

7289

I N S E N A T E

April 12, 2016

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

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

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

1 Section 1. Section 75 of the civil service law is amended by adding a
2 new subdivision 2-a to read as follows:
3 2-A. INDEPENDENT HEARING OFFICER. (A) NOTWITHSTANDING ANY OTHER
4 PROVISION OF LAW TO THE CONTRARY, ANY PAID OFFICER OR MEMBER OF AN
5 ORGANIZED FIRE COMPANY OR FIRE DEPARTMENT OF A CITY OF LESS THAN ONE
6 MILLION POPULATION, OR TOWN, VILLAGE OR FIRE DISTRICT WHO IS REPRESENTED
7 BY A CERTIFIED OR RECOGNIZED EMPLOYEE ORGANIZATION PURSUANT TO ARTICLE
8 FOURTEEN OF THIS CHAPTER SHALL NOT BE SUBJECTED TO THE PENALTY OF
9 DISMISSAL FROM SERVICE IF THE HEARING, UPON SUCH CHARGE, HAS BEEN
10 CONDUCTED BY SOMEONE OTHER THAN AN INDEPENDENT HEARING OFFICER TO BE
11 AGREED TO BY THE EMPLOYER AND THE PERSON AGAINST WHOM DISCIPLINARY
12 ACTION IS PROPOSED. IF THE PARTIES ARE UNABLE TO AGREE UPON A HEARING
13 OFFICER, HE OR SHE SHALL BE SELECTED FROM A LIST OF SEVEN NAMES TO BE
14 PROVIDED BY THE PUBLIC EMPLOYMENT RELATIONS BOARD. THE PUBLIC EMPLOYMENT
15 RELATIONS BOARD SHALL MAINTAIN A LIST OF INDEPENDENT HEARING OFFICERS
16 FOR THIS PURPOSE. THE PARTIES SHALL SELECT THE HEARING OFFICER BY ALTER-
17 NATELY STRIKING NAMES FROM THE LIST OF SEVEN. THE HEARING OFFICER SHALL
18 BE VESTED WITH ALL POWERS OF THE APPOINTING AUTHORITY, SHALL CONDUCT AND
19 MAKE A RECORD OF THE HEARING, AND SHALL RENDER A FINAL DECISION. THE
20 COST INCURRED IN OBTAINING SUCH INDEPENDENT HEARING OFFICER SHALL BE
21 DIVIDED EQUALLY BETWEEN THE PARTIES; PROVIDED THAT AS MAY BE DETERMINED
22 UPON THE CIRCUMSTANCES OF THE CASE, THE HEARING OFFICER SHALL BE AUTHOR-
23 IZED TO ALLOCATE SUCH COST ON THE BASIS OF THE FRIVOLOUS NATURE OF ANY
24 CLAIM MADE OR ANY DEFENSE INTERPOSED. IN ORDER TO FIND A CLAIM OR
25 DEFENSE TO BE FRIVOLOUS, THE HEARING OFFICER MUST FIND AT LEAST ONE OF
26 THE FOLLOWING:

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

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

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

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

17 S 2. This act shall take effect on the first of March next succeeding
18 the date on which it shall have become a law and shall apply to
19 proceedings commenced on or after such effective date; provided, howev-
20 er, that effective immediately, the addition, amendment and/or repeal of
21 any rule or regulation necessary for the implementation of the
22 provisions of this act on its effective date are authorized and directed
23 to be made and completed on or before such effective date.