as determined pursuant to subdivision seven of section two hundred one of this article, shall hold office in or be a member of any employee organization which is or seeks to become pursuant to this article the certified or recognized representative of the public employees employed by the public employer of such managerial or confidential employee.