

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1998**

No. 26

Introduced by Council Members Cruz, Linares, Rivera and Pinkett; also Council Members Michels, Koslowitz, and Lasher.

A LOCAL LAW

To amend the administrative code of the City of New York, in relation to the New York city collective bargaining law.

Be it enacted by the Council as follows:

Section 1. Subdivision l of section 12-303 of the administrative code of the city of New York is amended to read as follows:

1. The term "certified employee organization" shall mean any public employee organization: (1) certified by the board of certification as the exclusive bargaining representative of a bargaining unit determined to be appropriate for such purpose; (2) recognized as such exclusive bargaining representative by a public employer [other than a municipal agency] *in conformity with the rules set forth in the office of collective bargaining rules of practice and procedure*; or (3) recognized by a municipal agency, or certified by the department of labor, as such exclusive bargaining representative prior to the effective date of this chapter, unless such recognition has been or is revoked or such certificate has been or is terminated.

§ 2. Subdivision c of section 12-304 of the administrative code of the city of New York is amended to read as follows:

c. any other public employer, and to the public employees and public employee organizations thereof, upon the election by the public employer or the head thereof by executive order of the chief executive officer to make this chapter applicable, subject to approval by the mayor, provided, however, that any such election by the New York city board of education shall not include any [employee appointed through the board of examiners of the New York city board of education] *teacher as defined in section 13-501 of the administrative code or any employee who works in that capacity* or any para-professional employees with teaching functions; and

§ 3. Section 12-305 of the administrative code of the city of New York is amended to read as follows:

§ 12-305 Rights of public employees and certified employee organizations.

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that *public employees shall be presumed eligible for the rights set forth in this section, and no employee shall be deprived of these rights unless, as to such employee, a determination of managerial or confidential status has been rendered by the board of certification; and provided further, that nothing in this chapter shall be construed to: (i) deny to any managerial or confidential employee his or her rights under section fifteen of the civil rights law or any other rights; or (ii) prohibit any appropriate official or officials of a public employer as defined in this chapter to hear and consider grievances and complaints of managerial and confidential employees concerning the terms and conditions of their employment and to make recommendations thereon to the chief executive officer of the public employer for such action as such chief executive officer shall deem appropriate. A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.*

§ 4. Paragraph (4) of subdivision a of section 12-306 of the administrative code of the city of New York is amended and a new paragraph (5) is added to read as follows:

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees [.];

(5) *to unilaterally make any change as to any mandatory subject of collective bargaining or as to any term and condition of employment established in the prior contract, during a period of negotiations with a public employee organization as defined in subdivision d of section 12-311 of this chapter.*

§ 5. Paragraph (2) of subdivision b of section 12-306 of the administrative code of the city of New York is amended and a new paragraph (3) is added to read as follows:

(2) to refuse to bargain collectively in good faith with a public employer or on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer [.];

(3) *to breach its duty of fair representation to public employees under this chapter.*

§ 6. Section 12-306 of the administrative code of the city of New York is amended by adding new subdivisions d and e to read respectively as follows:

d. Joinder of parties in duty of fair representation cases. The public employer shall be made a party to any charge filed under paragraph three of subdivision b of this section which alleges that the duly 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.

e. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the

date the petitioner knew or should have known of said occurrence. Such petition may be filed by one or more public employees or any public employee organization acting on their behalf, or by a public employer, together with a request to the board for a final determination of the matter and for an appropriate remedial order.

§ 7. The introductory paragraph of subdivision a of section 12-307 of the administrative code of the city of New York and paragraph (1) of such subdivision are amended to read as follows:

a. Subject to the provisions of subdivision b of this section and subdivision c of section 12-304 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits), working conditions and provisions for the deduction from the wages or salaries of employees in the appropriate bargaining unit who are not members of the certified or designated employee organization of *an agency shop fee to the extent permitted by law, but in no event exceeding* sums equal to the periodic dues uniformly required of its members by such certified or designated employee organization and for the payment of the sums so deducted to the certified or designated employee organization, subject to applicable state law, except that:

(1) with respect to those employees whose wages are determined under section two hundred twenty of the labor law, [there shall be no] *the* duty to bargain [concerning those matters determination of which is provided for] *in good faith over wages and supplements shall be governed by* said section;

§ 8. Subdivision b of section 12-307 of the administrative code of the city of New York is amended to read as follows:

b. It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on [employees, such as] *terms and conditions of employment, including, but not limited to,* questions of workload [and manning], *staffing and employee safety,* are within the scope of collective bargaining.

§ 9. The title of section 12-308 of the administrative code of the city of New York and subdivision a of such section are amended to read as follows:

§ 12-308 **Judicial review and enforcement of a final order of the board of collective bargaining [relating to an improper practice] or the board of certification.**

a. Any order of the board *of collective bargaining or the board of certification* [with respect to any improper practice specified in section 12-306 of this chapter] shall

be (1) 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 (2) enforceable by the supreme court in a special proceeding, upon petition of the board *of collective bargaining, board of certification or any aggrieved party*.

§ 10. Paragraph (6) of subdivision a of section 12-309 of the administrative code of the city of New York, is amended to read as follows:

(6) to *hold hearings and* compel the attendance of witnesses and the production of documents;

§ 11. Paragraphs (4) and (5) of subdivision b of section 12-309 of the administrative code of the city of New York, are renumbered as (5) and (6) respectively, and a new paragraph (4) is added to read as follows:

(4) *to determine whether specified public employees are managerial or confidential within the meaning of subdivision seven of section two hundred one of the civil service law and thus are excluded from collective bargaining;*

§ 12. Subdivision d of section 12-310 of the administrative code of the city of New York is amended to read as follows:

d. **[Adoption] Promulgation of rules.** [Prior to the adoption of any rule by the board of collective bargaining or the board of certification, the proposed text of such rule shall be published in the City Record and a public hearing shall be conducted upon at least ten day's notice at which interested parties may state their views concerning such rule.] *Rules and amendments to rules promulgated by the board of collective bargaining or the board of certification shall be in conformity with the requirements of chapter forty-five of the city charter.*

§ 13. Paragraph (2) of subdivision c of section 12-311 of the administrative code of the city of New York is amended to read as follows:

(2) If the board of collective bargaining, upon recommendation of the director, determines that collective bargaining negotiations (with or without mediation) between a public employer and a certified or designated employee organization have been exhausted, and that the conditions are appropriate for the creation of an impasse panel, it shall promptly instruct the director to appoint such a panel. The director may also appoint an impasse panel upon request of both parties. In appointing a panel, the director shall submit to the parties a single list of seven persons from the register of impasse panel members, and each party shall inform the director of its preferences. To the extent the preferences disclose agreement, the person or persons agreed upon shall be appointed to the impasse panel; to the extent the preferences are not in agreement, the director shall proceed to designate the members of such panel from the register. Each party may at its own expense designate a consultant to an impasse panel, who shall be available to the panel for assistance. [The director shall give notice of the appointment of the impasse panel together with a statement of the issues to be submitted to the panel to the financial control board as constituted by chapter two hundred one of the laws of nineteen hundred seventy-eight.]

§ 14. The title of section 12-314 of the administrative code of the city of New York and subdivision a of section 12-314 of such code are amended to read as follows:

§ 12-314 **Special provisions relating to initial certification.** a. Any employee organization which (1) discriminates with regard to the terms and conditions of membership because of race, color, creed, *religion, disability, gender, sexual orientation, age,* or national origin, or (2) is engaged in or advocates the violent overthrow of the government of the United States or of any state or any political subdivision thereof shall be ineligible for certification as an exclusive bargaining representative. *For purposes of this section, the finding of a court or an administrative tribunal of competent jurisdiction that an employee organization has engaged in discrimination upon one of the above bases in a particular case shall not be dispositive of the question of that employee organization's eligibility for certification unless it is also found that the employee organization has engaged in a pattern or practice of such discrimination generally.*

§ 15. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on June 6, 1998, and approved by the Mayor on July 7, 1998.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 26 of 1998, Council Int. No. 235-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on June 24, 1998: 47 FOR, 0 AGAINST.

Was returned signed by the Mayor on July 7, 1998.

Was returned to the City Clerk on July 9, 1998.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel