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

10220--A

I N A S S E M B L Y

March 11, 2010

Introduced by M. of A. LENTOL, COLTON -- read once and referred to the Committee on Governmental Employees -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

Section 1. Section 75 of the civil service law is amended by adding a new subdivision 2-a to read as follows:

2-A. INDEPENDENT HEARING OFFICER. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A PERSON WHO IS DESCRIBED IN PARAGRAPH (A), (B), (C), (D) OR (E) OF SUBDIVISION ONE OF THIS SECTION AND WHO IS REPRESENTED BY A CERTIFIED OR RECOGNIZED EMPLOYEE ORGANIZATION PURSUANT TO ARTICLE FOURTEEN OF THIS CHAPTER SHALL NOT BE SUBJECTED TO THE PENALTY OF DISMISSAL FROM SERVICE IF THE HEARING, UPON SUCH CHARGE, HAS BEEN CONDUCTED BY SOMEONE OTHER THAN AN INDEPENDENT HEARING OFFICER. SUCH INDEPENDENT HEARING OFFICER SHALL BE A MEMBER OF THE PUBLIC EMPLOYEE RELATIONS BOARD'S PANEL OF ARBITRATORS ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SEVEN OF TITLE FOUR OF THE NEW YORK CODES, RULES AND REGULATIONS AND SUCH INDEPENDENT HEARING OFFICER SHALL BE AGREED TO BY THE EMPLOYER AND THE PERSON AGAINST WHOM DISCIPLINARY ACTION IS PROPOSED. IF THE PARTIES ARE UNABLE TO AGREE UPON A HEARING OFFICER, HE OR SHE SHALL BE SELECTED FROM A LIST OF SEVEN NAMES TO BE PROVIDED BY THE PUBLIC EMPLOYMENT RELATIONS BOARD. THE PARTIES SHALL SELECT THE HEARING OFFICER BY ALTERNATELY STRIKING NAMES FROM THE LIST OF SEVEN. THE HEARING OFFICER SHALL BE VESTED WITH ALL POWERS OF THE APPOINTING AUTHORITY, SHALL CONDUCT AND MAKE A RECORD OF THE HEARING, AND SHALL RENDER A FINAL DECISION. THE COST INCURRED IN OBTAINING SUCH INDEPENDENT HEARING OFFICER SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES; PROVIDED THAT AS MAY BE DETERMINED UPON THE CIRCUMSTANCES OF THE CASE, THE HEARING OFFICER SHALL BE AUTHORIZED TO ALLOCATE SUCH COST ON THE BASIS OF THE FRIVOLOUS NATURE OF ANY CLAIM MADE OR ANY DEFENSE INTERPOSED. IN ORDER TO FIND A CLAIM OR

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

LBD16131-02-0

DEFENSE TO BE FRIVOLOUS, THE HEARING OFFICER MUST FIND AT LEAST ONE OF THE FOLLOWING:

(I) THE CLAIM OR DEFENSE WAS COMMENCED, USED OR CONTINUED IN BAD FAITH, SOLELY TO DELAY OR PROLONG THE RESOLUTION OF THE ACTION OR TO HARASS OR MALICIOUSLY INJURE ANOTHER; OR

(II) THE CLAIM OR DEFENSE WAS COMMENCED OR CONTINUED IN BAD FAITH WITHOUT ANY REASONABLE BASIS IN LAW OR FACT. IF THE CLAIM OR DEFENSE WAS PROMPTLY DISCONTINUED WHEN THE PARTY LEARNED OR SHOULD HAVE LEARNED THAT THE CLAIM OR DEFENSE LACKED SUCH REASONABLE BASIS, THE HEARING OFFICER MAY FIND THAT THE PARTY DID NOT ACT IN BAD FAITH. A PERSON SERVED WITH CHARGES MAY, HOWEVER, ELECT IN WRITING TO PROCEED WITH A HEARING PURSUANT TO THE PROCEDURES ESTABLISHED IN SUBDIVISION TWO OF THIS SECTION IN LIEU OF THE PROCEDURES SET FORTH IN THIS SUBDIVISION.

(B) THE RIGHTS SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE IN ADDITION TO, AND SHALL NOT SUPPLANT, MODIFY OR REPLACE ANY RIGHTS PROVIDED TO AN EMPLOYEE PURSUANT TO AGREEMENTS NEGOTIATED BY A PUBLIC EMPLOYER AND AN EMPLOYEE ORGANIZATION PURSUANT TO ARTICLE FOURTEEN OF THIS CHAPTER.

S 2. This act shall take effect on the first of March next succeeding the date on which it shall have become a law and shall apply to proceedings commenced on or after such effective date. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the provisions of this act on its effective date is authorized to be made and completed on or before such effective date.