S T A T E O F N E W Y O R K

7493

I N S E N A T E

May 15, 2014

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the civil service law, in relation to layoff and recall rights and disciplinary hearings for certain employees in the non-competitive and labor class

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 80-a of the civil service law, as added by chapter 283 of the laws of 1972, subdivision 2 as amended by chapter 376 of the laws of 1977, and subdivision 3 as added and subdivisions 4 and 5 as renumbered by chapter 360 of the laws of 1985, is amended to read as follows:

S 80-a. Suspension or demotion upon the abolition or reduction of non-competitive class positions [in the state service] AND LABOR CLASS POSITIONS. 1. Suspension or demotion. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the non-competitive class [of the state service] OR LABOR CLASS are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents having tenure protection pursuant to [paragraph] PARAGRAPHS (c) AND (F) of subdivision one of section seventy-five of this [chapter] ARTICLE and holding the same or similar positions shall be made in the inverse order of original appointment on a permanent basis in the classified service [of the state service], subject to the provisions of subdivision seven of section eighty-five of this chapter; provided, however, that the date of original appointment of any such incumbent who was transferred to the state service from another governmental jurisdiction upon the transfer of functions shall be the date of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction from which such transfer was made. Notwithstanding the provisions of this subdivision, however, upon the abolition or reduction of positions in the non-competitive class OR LABOR CLASS, incumbents holding the same or similar positions who have not completed their probationary service shall be suspended or demoted, as the case may be,

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

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before any permanent incumbents, and among such probationary employees the order or suspension or demotion shall be determined as if such employees were permanent incumbents.

2. Continuous service. Except as otherwise provided herein, for the purposes of this section, [in the state service] the original appointment of an incumbent shall mean the date of his first appointment on a permanent basis in the classified service followed by continuous service in the classified service on a permanent basis up to the time of the abolition or reduction of the non-competitive class positions OR LABOR CLASS POSITIONS. An employee who has resigned and who has been reinstated or reappointed in the service within one year thereafter shall, for the purposes of this section, be deemed to have continuous service. An employee who has been terminated because of a disability resulting from occupational injury or disease as defined in the [workmen's] WORKERS' compensation law and who has been reinstated or reappointed in the service thereafter shall be deemed to have continuous service. A period of employment on a temporary or provisional basis, or in the unclassified service, immediately preceded and followed by permanent service in the classified service, shall not constitute an interruption of continuous service for the purposes of this section; nor shall a period of leave of absence without pay pursuant to law or the rules of the civil service commission having jurisdiction, or any period during which an employee is suspended from his position pursuant to this section, constitute an interruption of continuous service for the purposes of this section.

3. Interrupted service. [A state] AN employee who has resigned and who has been reinstated or reappointed in the service more than one year thereafter shall be credited with any previous [state] service rendered prior to his or her resignation to which he or she would have been entitled for the purposes of this section but for such resignation; provided, however, that any time out of the service exceeding three years shall be subtracted from the employee's previous [state] service. In such instances, continuous service shall be deemed to have begun on the date which precedes the otherwise applicable date for the commencement of continuous service by the period of actual creditable service provided by this subdivision.

4. Units for suspension or demotion. The president may, by regulation, designate as separate units for suspension or demotion under the provisions of this section any state hospital, institution or facility or any division of any state department or agency or specified hospitals, institutions and facilities of a single state department or agency within a particular geographic area as determined by the president. Upon the abolition or reduction of positions in the [state] service, suspension or demotion, as the case may be, shall be made from among employees holding the same or similar positions in the department wherein such abolition or reduction occurs, except that where such abolition or reduction occurs in a separate unit for suspension or demotion designated by regulation of the president, suspension or demotion shall be made from among incumbents holding the same or similar positions in such separate unit.

5. Displacement. A permanent incumbent having tenure protection pursuant to [paragraph] PARAGRAPHS (c) OR (F) of subdivision one of section seventy-five of this [chapter] ARTICLE who served in a position in [state] service and who was suspended or displaced from such position pursuant to this section shall displace the incumbent with the least retention right pursuant to subdivisions one and two of this section who

is serving in a position in the title in which the displacing incumbent last served on a permanent basis prior to service in one or more positions in the title from which he is suspended or displaced, if: (1) the service of the displacing incumbent while in such former title was satisfactory and (2) the position of the junior incumbent is in (a) the non-competitive class OR LABOR CLASS, (b) the layoff unit from which the displacing incumbent was suspended or displaced, and (c) a lower salary grade than the position from which the displacing incumbent is suspended or displaced; provided, however, that no incumbent shall displace any other incumbent having greater retention standing. Refusal of appointment to a position afforded by this subdivision constitutes waiver of rights under this subdivision with respect to the suspension or displacement on account of which the refused appointment was afforded. The [state civil service] commission shall promulgate rules to implement this subdivision including rules which may provide adjunctive opportunities for displacement to formerly held positions; provided, however, that no such rule shall permit an incumbent to displace any other incumbent having greater retention standing. For the purpose of acquiring preferred list rights, displacement pursuant to this subdivision is the equivalent of suspension or demotion pursuant to subdivision one of this section.

S 2. Subdivision 1 of section 75 of the civil service law, as amended by chapter 942 of the laws of 1970, the opening paragraph and paragraph (d) as amended and paragraph (e) as added by chapter 842 of the laws of 1985, paragraph (b) as amended by chapter 350 of the laws of 1989 and paragraph (c) as amended by chapter 439 of the laws of 1986, is amended to read as follows:

1. Removal and other disciplinary action. A person described in paragraph (a) [or], paragraph (b), [or] paragraph (c), [or] paragraph (d), [or] paragraph (e), OR PARAGRAPH (F) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or

(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer firefighter as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(c) an employee holding a position in the non-competitive class other than a position designated in the rules of the state or municipal civil service commission as confidential or requiring the performance of functions influencing policy, who since his last entry into service has completed at least [five years] ONE YEAR of continuous service in the non-competitive class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or

(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide in the non-competitive class, who since his last entry into city service has completed at least three years of continuous service in such position in the non-competitive class, or

(e) an employee in the service of a police department within the state of New York holding the position of detective for a period of three continuous years or more; provided, however, that a hearing shall not be required when reduction in rank from said position is based solely on reasons of the economy, consolidation or abolition of functions, curtailment of activities or otherwise, OR

(F) AN EMPLOYEE HOLDING A POSITION IN THE LABOR CLASS WHO HAS COMPLETED ONE YEAR OF SERVICE IN A LABOR CLASS POSITION.

S 3. This act shall take effect immediately.