

9983

I N A S S E M B L Y

February 23, 2010

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 hearing procedures for certain public employees

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

1 Section 1. Subdivision 2 of section 75 of the civil service law, as
2 amended by chapter 226 of the laws of 1994, is amended to read as
3 follows:
4 2. Procedure. An employee who at the time of questioning appears to be
5 a potential subject of disciplinary action shall have a right to repre-
6 sentation by his or her certified or recognized employee organization
7 under article fourteen of this chapter and shall be notified in advance,
8 in writing, of such right. A state employee who is designated managerial
9 or confidential under article fourteen of this chapter, shall, at the
10 time of questioning, where it appears that such employee is a potential
11 subject of disciplinary action, have a right to representation and shall
12 be notified in advance, in writing, of such right. If representation is
13 requested a reasonable period of time shall be afforded to obtain such
14 representation. If the employee is unable to obtain representation with-
15 in a reasonable period of time the employer has the right to then ques-
16 tion the employee. A hearing officer under this section shall have the
17 power to find that a reasonable period of time was or was not afforded.
18 In the event the hearing officer finds that a reasonable period of time
19 was not afforded then any and all statements obtained from said ques-
20 tioning as well as any evidence or information obtained as a result of
21 said questioning shall be excluded, provided, however, that this subdivi-
22 sion shall not modify or replace any written collective agreement
23 between a public employer and employee organization negotiated pursuant
24 to article fourteen of this chapter. A person against whom removal or
25 other disciplinary action is proposed shall have written notice thereof
26 and of the reasons therefor, shall be furnished a copy of the charges
27 preferred against him and shall be allowed at least eight days for
28 answering the same in writing. The hearing upon such charges shall be

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

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1 held by [the officer or body having the power to remove the person
2 against whom such charges are preferred, or by a deputy or other person
3 designated by such officer or body in writing for that purpose. In case
4 a deputy or other person is so designated, he] A HEARING OFFICER WHO
5 SHALL BE A MEMBER OF THE AMERICAN ARBITRATION ASSOCIATION, AND SUCH
6 HEARING OFFICER SHALL BE SELECTED BY THE MUTUAL AGREEMENT OF THE PERSON
7 AGAINST WHOM DISCIPLINARY ACTION IS PROPOSED AND OF THE EMPLOYING OFFI-
8 CER OR BODY. IF SUCH MUTUAL AGREEMENT CANNOT BE REACHED, THEN THE HEAR-
9 ING OFFICER SHALL BE SELECTED PURSUANT TO THE RULES OF THE AMERICAN
10 ARBITRATION ASSOCIATION. SUCH HEARING OFFICER shall, for the purpose of
11 such hearing, be vested with all the powers of such officer or body and
12 shall make a record of such hearing which shall, with his recommenda-
13 tions AND DECISION, be referred to such officer or body for [review and
14 decision] IMPLEMENTATION. The [person or persons] HEARING OFFICER hold-
15 ing such hearing shall, upon the request of the person against whom
16 charges are preferred, permit him to be represented by counsel, or by a
17 representative of a recognized or certified employee organization, and
18 shall allow him to summon witnesses in his behalf. The burden of proving
19 incompetency or misconduct shall be upon the person alleging the same.
20 Compliance with technical rules of evidence shall not be required. THE
21 HEARING OFFICER SHALL BE PAID A FEE WHICH IS EQUIVALENT TO THE NORMAL
22 AND CUSTOMARY FEE PAID TO HIM FOR SERVICES AS AN ARBITRATOR UNDER THE
23 AUSPICES OF THE AMERICAN ARBITRATION ASSOCIATION.

24 S 2. Subdivision 3 of section 75 of the civil service law, as amended
25 by chapter 710 of the laws of 1984, is amended to read as follows:

26 3. Suspension pending determination of charges; penalties. Pending
27 the hearing and determination of charges of incompetency or misconduct,
28 the officer or employee against whom such charges have been preferred
29 may be suspended [without pay] for a period not exceeding thirty days.
30 THE SUSPENSION SHALL BE WITH PAY, EXCEPT THE EMPLOYEE MAY BE SUSPENDED
31 WITHOUT PAY IF THE EMPLOYEE HAS ENTERED A GUILTY PLEA TO OR HAS BEEN
32 CONVICTED OF A FELONY CRIME CONCERNING THE CRIMINAL SALE OR POSSESSION
33 OF A CONTROLLED SUBSTANCE OR A PRECURSOR OF A CONTROLLED SUBSTANCE. If
34 such officer or employee is found guilty of the charges, the penalty or
35 punishment may consist of a reprimand, a fine not to exceed one hundred
36 dollars to be deducted from the salary or wages of such officer or
37 employee, suspension without pay for a period not exceeding two months,
38 demotion in grade and title, or dismissal from the service; provided,
39 however, that the time during which an officer or employee is suspended
40 without pay may be considered as part of the penalty. If he is acquit-
41 ted, he shall be restored to his position [with full pay for the period
42 of suspension less the amount of any unemployment insurance benefits he
43 may have received during such period]. If such officer or employee is
44 found guilty, a copy of the charges, his written answer thereto, a tran-
45 script of the hearing, and the determination shall be filed in the
46 office of the department or agency in which he has been employed, and a
47 copy thereof shall be filed with the civil service commission having
48 jurisdiction over such position. A copy of the transcript of the hearing
49 shall, upon request of the officer or employee affected, be furnished to
50 him without charge.

51 S 3. This act shall take effect immediately.