At Special Term Part 14 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, 360 Adams Street, Brooklyn, New York, on the 19th day of April, 2006

P R E S E N T:

HON. THEODORE T. JONES,

Justice.

- -X

NEW YORK CITY TRANSIT AUTHORITY and MANHATTAN and BRONX SURFACE TRANSIT OPERATING AUTHORITY,

Plaintiffs,

Index No. 37469/05

- against -

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, an unincorporated voluntary association, et al,

Defendants.

- -X

The following papers numbered 1 to ___ read on this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed________________________	_______________
Opposing Affidavits (Affirmations)_______________________	_______________
Reply Affidavits (Affirmations)__________________________	_______________
____________Affidavit (Affirmation)_____________________	_______________
Other Papers___________________________	_______________

Upon the foregoing papers, plaintiffs New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, and MTA Bus Company (plaintiffs) move for an order (1) pursuant to Judiciary Law § 751(2)(a), setting forth in total determinate amount, the contempt fine of defendants Local 100 of the Transport Workers Union of America, AFL-CIO (Local 100), for its contemptuous conduct between December 20, 2005

and December 22, 2005, calculated as based upon the per diem fixed fine contained in the prior contempt order issued by the court on December 20, 2005, and (2) pursuant to § 34 of Chapter 929 of the Laws of 1986 (as amended) and Civil Service Law § 210(3)(f), imposing forfeiture of the dues deduction right of Local 100. In a separate application, plaintiffs seek an order, pursuant to Judiciary Law §§ 750 and 751(1), finding Roger Toussaint, President of Local 100, Ed Watt, Secretary-Treasurer of Local 100, and Darlyne Lawson, Recording Secretary of Local 100, to be in contempt of the court's December 13, 2005 preliminary injunction and imposing punishment in the form of fines and/or jail time for each individual.[1]

Setting the Fine

The court will first address plaintiffs' motion to aggregate the amount of the contempt fine owed by Local 100. A preliminary injunction was issued by this court on December 13, 2005 against Local 100 prohibiting it from striking in violation of the no-strike provision contained in Civil Service Law § 210 (1) of the Taylor Law. Despite this order, on December 20, 2005, at approximately 3:00 a.m., Local 100 did indeed go out on strike. Consequently, on that date, plaintiffs brought, by way of Order to Show Cause, an application to hold Local 100 in contempt, pursuant to Judiciary Law § § 750 and 751(2)(a). Also, on that date, and following the court's contempt hearing pursuant to § 751 (2)(a) of

[1]In a separate action filed under Kings County Index No. 37468/05, plaintiff MTA Bus Company (MTA Bus) has moved for an identical order imposing the dues forfeiture sanction against Local 100. Accordingly, the two actions were consolidated for purposes of holding hearings on the issue of the dues forfeiture sanction. Furthermore, the portion of this decision and order dealing with the dues forfeiture issue has been incorporated into the court's April 19, 2006 decision and order issued in MTA Bus's action under Kings County Index No. 37468/05.

the Judiciary Law, this court imposed a per diem fine of $1,000,000.00 against Local 100 for each day it was on strike.

As acknowledged by stipulation of the parties, the strike ended, at approximately 3:00 p.m., on December 22, 2005. While the court is mindful of the catastrophic impact this strike had on the safe functioning and financial health of the City of New York, it also wishes to encourage the prompt resolution of any possible future violations of the no-strike provision of the Taylor Law, Civil Service Law § 210 (1). As such, and in recognition of the fact that Local 100 ordered its members back to work at or about midday on December 22, 2005 (rather than waiting until 11:59 p.m.), the court sets the total fine against Local 100 at $2,500,000.00. The court comes to this figure by doubling the per diem fine amount for the first two days of the strike, and pro rating the third day so as to credit Local 100 for calling off the strike at or about midday. Within 30 days of entry of this order, Local 100 shall either pay said fine to the Clerk of the Supreme Court, Kings County, or make an application before this court for the implementation of a payment schedule in order to satisfy the outstanding fine.

Forfeiture of Dues Check-off Right

Plaintiffs move for an order, pursuant to § 34 of Chapter 929 of the Laws of 1986 (as amended) (hereafter, § 34) and Civil Service Law § 210(3), imposing forfeiture of the dues deduction right of Local 100. In support of this branch of their motion, plaintiffs point out that Civil Service Law § 210(3)(f) specifically requires that, where PERB determines that an employee organization has violated Civil Service Law § 210(1), PERB "shall order the

forfeiture of the [employee organization's dues collection rights] for such period of time as the board shall determine, or in the discretion of [PERB], for an indefinite period of time subject to restoration upon application." Plaintiffs further argue that, in enacting § 34, the Legislature specifically transferred the responsibility and jurisdiction for enforcing Civil Service Law § 210 (3) from PERB to the court.[2] In this regard, § 34 provides:

> "For the purposes of [Civil Service Law § 210 (3) and Judiciary Law § 751] any public employer as defined in subdivision five of section two hundred nine of the civil service law whose public employee organizations are covered by such subdivision shall be deemed to be a government exempt from certain provisions of article fourteen of the civil service law pursuant to section two hundred twelve of such law. Where an employee organization is determined by the court in the exercise of its authority under [Judiciary Law § 751] to have violated the provisions of [Civil Service Law § 210 (1)], the court shall apply the provisions set forth in [Civil Service Law § 210 (3)]."

In particular, plaintiffs note that the first sentence of § 34 applies directly to plaintiffs and Local 100 since Civil Service Law § 209(5)(a) expressly covers these entities. As to the second sentence of § 34, plaintiffs point out that the court has already determined, in the exercise of its authority under Judiciary Law § 751(2)(a), that Local 100 violated Civil Service Law § 210(1). Thus, plaintiffs maintain that, pursuant to § 34, the court (as opposed to PERB) is required to "apply the provisions set forth in [Civil Service Law § 210 (3)]" and

[2]Plaintiffs initially brought a Civil Service Law § 210 (3) dues forfeiture proceeding against Local 100 before PERB. At this proceeding, the issue of PERB's jurisdiction over the matter was raised given the enactment of § 34. Thereafter, plaintiffs moved before this court for an order imposing this sanction and PERB placed the proceeding on its "hold calendar."

order the forfeiture of Local 100's right to an automatic dues deduction from their members' paychecks.

With respect to the duration of the dues forfeiture, plaintiffs maintain that the court should order an indefinite forfeiture, which should only be terminated after Local 100 demonstrates a sufficient period of good faith compliance with the mandates of the Taylor Law. In the alternative, plaintiffs aver that the court should order a forfeiture for a definite period of time. Finally, plaintiffs suggest that, since the court has already determined that Local 100 violated Civil Service Law § 210(1), and evidence has already been presented (at the December 20, 2005 contempt hearing) regarding the impact of the strike, the extent of the union's defiance and the financial resources of Local 100, no new hearing is necessary prior to the imposition of the forfeiture sanction.

In opposition to this branch of plaintiffs' motion, Local 100 initially points out that plaintiffs are not seeking the dues forfeiture sanction as part of a Judiciary Law § 751(2)(a) contempt proceeding. Rather, Local 100 notes that plaintiffs seek this sanction as a separate cause of action, independent of any contempt sanctions. According to Local 100, a review of § 34, as well as of Judiciary Law § 751(2) and Civil Service Law § 210 (3), makes it clear that the Legislature did not intend to create a separate cause of action whereby an employer can seek dues forfeiture sanctions independent of a Judiciary Law § 751(2)(a) contempt proceeding. In this regard, Local 100 points out that, prior to the enactment of § 34, MTA unions (such as itself) were subject to two separate but largely identical proceedings before two distinct entities in the wake of a Civil Service Law § 210(1) violation. In particular, an

MTA union was subject to a fine following a Judiciary Law § 751(2)(a) contempt proceeding. At such a proceeding, in setting the amount of the fine, the court was required to consider the extent of the union's wilful defiance, the impact of the strike on the welfare of the community, and the ability of the union to pay the fine. Subsequently, the union was subject to a proceeding before PERB wherein it faced the sanction of forfeiting its right to have membership dues automatically deducted from employees' paychecks for a period of time which PERB determined by weighing substantially the same criteria previously considered by the court in the Judiciary Law § 751(2)(a) proceeding. Thus, Local 100 contends that § 34 was enacted in order to consolidate these two separate proceedings into a single proceeding before the court. In other words, Local 100 argues that § 34 mandates that the issues of the imposition of a fine and dues forfeiture sanction be resolved by the court within the context of a Judiciary Law § 751(2)(a) contempt proceeding. Here, because plaintiffs admittedly are not seeking the imposition of the dues forfeiture as a sanction for contempt under Judiciary Law § 751 (2)(a), Local 100 avers that there is no basis for the court to impose this sanction against it.[3]

In further opposition to that branch of plaintiffs' motion for the imposition of a dues forfeiture sanction, Local 100 argues that, even if plaintiffs are entitled to this relief, the court must conduct a hearing prior to determining the duration of this forfeiture penalty. In this

[3]Local 100 argues that, inasmuch as a judgment has already been entered for the Judiciary Law § 751(2)(a) contempt hearing, plaintiffs have, in effect, waived any right they had to seek the dues forfeiture sanction. In particular, Local 100 contends that any attempt to reopen the contempt proceeding in order to impose the additional dues forfeiture sanction would raise double jeopardy concerns.

regard, Local 100 notes that Civil Service Law §210(3)(d) specifically requires that a hearing be conducted before the court determines the duration of the forfeiture. In addition, Local 100 avers that the previous contempt hearings are insufficient to satisfy the hearing requirement set forth in Civil Service Law § 210(3)(d) since Local 100's financial resources (which the court must consider in setting the duration of the forfeiture) have changed since the December 2005 contempt hearings. Furthermore, Local 100 maintains that there are mitigating factors, including provocation on the part of plaintiffs, which the court should consider prior to determining the duration of the forfeiture.

There is no merit to Local 100's argument that an application for a dues forfeiture sanction must be brought as part of a Judiciary Law § 751(2)(a) contempt proceeding. Prior to the enactment of § 34, contempt proceedings under Judiciary Law § 751(2)(a) and dues forfeiture proceedings under Civil Service Law § 210(3) brought against any MTA union were separate and distinct undertakings made before two different bodies (i.e., the court and PERB) (*Board of Educ., Union Free School Dist. No. 4, Town of Rye v Public Empl. Relations Bd.*, 74 Misc 2d 741, 742 [1973]). While § 34 does transfer jurisdiction for imposing the dues forfeiture sanction under Civil Service Law § 210 (3) from PERB to the court, nothing in the language of the statute specifically mandates that this distinct sanction be sought during, or as part of, Judiciary Law § 751(2)(a) contempt proceedings. Indeed, in comparing the respective rationales for contempt under Judiciary Law § 751 (2)(a) and Civil Service Law § 210(3) forfeiture proceedings, it is clear that they remain distinct undertakings. In this regard, it is well-settled that a contempt proceeding under Judiciary

Law § 751(2)(a) is held in order to determine the appropriate punishment for an employee organization's violation of a court's injunction. Thus, the purpose of any sanctions imposed under Judiciary Law § 751(2)(a) is to uphold the authority of the court (*see generally Matter of Rubin v Plainview-Old Bethpage Congress of Teachers, NYEA/NEA*, 100 AD2d 850, 851 [1984]). In contrast, the forfeiture sanction set forth in Civil Service Law § 210(3) is intended as punishment for an employee organization's statutory violation of Civil Service Law § 210(1). Furthermore, while the imposition of the dues forfeiture sanction by the court under Judiciary Law § 751(2)(a) in "government exempt" cases is a discretionary matter, the sanction is mandatory under Civil Service Law § 210(3)(f). Thus, it stands to reason that Civil Service Law § 210(3)(f) proceedings against the MTA unions remain distinct and separate from contempt proceedings under Judiciary Law § 751(2)(a).

In any event, assuming, arguendo, that Local 100 is correct in asserting that § 34, in effect, made the heretofore separate Civil Service Law § 210 (3) forfeiture proceedings part of Judiciary Law § 751 (2)(a) contempt proceedings in cases involving MTA unions, nothing in § 34 would preclude the court from deeming that plaintiffs' motion for the forfeiture sanctions had been made pursuant to Judiciary Law § 751(2)(a). Local 100 has not demonstrated that it would be prejudiced if this court were to hold a second contempt proceeding on the issue of dues forfeiture after initial contempt hearings on the issue of a fine have already been held. In fact, Local 100 would arguably benefit from a two-part contempt proceeding as it could better demonstrate what effect the previously imposed fine would have on its financial condition, and could therefore argue for a shorter dues forfeiture period.

Indeed, since the court will, as Local 100 urges, take into consideration the per diem fine imposed by the court in the previous December 2005 contempt hearing, it would appear illogical to proceed, as Local 100 suggests, on the issues of the fine and dues forfeiture sanction simultaneously.

Finally, the sanction sought by plaintiffs, which merely involves the temporary forfeiture of Local 100's right to have the employers automatically deduct union dues from employees' paychecks, does not implicate any double jeopardy concerns. Historically (i.e., prior to the enactment of § 34), these sanctions were always imposed independently from one another. Furthermore, Local 100 is free to continue collecting dues from its membership using whatever methods it deems appropriate.

Accordingly, plaintiffs are entitled to seek the forfeiture sanction against Local 100 notwithstanding the fact that they did not seek such forfeiture in the contempt proceedings before the court in December 2005. However, the court agrees with Local 100 that, prior to setting the duration of any dues forfeiture, hearings must be conducted where the court must consider the extent of Local 100's wilful defiance of Civil Service Law § 210(1), the impact of the strike on the public health, safety, and welfare of the community, as well as the financial resources of Local 100. In fact, Civil Service Law § 210 (3)(d) specifically requires such a hearing. Moreover, while it is true that the court conducted similar hearings in connection with the December 2005 contempt proceedings, this does not obviate the need for a new hearing on the matter since the financial condition of Local 100 may have changed in the ensuing months and new evidence should be certainly available regarding the actual

impact of the strike upon the community welfare. However, since the factors which the court must weigh in the contempt and dues check-off proceedings are nearly identical, the court will consider the evidence and record accumulated in the December 20, 2005 contempt proceeding in reaching a determination regarding the appropriate duration of the forfeiture of Local 100's dues check-off rights.

On April 7, 10, 11, 12, and 17, 2006, the court conducted hearings in order to determine whether the imposition of a forfeiture sanction against Local 100 was warranted, and if so, what the appropriate duration of such a sanction should be. For the reasons stated above, the court has determined that, pursuant to Civil Service Law § 210 (3) and § 34, such a sanction is not only warranted, but in fact, required by law.

Turning to the issue of the appropriate duration of the forfeiture sanction, the court initially notes that, under Civil Service Law § 210 (3)(f), in making a determination in this regard, the court must consider the extent of Local 100's wilful defiance of Civil Service Law § 210 (1), the impact of the strike on the public health, safety, and welfare of the community, and the financial resources of the employee organization. In addition, the court may consider any other factors that it considers relevant including whether the public employer (i.e., the plaintiffs) engaged in "acts of extreme provocation as to detract from the responsibility of [Local 100] for the strike."

Accordingly, at the April 2006 hearings, as well as at the December 20, 2005 contempt hearing, evidence in the form of sworn witness testimony, affidavits, reports, and letters were presented to the court regarding the above-stated required factors and the court

has given due consideration to such evidence. Moreover, the court has considered Local 100's conduct with respect to prior contract negotiations including an 11-day transit strike in 1980 as well as conduct which necessitated the issuance of preliminary injunctions in 1999 and 2002 (*see Matter of Webutuck Teachers Assn.*, 13 PERB ¶ 3041 [1980] [wherein PERB noted that it generally imposed a more severe penalty for a second violation of the Taylor Law]; *accord Matter of Lakeland*, 11 PERB ¶ 3020 [1978]). In addition, evidence regarding Local 100's efforts to mitigate the effect of the strike, by safeguarding transit facilities and equipment and by ensuring that all bus and train operators finished their appointed runs prior to walking off the job was presented to the court, and the court has considered this factor in determining the appropriate duration of the forfeiture sanction.

Finally, during the course of the hearings, Local 100 called numerous witnesses and presented various documentary evidence in an effort to establish that the plaintiffs engaged in acts of "extreme provocation" during the course of the contract negotiations leading up to the strike.[4] Although not required to do so, the court was prepared to consider this factor in determining the duration of the dues forfeiture sanction. However, none of the plaintiffs' actions which came to light during the course of the hearings qualify as such extreme provocation, "especially in view of the obvious danger to the health and safety of the citizenry" (*City of New York v Vizzini*, 49 AD2d 833, 834 [1975]). Indeed, much of what occurred merely amounted to the type of routine posturing and strategic ploys that are typical

[4]The court notes that the provocation evidence presented differed with respect to MTA Bus and the TA and MABSTOA.

in employment contract negotiations, particularly between parties (such as plaintiffs and Local 100) which have an acrimonious history. Furthermore, even Local 100's more legitimate complaints, such as plaintiffs' insistence that Local 100 place the issue of pensions on the bargaining table, do not qualify as extreme provocation. In this regard, Local 100 could and should have resolved this matter by appealing to PERB rather than engaging in an unlawful and crippling transit strike during the holiday season.

Accordingly, having conducted the hearing, and after considering all the mandatory factors set forth in Civil Service Law § 210(3)(f), as well as all other relevant and mitigating factors, the court hereby imposes upon Local 100 an indefinite term of forfeiture commencing 30 days after entry of this order, unless Local 100 makes an application within said 30-day period with respect to the commencement date of the forfeiture sanction. Local 100 may seek reinstatement of its dues check-off right no earlier than three months after implementation of the forfeiture sanction. At that time, Local 100 may appear before this court, and upon a showing of good faith compliance with the mandates of the Taylor Law, and submission of an affirmation that it no longer asserts the right to strike against any government as required pursuant to Civil Service Law §§ 210 (3)(g) and 207 (3), apply for reinstatement of its right to have the employers automatically deduct membership dues from the paychecks of union members.

Individual Contempt Proceedings

Finally, the court turns to plaintiffs' application, pursuant to Judiciary Law §§ 750 and 751(1), for an order holding certain individual officers of Local 100, specifically Roger

Toussaint, President of Local 100, Ed Watt, Secretary-Treasurer of Local 100, and Darlyne Lawson, Recording Secretary of Local 100, to be in contempt of the court's December 13, 2005 order.

In proceedings before the court on April 10, 2006, Mr. Toussaint, Mr. Watt, and Ms. Lawson, through counsel, conceded and otherwise did not contest the fact that they acted in wilful defiance of the court's December 13, 2005 preliminary injunction order. Consequently, the only issue before the court is the appropriate penalty for this contempt.

Judiciary Law § 751 (1) states in relevant part that "punishment for a contempt...may be by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting, or both, in the discretion of the court." Where individual officers of a union wilfully disobey a court's order precluding them from striking in violation of the Taylor Law, both fines and incarceration may be appropriate punishments *(Yorktown Cent. School Dist. No. 2 v Yorktown Congress of Teachers*, 42 AD2d 422, 427-428 [1973]). In fact, incarceration may be warranted even when the legal officer for the government entity involved in the case does not seek such a sanction (*id* at 427-428).[5] Given the circumstances of this case, and in particular, the individuals' wilful disobedience of the court's preliminary injunction order, the following penalties are hereby imposed with respect to: (1) Mr. Toussaint, a fine of $1,000.00 fine and 10 days incarceration; (2) Mr.

[5]During the course of the individual contempt proceedings held before the court on April 10, 2006, plaintiffs' attorneys stated that they would recommend against any punishment of jail time for Mr. Toussaint if he would stipulate to a sentence of 30 days "community service." There is no provision in Judiciary Law § 751 (1) for a sentence of community service and neither Mr. Toussaint nor his attorneys expressed any interest in entering into such a stipulation.

Watt, a fine of $500.00; and (3) Ms. Lawson, a fine of $500.00. Execution of these penalties is stayed for 30 days from the entry of this order.

Summary

In summary, the court rules as follows: (1) that branch of plaintiffs' motion/application which seeks an order setting the determinate amount of the contempt fine as against Local 100 is granted to the extent that the fine is set at $2,500,000.00. Within 30 days of entry of this order, Local 100 shall either pay said contempt fine to the Clerk of the Supreme Court, Kings County, or make an application before this court for the implementation of a payment schedule; (2) that branch of plaintiffs' motion/application which seeks an order imposing forfeiture of the dues deduction right of Local 100 is granted to the extent that 30 days after entry of this order, Local 100 is to forfeit this right for an indefinite period of time, with leave to apply for reinstatement of this right no earlier than three months after such forfeiture first occurs; and (3) that branch of plaintiffs' motion/application, pursuant to Judiciary Law §§ 750 and 751(1), which seeks an order finding Mr. Toussaint, Mr. Watt, and Ms. Lawson to be in contempt of the court's December 13, 2005 preliminary injunction, and imposing punishment is granted to the extent that said individuals are found to be in contempt and are to be sanctioned as set forth above.

This constitutes the decision, order and judgment of the court.

ENTER,

J. S. C.

At Special Term Part 14 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, 360 Adams Street, Brooklyn, New York, on the 19th day of April, 2006

P R E S E N T:

HON. THEODORE T. JONES,

Justice.

- -X

NEW YORK CITY TRANSIT AUTHORITY,

Plaintiff,

Index No. 37902/05

- against -

AMALGAMATED TRANSIT UNION, AFL-CIO, an unincorporated voluntary association, et al,

Defendants.

- -X

The following papers numbered 1 to X read on this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed______________________	_______________
Opposing Affidavits (Affirmations)_____________________	_______________
Reply Affidavits (Affirmations)________________________	_______________
___________Affidavit (Affirmation)____________________	_______________
Other Papers_________________________	_______________

Upon the foregoing papers, plaintiff New York City Transit Authority (plaintiff or the TA) moves for an order (1) pursuant to Judiciary Law § 751(2)(a), setting forth in total determinate amount, the contempt fines of defendants Locals 726 and 1056 of the Amalgamated Transit Union, AFL-CIO (collectively, the amalgamated unions) for their contemptuous conduct between December 20, 2005 and December 22, 2005, calculated as based upon the per diem fixed fine contained in the prior contempt order issued by the court

on December 21, 2005, and (2) pursuant to § 34 of Chapter 929 of the Laws of 1986 (as amended) and Civil Service Law § 210(3)(f), imposing forfeiture of the dues deduction right of Locals 726 and 1056.

Setting the Fines

The court will first address the TA's motion to aggregate the amount of the contempt fines owed by the amalgamated unions. Preliminary injunctions were issued by this court on December 15, 2005 against Locals 726 and 1056 prohibiting them from striking in violation of the no-strike provision contained in Civil Service Law § 210 (1). Despite this order, on December 20, 2005, at approximately 3:00 a.m., the amalgamated unions did indeed go out on strike. Consequently, on that date, plaintiff brought, by way of Order to Show Cause, an application to hold Locals 726 and 1056 in contempt pursuant to Judiciary Law §§ 750 and 751(2)(a). On December 21, 2005, the court held contempt hearings pursuant to § 751 (2)(a) of the Judiciary Law and imposed per diem fines of $50,000.00 against Local 726, and $75,000 against Local 1056.

As acknowledged by stipulation of the parties, the strike ended, at approximately 3:00 p.m., on December 22, 2005. While the court is mindful of the impact this strike had on the financial health and safe functioning of the City of New York, it also wishes to encourage the prompt resolution of any possible future violations of the no-strike provision of the Taylor Law, Civil Service Law § 210 (1). As such, and in recognition of the fact that the amalgamated unions ordered their members back to work at or about midday on December 22, 2005 (rather than waiting until 11:59 p.m.), the court sets the total fines at $125,000.00

as against Local 726 and $187,500.00 as against Local 1056. The court comes to these figures by doubling the per diem fine amount for the first two days of the strike, and pro-rating the third day so as to credit the amalgamated unions for calling off the strike at or about midday. Within 30 days after entry of this order, the amalgamated unions shall either pay their respective fines to the Clerk of the Supreme Court, Kings County, or, make an application before this court for the imposition of a payment schedule in order to satisfy said fines.

Forfeiture of Dues Check-Off Rights

The TA moves for an order, pursuant to § 34 of Chapter 929 of the Laws of 1986 (as amended) (hereafter, § 34) and Civil Service Law § 210(3), imposing forfeiture of the dues deduction rights of Locals 726 and 1056. In support of this branch of its motion, plaintiff points out that Civil Service Law § 210(3)(f) specifically requires that, where PERB determines that an employee organization has violated Civil Service Law § 210(1), PERB "shall order the forfeiture of the [employee organization's dues collection rights] for such period of time as the board shall determine, or in the discretion of [PERB], for an indefinite period of time subject to restoration upon application." Plaintiff further argues that, in enacting § 34, the Legislature specifically transferred the responsibility and jurisdiction for

enforcing Civil Service Law § 210 (3) from PERB to the court.[1] In this regard, § 34 provides:

> "For the purposes of [Civil Service Law § 210 (3) and Judiciary Law § 751] any public employer as defined in subdivision five of section two hundred nine of the civil service law whose public employee organizations are covered by such subdivision shall be deemed to be a government exempt from certain provisions of article fourteen of the civil service law pursuant to section two hundred twelve of such law. Where an employee organization is determined by the court in the exercise of its authority under [Judiciary Law § 751] to have violated the provisions of [Civil Service Law § 210 (1)], the court shall apply the provisions set forth in [Civil Service Law § 210 (3)]."

In particular, plaintiff notes that the first sentence of § 34 directly applies to plaintiff and the amalgamated unions since Civil Service Law § 209(5)(a) covers these entities. As to the second sentence of § 34, plaintiff points out that the court has already determined, in the exercise of its authority under Judiciary Law § 751(2)(a), that Locals 726 and 1056 violated Civil Service Law § 210(1). Thus, plaintiff maintains that, pursuant to § 34, the court (as opposed to PERB) is required to "apply the provisions set forth in [Civil Service Law § 210 (3)]" and order the forfeiture of the amalgamated unions' right to an automatic dues deduction from their members' paychecks.

With respect to the duration of the dues forfeiture, plaintiff maintains that the court should order an indefinite forfeiture, which should only be terminated after Locals 726 and

---

[1]Plaintiff initially brought a Civil Service Law § 210 (3) dues forfeiture proceeding against the amalgamated unions before PERB. At this proceeding, the issue of PERB's jurisdiction over the matter was raised given the enactment of § 34. Thereafter, plaintiff moved before this court for an order imposing this sanction and PERB placed the proceeding on its "hold calendar."

1056 demonstrate a sufficient period of good faith compliance with the mandates of the Taylor Law. In the alternative, plaintiff avers that the court should order a forfeiture for a definite period of time. Finally, plaintiff suggests that, since the court has already determined that the amalgamated unions violated Civil Service Law § 210(1), and evidence has already been presented (at the December 21, 2005 contempt hearing) regarding the impact of the strike, the extent of the amalgamated unions' defiance and the financial resources of Locals 726 and 1056, no new hearing is necessary prior to the imposition of the forfeiture sanction.

In opposition to this branch of plaintiff's motion, the amalgamated unions point out that plaintiff is not seeking the dues forfeiture sanction as part of a Judiciary Law § 751(2)(a) contempt proceeding. Rather, Locals 726 and 1056 note that plaintiff seeks this sanction as a separate cause of action, independent of any contempt sanctions. According to the amalgamated unions, a review of § 34, as well as of Judiciary Law § 751(2) and Civil Service Law § 210 (3), makes it clear that the Legislature did not intend to create a separate cause of action whereby an employer can seek dues forfeiture sanctions independent of a Judiciary Law § 751(2)(a) contempt proceeding. In this regard, Locals 726 and 1056 point out that, prior to the enactment of § 34, MTA unions (such as themselves) were subject to two separate but largely identical proceedings before two distinct entities in the wake of a Civil Service Law § 210(1) violation. In particular, an MTA union was subject to a fine following a Judiciary Law § 751(2)(a) proceeding. At such a proceeding, in setting the amount of the fine, the court was required to consider the extent of the union's wilful defiance, the impact of the strike on the welfare of the community, and the ability of the union to pay the fine.

Subsequently, the union was subject to a proceeding before PERB wherein it faced the sanction of forfeiting its right to have membership dues automatically deducted from employees' paychecks for a period of time which PERB determined by weighing substantially the same criteria previously considered by the court in the Judiciary Law § 751(2)(a) proceeding. Thus, the amalgamated unions contend that § 34 was enacted in order to consolidate these two separate proceedings into a single proceeding before the court. In other words, Locals 726 and 1056 argue that § 34 mandates that the issues of the imposition of a fine and dues forfeiture sanction be resolved by the court within the context of a Judiciary Law § 751(2)(a) contempt proceeding. Here, because the TA admittedly is not seeking the imposition of the dues forfeiture as a sanction for contempt under Judiciary Law § 751 (2)(a), the amalgamated unions aver that there is no basis for the court to impose this sanction against them.[2]

In further opposition to that branch of plaintiff's motion for the imposition of a dues forfeiture sanction, the amalgamated unions argue that, even if plaintiff is entitled to this relief, the court must conduct a hearing prior to determining the duration of any forfeiture penalties to be imposed. In this regard, Locals 726 and 1056 note that Civil Service Law §210(3)(d) specifically requires that a hearing be conducted before the court determines the duration of the forfeiture. In addition, the amalgamated unions aver that the previous

[2]Locals 726 and 1056 argue that, inasmuch as a judgment has already been entered for the Judiciary Law § 751(2)(a) contempt hearing, plaintiff has, in effect, waived any right it had to seek the dues forfeiture sanction. In particular, the amalgamated unions contend that any attempt to reopen the contempt proceeding in order to impose the additional dues forfeiture sanction would raise double jeopardy concerns.

contempt hearings are insufficient to satisfy the hearing requirement set forth in Civil Service Law § 210(3)(d) since the amalgamated unions' financial resources (which the court must consider in setting the duration of any forfeiture) have changed since the December 2005 contempt hearings. Furthermore, the amalgamated unions maintain that there are mitigating factors, including provocation on the part of plaintiff, which the court should consider prior to determining the duration of the forfeiture.

There is no merit to the amalgamated unions' argument that an application for a dues forfeiture sanction must be brought as part of a Judiciary Law § 751(2)(a) contempt proceeding. Prior to the enactment of § 34, contempt proceedings under Judiciary Law § 751(2)(a) and dues forfeiture proceedings under Civil Service Law § 210(3) brought against any MTA union were separate and distinct undertakings made before two different bodies (i.e., the court and PERB) (*Board of Educ., Union Free School Dist. No. 4, Town of Rye v Public Empl. Relations Bd.*, 74 Misc 2d 741, 742 [1973]). While § 34 does transfer jurisdiction for imposing the dues forfeiture sanction under Civil Service Law § 210 (3) from PERB to the court, nothing in the language of the statute specifically mandates that this distinct sanction be sought during, or as part of, Judiciary Law § 751(2)(a) contempt proceedings. Indeed, in comparing the respective rationales for contempt under Judiciary Law § 751 (2)(a) and Civil Service Law § 210(3) forfeiture proceedings, it is clear that they remain distinct undertakings. In this regard, it is well-settled that a contempt proceeding under Judiciary Law § 751(2)(a) is held in order to determine the appropriate punishment for an employee organization's violation of a court's injunction. Thus, the purpose of any

sanctions imposed under Judiciary Law § 751(2)(a) is to uphold the authority of the court (*see generally Matter of Rubin v Plainview-Old Bethpage Congress of Teachers, NYEA/NEA*, 100 AD2d 850, 851 [1984]). In contrast, the forfeiture sanction set forth in Civil Service Law § 210(3) is intended as punishment for an employee organization's statutory violation of Civil Service Law § 210(1). Furthermore, while Judiciary Law § 751(2)(a) provides that the court "may" impose a dues forfeiture sanction in cases involving "government exempt" unions, Civil Service Law § 210(3)(f) states that the court "shall" impose such a sanction. Thus, it stands to reason that Civil Service Law § 210(3)(f) proceedings against the MTA unions remain distinct and separate from contempt proceedings under Judiciary Law § 751(2)(a). In any event, assuming, arguendo, that the amalgamated unions are correct in asserting that § 34, in effect, made the heretofore separate Civil Service Law § 210 (3) forfeiture proceedings part of Judiciary Law § 751 (2)(a) contempt proceedings in cases involving MTA unions, nothing in § 34 would preclude the court from deeming that plaintiff's motion for the forfeiture sanctions had been made pursuant to Judiciary Law § 751(2)(a). Locals 726 and 1056 have not demonstrated that they would be prejudiced if this court were to hold a second contempt proceeding on the issue of dues forfeiture after initial contempt hearings on the issue of fines have already been held. In fact, the amalgamated unions would arguably benefit from two-part contempt proceedings as they could better demonstrate what effects the previously imposed fines would have on their respective financial conditions, and could therefore argue for a shorter dues forfeiture period. Indeed, since the court will, as the amalgamated unions urge, take into consideration the per

diem fines imposed by the court in the previous December 2005 contempt hearing, it would appear illogical to proceed, as Locals 726 and 1056 suggest, on the issues of the fines and dues forfeiture sanctions simultaneously.

Finally, the sanction sought by plaintiff, which merely involves the temporary forfeiture of the amalgamated unions' right to have the TA automatically deduct union dues from employees' paychecks, does not implicate any double jeopardy concerns. Historically (i.e., prior to the enactment of § 34), these sanctions were always imposed independently from one another. Furthermore, the amalgamated unions are free to continue collecting dues from their memberships using whatever methods they deem appropriate.

Accordingly, the TA is entitled to seek the forfeiture sanction against Locals 726 and 1056 notwithstanding the fact that it did not seek such forfeiture in the contempt proceedings before the court in December 2005. However, the court agrees with the amalgamated unions that, prior to setting the duration of any dues forfeiture, a hearing must be conducted where the court must consider the extent of the amalgamated unions' wilful defiance of Civil Service Law § 210(1), the impact of their strike on the public health, safety, and welfare of the community, as well as the respective financial resources of Locals 726 and 1056. In fact, Civil Service Law § 210 (3)(d) specifically requires such a hearing. Moreover, while it is true that the court conducted similar hearings in connection with the December 2005 contempt proceedings, this does not obviate the need for a new hearing on the matter since the financial condition of the amalgamated unions may have changed in the ensuing months and new evidence should be certainly available regarding the actual impact of the strike upon

the community welfare. However, since the factors which the court must weigh in the contempt and dues check-off proceedings are nearly identical, the court will consider the evidence and record accumulated in the December 21, 2005 contempt proceeding in reaching a determination regarding the appropriate duration of the forfeiture of the amalgamated unions' dues check-off rights.

On April 7, 10, 11, 12, and 17, 2006, the court conducted hearings in order to determine whether the imposition of a forfeiture sanction against the amalgamated unions was warranted, and if so, what the appropriate duration of such a sanction should be. For the reasons stated above, the court has determined that, pursuant to Civil Service Law § 210 (3) and § 34, such a sanction is not only warranted, but in fact, under the present circumstances, required by law.[3]

Turning to the issue of the appropriate duration of the forfeiture sanction, the court initially notes that, under Civil Service Law § 210 (3)(f), in making a determination in this regard, the court must consider the extent of the amalgamated unions' wilful defiance of Civil Service Law § 210 (1), the impact of their strike on the public health, safety, and welfare of the community, and the financial resources of the amalgamated unions. In addition, the court may consider any other factors that it considers relevant including whether

[3]The PERB decisions cited by the amalgamated unions in which no forfeiture sanction was imposed are not binding upon this court. Furthermore, these decisions are clearly inapposite since they involved findings of de minimus impact, extreme provocation, and/or good faith belief that the employees' actions did not run afoul of the Taylor Law.

the TA engaged in "acts of extreme provocation as to detract from the responsibility of [the amalgamated unions] for the strike."

Accordingly, at the April 2006 hearings, as well as the December 21, 2005 contempt hearing, evidence in the form of sworn witness testimony, affidavits, reports, and letters were presented to the court regarding the above stated required factors and the court has given due consideration to such evidence. In addition, evidence regarding the amalgamated unions' efforts to mitigate the effect of the strike by safeguarding transit facilities and equipment and ensuring that all bus operators finished their appointed runs prior to walking off the job was presented to the court, and the court has considered this factor in determining the appropriate duration of the forfeiture sanction.

Finally, during the course of the hearings, the amalgamated unions called witnesses and presented various documentary evidence in an effort to establish that the TA engaged in acts of "extreme provocation" during the course of the contract negotiations leading up to the strike. Although not required to do so, the court was prepared to consider this factor in determining the duration of the dues forfeiture sanctions against the amalgamated unions. However, none of the TA's actions which came to light during the course of the hearings qualify as such extreme provocation, "especially in view of the obvious danger to the health and safety of the citizenry" (*City of New York v Vizzini*, 49 AD2d 833, 834 [1975]). Indeed, much of what occurred merely amounted to the type of routine posturing and strategic ploys that are typical in employment contract negotiations. Furthermore, even the amalgamated unions' more legitimate complaints, such as plaintiff's insistence that the amalgamated

unions place the issue of pensions on the bargaining table, do not qualify as extreme provocation. In this regard, the amalgamated unions could and should have resolved this matter by appealing to PERB rather than engaging in an unlawful and ruinous transit strike during the holiday season.

Accordingly, having conducted the hearing, and after considering all the mandatory factors set forth in Civil Service Law § 210(3)(f), as well as all other relevant and mitigating factors, the court hereby imposes upon Locals 726 and 1056 a definite term of forfeiture of 30 days commencing 30 days after entry of this order unless Local 726 or Local 1056 makes an application within said 30 day period with respect to the commencement date of the forfeiture sanction.

Summary

In summary, the court rules as follows (1) that branch of plaintiff's motion/application which seeks an order setting the determinate amount of the contempt fines as against the amalgamated unions is granted to the extent that the fine is set at $125,000.00 as against Local 726, and $187,500.00 as against Local 1056. Within 30 days after entry of this order, the amalgamated unions shall either pay said contempt fines to the Clerk of the Supreme Court, Kings County, or, make an application before this court for the imposition of a payment schedule, and (2) that branch of plaintiff's motion/application which seeks an order imposing forfeiture of the dues deduction right of the amalgamated unions is granted to the extent that both Local 726 and Local 1056 are to forfeit this right for a definite period of 30 days commencing within 30 days of entry of this order.

This constitutes the decision, order and judgment of the court.

ENTER,

J. S. C.

At Special Term Part 14 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, 360 Adams Street, Brooklyn, New York, on the 19th day of April, 2006

P R E S E N T:

HON. THEODORE T. JONES,

Justice.

- -X

MTA BUS COMPANY,

Plaintiffs,

Index No. 37468/05

- against -

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, an unincorporated voluntary association, et al,

Defendants.

- -X

The following papers numbered 1 to X read on this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed______________________	_______________
Opposing Affidavits (Affirmations)_____________________	_______________
Reply Affidavits (Affirmations)________________________	_______________
___________Affidavit (Affirmation)___________________	_______________
Other Papers_______________________________________	_______________

Upon the foregoing papers, plaintiff MTA Bus Company (plaintiff or MTA Bus) moves for an order pursuant to § 34 of Chapter 929 of the Laws of 1986 (as amended) and Civil Service Law § 210(3)(f), imposing forfeiture of the dues deduction right of defendant Local 100 of the Transport Workers Unions of America, AFL-CIO (Local 100).[1]

---

[1]In a separate action filed under Kings County Index No. 37469/05, plaintiffs New York City Transit Authority (TA) and Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) have moved for (among other things) an identical order imposing the dues forfeiture sanction against Local 100. Accordingly, the two actions were consolidated for

Plaintiff moves for an order, pursuant to § 34 of Chapter 929 of the Laws of 1986 (as amended) (hereafter, § 34) and Civil Service Law § 210(3), imposing forfeiture of the dues deduction right of Local 100. In support of this motion, plaintiff points out that Civil Service Law § 210(3)(f) specifically requires that, where PERB determines that an employee organization has violated Civil Service Law § 210(1), PERB "shall order the forfeiture of the [employee organization's dues collection rights] for such period of time as the board shall determine, or in the discretion of [PERB], for an indefinite period of time subject to restoration upon application." Plaintiff further argues that, in enacting § 34, the Legislature specifically transferred the responsibility and jurisdiction for enforcing Civil Service Law § 210 (3) from PERB to the court.[2] In this regard, § 34 provides:

> "For the purposes of [Civil Service Law § 210 (3) and Judiciary Law § 751] any public employer as defined in subdivision five of section two hundred nine of the civil service law whose public employee organizations are covered by such subdivision shall be deemed to be a government exempt from certain provisions of article fourteen of the civil service law pursuant to section two hundred twelve of such law. Where an employee organization is determined by the court in the exercise of its authority under [Judiciary Law § 751] to have violated the provisions of [Civil Service Law § 210 (1)], the court shall apply the provisions set forth in [Civil Service Law § 210 (3)]."

---

purposes of holding hearings on the issue of dues forfeiture. Furthermore, the instant decision and order has been incorporated into the court's April 19, 2006 decision and order issued in the TA and MABSTOA's action under Kings County Index No. 37469/05.

[2]Plaintiff initially brought a Civil Service Law § 210 (3) dues forfeiture proceeding against Local 100 before PERB. At this proceeding, the issue of PERB's jurisdiction over the matter was raised given the enactment of § 34. Thereafter, plaintiff moved before this court for an order imposing this sanction and PERB placed the proceeding on its "hold calendar."

In particular, MTA Bus notes that the first sentence of § 34 directly applies to plaintiffs and Local 100 since Civil Service Law § 209(5)(a) expressly covers these entities. As to the second sentence of § 34, plaintiff points out that the court has already determined, in the exercise of its authority under Judiciary Law § 751(2)(a), that Local 100 violated Civil Service Law § 210(1). Thus, MTA Bus maintains that, pursuant to § 34, the court (as opposed to PERB) is required to "apply the provisions set forth in [Civil Service Law § 210 (3)]" and order the forfeiture of Local 100's right to an automatic dues deduction from their members' paychecks.

With respect to the duration of the dues forfeiture, plaintiff maintains that the court should order an indefinite forfeiture, which should only be terminated after Local 100 demonstrates a sufficient period of good faith compliance with the mandates of the Taylor Law. In the alternative, plaintiff avers that the court should order a forfeiture for a definite period of time. Finally, plaintiff suggests that, since the court has already determined that Local 100 violated Civil Service Law § 210(1), and evidence has already been presented (at the December 20, 2005 contempt hearing) regarding the impact of the strike, the extent of the union's defiance and the financial resources of Local 100, no new hearing is necessary prior to the imposition of the forfeiture sanction.

In opposition to plaintiff's motion, Local 100 initially points out that MTA Bus is not seeking the dues forfeiture sanction as part of a Judiciary Law § 751(2)(a) contempt proceeding. Rather, Local 100 notes that plaintiff seeks this sanction as a separate cause of action, independent of any contempt sanctions. According to Local 100, a review of § 34,

as well as of Judiciary Law § 751(2) and Civil Service Law § 210 (3), makes it clear that the Legislature did not intend to create a separate cause of action whereby an employer can seek dues forfeiture sanctions independent of a Judiciary Law § 751(2)(a) contempt proceeding. In this regard, Local 100 points out that, prior to the enactment of § 34, MTA unions (such as itself) were subject to two separate but largely identical proceedings before two distinct entities in the wake of a Civil Service Law § 210(1) violation. In particular, an MTA union was subject to a fine following a Judiciary Law § 751(2)(a) contempt proceeding. At such a proceeding, in setting the amount of the fine, the court was required to consider the extent of the union's wilful defiance, the impact of the strike on the welfare of the community, and the ability of the union to pay the fine. Subsequently, the union was subject to a proceeding before PERB wherein it faced the sanction of forfeiting its right to have membership dues automatically deducted from employees' paychecks for a period of time which PERB determined by weighing substantially the same criteria previously considered by the court in the Judiciary Law § 751(2)(a) proceeding. Thus, Local 100 contends that § 34 was enacted in order to consolidate these two separate proceedings into a single proceeding before the court. In other words, Local 100 argues that § 34 mandates that the issues of the imposition of a fine and dues forfeiture sanction be resolved by the court within the context of a Judiciary Law § 751(2)(a) contempt proceeding. Here, because MTA Bus admittedly is not seeking the imposition of the dues forfeiture as a sanction for contempt under Judiciary Law

§ 751 (2)(a), Local 100 avers that there is no basis for the court to impose this sanction against it.[3]

In further opposition to plaintiff's motion for the imposition of a dues forfeiture sanction, Local 100 argues that even if MTA Bus is entitled to this relief, the court must conduct a hearing prior to determining the duration of this forfeiture penalty. In this regard, Local 100 notes that Civil Service Law §210(3)(d) specifically requires that a hearing be conducted before the court determines the duration of the forfeiture. In addition, Local 100 avers that the previous contempt hearings are insufficient to satisfy the hearing requirement set forth in Civil Service Law § 210(3)(d) since Local 100's financial resources (which the court must consider in setting the duration of the forfeiture) have changed since the December 2005 contempt hearings. Furthermore, Local 100 maintains that there are mitigating factors, including provocation on the part of plaintiff, which the court should consider prior to determining the duration of the forfeiture.

There is no merit to Local 100's argument that an application for a dues forfeiture sanction must be brought as part of a Judiciary Law § 751(2)(a) contempt proceeding. Prior to the enactment of § 34, contempt proceedings under Judiciary Law § 751(2)(a) and dues forfeiture proceedings under Civil Service Law § 210(3) brought against any MTA union were separate and distinct undertakings made before two different bodies (i.e., the court and

[3]Local 100 argues that, inasmuch as a judgment has already been entered for the Judiciary Law § 751(2)(a) contempt hearing, plaintiff has, in effect, waived any right it had to seek the dues forfeiture sanction. In particular, Local 100 contends that any attempt to reopen the contempt proceeding in order to impose the additional dues forfeiture sanction would raise double jeopardy concerns.

PERB) (*Board of Educ., Union Free School Dist. No. 4, Town of Rye v Public Empl. Relations Bd.*, 74 Misc 2d 741, 742 [1973]). While § 34 does transfer jurisdiction for imposing the dues forfeiture sanction under Civil Service Law § 210 (3) from PERB to the court, nothing in the language of the statute specifically mandates that this distinct sanction be sought during, or as part of, Judiciary Law § 751(2)(a) contempt proceedings. Indeed, in comparing the respective rationales for contempt under Judiciary Law § 751 (2)(a) and Civil Service Law § 210(3) forfeiture proceedings, it is clear that they remain distinct undertakings. In this regard, it is well-settled that a contempt proceeding under Judiciary Law § 751(2)(a) is held in order to determine the appropriate punishment for an employee organization's violation of a court's injunction. Thus, the purpose of any sanctions imposed under Judiciary Law § 751(2)(a) is to uphold the authority of the court (*see generally Matter of Rubin v Plainview-Old Bethpage Congress of Teachers, NYEA/NEA*, 100 AD2d 850, 851 [1984]). In contrast, the forfeiture sanction set forth in Civil Service Law § 210(3) is intended as punishment for an employee organization's statutory violation of Civil Service Law § 210(1). Furthermore, while the imposition of the dues forfeiture sanction by the court under Judiciary Law § 751(2)(a) in "government exempt" cases is a discretionary matter, the sanction is mandatory under Civil Service Law § 210(3)(f). Thus, it stands to reason that Civil Service Law § 210(3)(f) proceedings against the MTA unions remain distinct and separate from contempt proceedings under Judiciary Law § 751(2)(a).

In any event, assuming, arguendo, that Local 100 is correct in asserting that § 34, in effect, made the heretofore separate Civil Service Law § 210 (3) forfeiture proceedings part

of Judiciary Law § 751 (2)(a) contempt proceedings in cases involving MTA unions, nothing in § 34 would preclude the court from deeming that MTA Bus's motion for the forfeiture sanctions had been made pursuant to Judiciary Law § 751(2)(a). Local 100 has not demonstrated that it would be prejudiced if this court were to hold a second contempt proceeding on the issue of dues forfeiture after initial contempt hearings on the issue of a fine have already been held. In fact, Local 100 would arguably benefit from a two-part contempt proceeding as it could better demonstrate what effect the previously imposed fine would have on its financial condition, and could therefore argue for a shorter dues forfeiture period. Indeed, since the court will, as Local 100 urges, take into consideration the per diem fine imposed by the court in the previous December 2005 contempt hearing, it would appear illogical to proceed, as Local 100 suggests, on the issues of the fine and dues forfeiture sanction simultaneously.

Finally, the sanction sought by plaintiff, which merely involves the temporary forfeiture of Local 100's right to have the employers automatically deduct union dues from employees' paychecks, does not implicate any double jeopardy concerns. Historically (i.e., prior to the enactment of § 34), these sanctions were always imposed independently from one another. Furthermore, Local 100 is free to continue collecting dues from its membership using whatever methods it deems appropriate.

Accordingly, plaintiff is entitled to seek the forfeiture sanction against Local 100 notwithstanding the fact that it did not seek such forfeiture in the contempt proceedings before the court in December 2005. However, the court agrees with Local 100 that, prior to

setting the duration of any dues forfeiture, hearings must be conducted wherein the court must consider the extent of Local 100's wilful defiance of Civil Service Law § 210(1), the impact of the strike on the public health, safety, and welfare of the community, as well as the financial resources of Local 100. In fact, Civil Service Law § 210 (3)(d) specifically requires such a hearing. Moreover, while it is true that the court conducted similar hearings in connection with the December 2005 contempt proceedings, this does not obviate the need for a new hearing on the matter since the financial condition of Local 100 may have changed in the ensuing months and new evidence should be certainly available regarding the actual impact of the strike upon the community welfare. However, since the factors which the court must weigh in the contempt and dues check-off proceedings are nearly identical, the court will consider the evidence and record accumulated in the December 20, 2005 contempt proceeding in reaching a determination regarding the appropriate duration of the forfeiture of Local 100's dues check-off rights.

On April 7, 10, 11, 12, and 17, 2006, the court conducted hearings in order to determine whether the imposition of a forfeiture sanction against Local 100 was warranted, and if so, what the appropriate duration of such a sanction should be. For the reasons stated above, the court has determined that, pursuant to Civil Service Law § 210 (3) and § 34, such a sanction is not only warranted, but in fact, required by law.

Turning to the issue of the appropriate duration of the forfeiture sanction, the court initially notes that, under Civil Service Law § 210 (3)(f), in making a determination in this regard, the court must consider the extent of Local 100's wilful defiance of Civil Service Law

§ 210 (1), the impact of the strike on the public health, safety, and welfare of the community, and the financial resources of the employee organization. In addition, the court may consider any other factors that it considers relevant including whether the public employer (i.e., the plaintiffs) engaged in "acts of extreme provocation as to detract from the responsibility of [Local 100] for the strike."

Accordingly, at the April 2006 hearings, as well as the December 20, 2005 contempt hearing, evidence in the form of sworn witness testimony, affidavits, reports, and letters were presented to the court regarding the above stated required factors and the court has given due consideration to such evidence. Moreover, the court has considered Local 100's conduct with respect to prior contract negotiations including an 11 day transit strike in 1980 as well as conduct which necessitated the issuance of preliminary injunctions in 1999 and 2002 (*see Matter of Webutuck Teachers Assn*., 13 PERB ¶ 3041 [1980] [wherein PERB noted that it generally imposed a more severe penalty for a second violation of the Taylor Law]; *accord Matter of Lakeland*, 11 PERB ¶ 3020 [1978]). In addition, evidence regarding Local 100's efforts to mitigate the effect of the strike, by safeguarding transit facilities and equipment and by ensuring that all bus and train operators finished their appointed runs prior to walking off the job was presented to the court, and the court has considered this factor in determining the appropriate duration of the forfeiture sanction.

Finally, during the course of the hearings, Local 100 called numerous witnesses and presented various documentary evidence in an effort to establish that the plaintiff engaged in acts of "extreme provocation" during the course of the contract negotiations leading up to

the strike.[4] Although not required to do so, the court was prepared to consider this factor in determining the duration of the dues forfeiture sanction. However, none of MTA Bus actions which came to light during the course of the hearings qualify as such extreme provocation, "especially in view of the obvious danger to the health and safety of the citizenry" (*City of New York v Vizzini*, 49 AD2d 833, 834 [1975]). Indeed, much of what occurred merely amounted to the type of routine posturing and strategic ploys that are typical in employment contract negotiations, particularly between parties (such as plaintiffs and Local 100) which have an acrimonious history. Furthermore, even Local 100's more legitimate complaints, such as plaintiff's insistence that Local 100 place the issue of pensions on the bargaining table, do not qualify as extreme provocation. In this regard, Local 100 could and should have resolved this matter by appealing to PERB rather than engaging in an unlawful and crippling transit strike during the holiday season.

Accordingly, having conducted the hearing, and after considering all the mandatory factors set forth in Civil Service Law § 210(3)(f), as well as all other relevant and mitigating factors, the court hereby imposes upon Local 100 an indefinite term of forfeiture commencing 30 days after entry of this order, unless Local 100 makes an application within said 30-day period with respect to the commencement date of the forfeiture sanction. Local 100 may seek reinstatement of its dues check-off right no earlier than three months after implementation of the forfeiture sanction. At that time, Local 100 may appear before this

[4]The court notes that the provocation evidence presented differed with respect to MTA Bus and the TA and MABSTOA.

court, and upon a showing of good faith compliance with the mandates of the Taylor Law, and submission of an affirmation that it no longer asserts the right to strike against any government as required pursuant to Civil Service Law §§ 210 (3)(g) and 207 (3), apply for reinstatement of its right to have the employers automatically deduct membership dues from the paychecks of union members.

Summary

In summary, plaintiff's motion/application which seeks an order imposing forfeiture of the dues deduction right of Local 100 is granted to the extent that 30 days after entry of this order, Local 100 is to forfeit this right for an indefinite period of time, with leave to apply for reinstatement of this right no earlier than three months after such forfeiture first occurs.

This constitutes the decision, order and judgment of the court.

ENTER,

J. S. C.