

5743

2011-2012 Regular Sessions

I N A S S E M B L Y

February 28, 2011

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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 ASSEM-  
BLY, 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

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

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

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

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

55 S 3. This act shall take effect immediately.