

8112

2011-2012 Regular Sessions

I N A S S E M B L Y

June 2, 2011

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 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:

1 Section 1. Section 80-a of the civil service law, as added by chapter
2 283 of the laws of 1972, subdivision 2 as amended by chapter 376 of the
3 laws of 1977, and subdivision 3 as added and subdivisions 4 and 5 as
4 renumbered by chapter 360 of the laws of 1985, is amended to read as
5 follows:
6 S 80-a. Suspension or demotion upon the abolition or reduction of
7 non-competitive class positions [in the state service] AND LABOR CLASS
8 POSITIONS. 1. Suspension or demotion. Where, because of economy,
9 consolidation or abolition of functions, curtailment of activities or
10 otherwise, positions in the non-competitive class [of the state service]
11 OR LABOR CLASS are abolished or reduced in rank or salary grade, suspen-
12 sion or demotion, as the case may be, among incumbents having tenure
13 protection pursuant to [paragraph] PARAGRAPHS (c) AND (F) of subdivision
14 one of section seventy-five of this [chapter] ARTICLE and holding the
15 same or similar positions shall be made in the inverse order of original
16 appointment on a permanent basis in the classified service [of the state
17 service], subject to the provisions of subdivision seven of section
18 eighty-five of this chapter; provided, however, that the date of
19 original appointment of any such incumbent who was transferred to the
20 state service from another governmental jurisdiction upon the transfer
21 of functions shall be the date of original appointment on a permanent
22 basis in the classified service in the service of the governmental
23 jurisdiction from which such transfer was made. Notwithstanding the
24 provisions of this subdivision, however, upon the abolition or reduction

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

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1 of positions in the non-competitive class OR LABOR CLASS, incumbents
2 holding the same or similar positions who have not completed their
3 probationary service shall be suspended or demoted, as the case may be,
4 before any permanent incumbents, and among such probationary employees
5 the order or suspension or demotion shall be determined as if such
6 employees were permanent incumbents.

7 2. Continuous service. Except as otherwise provided herein, for the
8 purposes of this section, [in the state service] the original appoint-
9 ment of an incumbent shall mean the date of his first appointment on a
10 permanent basis in the classified service followed by continuous service
11 in the classified service on a permanent basis up to the time of the
12 abolition or reduction of the non-competitive class positions OR LABOR
13 CLASS POSITIONS. An employee who has resigned and who has been rein-
14 stated or reappointed in the service within one year thereafter shall,
15 for the purposes of this section, be deemed to have continuous service.
16 An employee who has been terminated because of a disability resulting
17 from occupational injury or disease as defined in the [workmen's] WORK-
18 ERS' compensation law and who has been reinstated or reappointed in the
19 service thereafter shall be deemed to have continuous service. A period
20 of employment on a temporary or provisional basis, or in the unclassi-
21 fied service, immediately preceded and followed by permanent service in
22 the classified service, shall not constitute an interruption of contin-
23 uous service for the purposes of this section; nor shall a period of
24 leave of absence without pay pursuant to law or the rules of the civil
25 service commission having jurisdiction, or any period during which an
26 employee is suspended from his position pursuant to this section,
27 constitute an interruption of continuous service for the purposes of
28 this section.

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

40 4. Units for suspension or demotion. The president may, by regulation,
41 designate as separate units for suspension or demotion under the
42 provisions of this section any state hospital, institution or facility
43 or any division of any state department or agency or specified hospi-
44 tals, institutions and facilities of a single state department or agency
45 within a particular geographic area as determined by the president. Upon
46 the abolition or reduction of positions in the [state] service, suspen-
47 sion or demotion, as the case may be, shall be made from among employees
48 holding the same or similar positions in the department wherein such
49 abolition or reduction occurs, except that where such abolition or
50 reduction occurs in a separate unit for suspension or demotion desig-
51 nated by regulation of the president, suspension or demotion shall be
52 made from among incumbents holding the same or similar positions in such
53 separate unit.

54 5. Displacement. A permanent incumbent having tenure protection pursu-
55 ant to [paragraph] PARAGRAPHS (c) OR (F) of subdivision one of section
56 seventy-five of this [chapter] ARTICLE who served in a position in

1 [state] service and who was suspended or displaced from such position
2 pursuant to this section shall displace the incumbent with the least
3 retention right pursuant to subdivisions one and two of this section who
4 is serving in a position in the title in which the displacing incumbent
5 last served on a permanent basis prior to service in one or more posi-
6 tions in the title from which he is suspended or displaced, if: (1) the
7 service of the displacing incumbent while in such former title was
8 satisfactory and (2) the position of the junior incumbent is in (a) the
9 non-competitive class OR LABOR CLASS, (b) the layoff unit from which the
10 displacing incumbent was suspended or displaced, and (c) a lower salary
11 grade than the position from which the displacing incumbent is suspended
12 or displaced; provided, however, that no incumbent shall displace any
13 other incumbent having greater retention standing. Refusal of appoint-
14 ment to a position afforded by this subdivision constitutes waiver of
15 rights under this subdivision with respect to the suspension or
16 displacement on account of which the refused appointment was afforded.
17 The [state civil service] commission shall promulgate rules to implement
18 this subdivision including rules which may provide adjunctive opportu-
19 nities for displacement to formerly held positions; provided, however,
20 that no such rule shall permit an incumbent to displace any other incum-
21 bent having greater retention standing. For the purpose of acquiring
22 preferred list rights, displacement pursuant to this subdivision is the
23 equivalent of suspension or demotion pursuant to subdivision one of this
24 section.

25 S 2. Subdivision 1 of section 75 of the civil service law, as amended
26 by chapter 942 of the laws of 1970, the opening paragraph and paragraph
27 (d) as amended and paragraph (e) as added by chapter 842 of the laws of
28 1985, paragraph (b) as amended by chapter 350 of the laws of 1989 and
29 paragraph (c) as amended by chapter 439 of the laws of 1986, is amended
30 to read as follows:

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

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

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

52 (c) an employee holding a position in the non-competitive class other
53 than a position designated in the rules of the state or municipal civil
54 service commission as confidential or requiring the performance of func-
55 tions influencing policy, who since his last entry into service has
56 completed at least [five years] ONE YEAR of continuous service in the

1 non-competitive class in a position or positions not so designated in
2 the rules as confidential or requiring the performance of functions
3 influencing policy, or

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

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

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

16 S 3. This act shall take effect immediately.