

# STATE OF NEW YORK

9614

## IN ASSEMBLY

March 28, 2022

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to independent hearing officers for certain disciplinary hearings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "New York State firefighter bill of rights act".

3 § 2. Section 75 of the civil service law is amended by adding a new  
4 subdivision 2-a to read as follows:

5 2-a. Independent hearing officer. (a) Notwithstanding any other  
6 provision of law to the contrary, including but not limited to subdivi-  
7 sion four of section seventy-six of this title, any paid officer or  
8 member of an organized fire company or fire department of a city of less  
9 than one million population, or town, village or fire district who is  
10 represented by a certified or recognized employee organization pursuant  
11 to article fourteen of this chapter shall not be subjected to the penal-  
12 ty of dismissal from service or any other discipline if the hearing,  
13 upon such charge, has been conducted by someone other than an independ-  
14 ent hearing officer to be agreed to by the employer and the person  
15 against whom disciplinary action is proposed. If the parties are unable  
16 to agree upon a hearing officer, the hearing officer shall be selected  
17 from a list of seven names to be provided by the public employment  
18 relations board. The public employment relations board shall maintain a  
19 list of independent hearing officers for this purpose. The parties shall  
20 select the hearing officer by alternately striking names from the list  
21 of seven. The hearing officer shall be vested with all powers of the  
22 appointing authority, shall conduct and make a record of the hearing,  
23 and shall render a final decision. The cost incurred in obtaining such  
24 independent hearing officer shall be divided equally between the  
25 parties; provided that as may be determined upon the circumstances of  
26 the case, the hearing officer shall be authorized to allocate such cost  
27 on the basis of the frivolous nature of any claim made or any defense  
28 interposed. In order to find a claim or defense to be frivolous, the  
29 hearing officer must find at least one of the following:

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

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1 (i) the claim or defense was commenced, used or continued in bad  
2 faith, solely to delay or prolong the resolution of the action or to  
3 harass or maliciously injure another; or

4 (ii) the claim or defense was commenced or continued in bad faith  
5 without any reasonable basis in law or fact. If the claim or defense was  
6 promptly discontinued when the party learned or should have learned that  
7 the claim or defense lacked such reasonable basis, the hearing officer  
8 may find that the party did not act in bad faith. A person served with  
9 charges may then, however, elect in writing to proceed with a hearing  
10 pursuant to the procedures established in subdivision two of this  
11 section in lieu of the procedures set forth in this subdivision.

12 (b) The rights set forth in paragraph (a) of this subdivision shall be  
13 in addition to, and shall not supplant, modify or replace any rights  
14 provided to an employee pursuant to agreements negotiated by a public  
15 employer and an employee organization pursuant to article fourteen of  
16 this chapter, or pursuant to any other provision of law, including but  
17 not limited to other provisions of this section.

18 § 3. Subdivision 4 of section 201 of the civil service law, as amended  
19 by chapter 606 of the laws of 1992, is amended to read as follows:

20 4. The term "terms and conditions of employment" means:

21 (a) salaries, wages, hours and other terms and conditions of employ-  
22 ment provided, however, that such term shall not include any benefits  
23 provided by or to be provided by a public retirement system, or payments  
24 to a fund or insurer to provide an income for retirees, or payment to  
25 retirees or their beneficiaries. No such retirement benefits shall be  
26 negotiated pursuant to this article, and any benefits so negotiated  
27 shall be void.

28 (b) in addition, the terms and conditions of employment for firefight-  
29 ers shall include discipline and disciplinary procedures including  
30 alternatives to any statutory disciplinary system, provided, however,  
31 that any right of firefighters under the terms of any state law to elect  
32 coverage under either a statutory disciplinary system or a disciplinary  
33 system established by collective negotiations shall not be impaired,  
34 unless any such state law authorizes exclusivity of a negotiated disci-  
35 plinary system and provided further that no provision contained in the  
36 town law, general city law, second class cities law, general municipal  
37 law, municipal home rule law, county law, or other state, local, special  
38 law or charter provision, or any special police act or other special act  
39 created by local law or charter or otherwise created, or this chapter  
40 shall prevent or impair the right to collective bargaining for or  
41 modification of disciplinary procedures.

42 § 4. Section 204-a of the civil service law is amended by adding a new  
43 subdivision 4 to read as follows:

44 4. The terms of any current or expired agreement or interest arbi-  
45 tration award between any public employer and any public employee organ-  
46 ization representing firefighters relating to the discipline of any  
47 firefighters shall be deemed valid and enforceable from the effective  
48 date of this subdivision.

49 § 5. This act shall take effect on the first of March next succeeding  
50 the date on which it shall have become a law and shall apply to  
51 proceedings commenced on or after such effective date. Effective imme-  
52 diately, the addition, amendment and/or repeal of any rule or regulation  
53 necessary for the implementation of the provisions of this act on its  
54 effective date are authorized to be made and completed on or before such  
55 effective date.