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

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I N A S S E M B L Y

May 27, 2014

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 the negotiability of disciplinary procedures affecting employees in the competitive class of civil service of the state of New York or any civil division thereof

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

Section 1. Legislative findings and declarations. The Taylor Law requires collective bargaining over all "terms and conditions of employment." Our courts have often stressed the importance of this policy and have made clear that "the presumption...that all terms and conditions of employment are subject to mandatory bargaining" cannot easily be overcome. IN THE MATTER OF PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. V. NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 6 N.Y. 3d 563 at 572 (2006) (Hereinafter NYC PBA case). However, while paying homage to our state's strong and sweeping policy to support collective bargaining of all terms and conditions of employment under the Taylor Law, the Court of Appeals in the case cited above held that that policy must yield to any other legislation which specifically commits police discipline to the discretion of local officials, including the New York City charter, the Rockland County Police Act, section 155 of the town law and section 8-804 of the village law, provided only that those laws were passed prior to 1958 when Sections 75 and 76 of the civil service law providing minimum or back-stop provisions for due process disciplinary procedures for public employees were enacted. In doing so, the court cited specifically to the first sentence of subdivision 4 of section 76 of the civil service law which says that sections 75 and 76 of the civil service law shall not be construed to repeal or modify pre-existing laws relating to the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division.

Since the Taylor Law was enacted in 1967 making all terms and conditions of employment subject to collective bargaining, matters pertaining

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

LBD15316-01-4

to employee discipline, including disciplinary procedures, have been negotiated into many collective bargaining agreements in municipalities across the state covering all types of public employees, including police officers. Those agreements were honored until 2006 when the NYC PBA case was decided. The impact of the NYC PBA case has been to deprive many, but not all, police officers of the right to enforce their negotiated disciplinary procedures and of the right to collectively bargain with regard to matters pertaining to discipline in the future that all other public employees enjoy. The purpose of this act is to expressly overrule this decision and those that have followed it and to replace them with a legislative declaration that police officers and all other competitive class public employees in the state of New York are entitled to collectively bargain with respect to all matters pertaining to discipline and, in the absence of a negotiated procedure, to at least the minimum due process protections provided by sections 75 and 75 of the civil service law.

S 2. Subdivision 4 of section 76 of the civil service law, as amended by chapter 283 of the laws of 1972, is amended and a new subdivision 5 is added to read as follows:

4. [Nothing contained in section seventy-five or seventy-six of this chapter shall be construed to repeal or modify any general, special or local law or charter provision relating to the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division. Such sections may be supplemented, modified or replaced by agreements negotiated between the state and an employee organization pursuant to article fourteen of this chapter. Where such sections are so supplemented, modified or replaced, any employee against whom charges have been preferred prior to the effective date of such supplementation, modification or replacement shall continue to be subject to the provisions of such sections as in effect on the date such charges were preferred.] THIS SECTION OR SECTION SEVENTY-FIVE OF THIS TITLE SHALL BE CONSTRUED TO REPEAL OR MODIFY ANY GENERAL, SPECIAL OR LOCAL LAW OR CHARTER PROVISION RELATING TO THE REMOVAL OR SUSPENSION OF OFFICERS OR EMPLOYEES IN THE COMPETITIVE CLASS OF THE CIVIL SERVICE OF THE STATE OR ANY CIVIL DIVISION. THIS SECTION AND SECTION SEVENTY-FIVE OF THIS TITLE MAY BE SUPPLEMENTED, MODIFIED OR REPLACED BY AGREEMENTS NEGOTIATED BETWEEN THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND AN EMPLOYEE ORGANIZATION PURSUANT TO ARTICLE FOURTEEN OF THIS CHAPTER. WHERE SUCH SECTIONS ARE SO SUPPLEMENTED, MODIFIED OR REPLACED, ANY EMPLOYEE AGAINST WHOM CHARGES HAVE BEEN PREFERRED PRIOR TO THE EFFECTIVE DATE OF SUCH SUPPLEMENTATION, MODIFICATION OR REPLACEMENT SHALL CONTINUE TO BE SUBJECT TO THE PROVISIONS OF SUCH SECTIONS AS IN EFFECT ON THE DATE SUCH CHARGES WERE PREFERRED.

5. THE TERMS OF ANY CURRENT OR EXPIRED COLLECTIVE BARGAINING AGREEMENT OR INTEREST ARBITRATION AWARD BETWEEN ANY PUBLIC EMPLOYER AND ANY PUBLIC EMPLOYEE ORGANIZATION RELATING TO ANY ASPECT OF POLICE OFFICER DISCIPLINE WHICH WERE INVALIDATED OR RENDERED UNENFORCEABLE BY ANY DECISION, ORDER OR JUDGEMENT OF ANY COURT, ADMINISTRATIVE AGENCY OR OTHER ADJUDICATORY TRIBUNAL ON GROUNDS OF PUBLIC POLICY SHALL BE DEEMED VALID FROM THE DATE ANY SUCH AGREEMENTS OR AWARDS WERE FIRST REACHED OR ISSUED, AND THOSE AGREEMENTS OR AWARDS SHALL BE APPLIED AND ENFORCED AS TO ANY DISCIPLINARY CHARGES PENDING ON THE EFFECTIVE DATE OF THIS SUBDIVISION AND TO ANY DISCIPLINARY CHARGES FILED THEREAFTER.

S 3. This act shall take effect immediately.