STATE OF NEW YORK

8660

2017-2018 Regular Sessions

IN ASSEMBLY

September 1, 2017

Introduced by M. of A. STECK -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to the furnishing of those placed on leave with notice of the charges within forty-five days of being placed on leave

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 75 of the civil service law, as amended by chapter 226 of the laws of 1994, is amended to read as follows:

2. Procedure. An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right. A state employee who is designated managerial or confidential under article fourteen of this chapter, shall, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action, have a right to representation and shall be notified in advance, in writing, of such right. If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then question the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter. A person against whom removal or

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

LBD11937-02-7

other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing**; provided that such notice and copy of the charges shall be furnished within forty-five days of a person being suspended, placed on administrative leave or otherwise forced to take a leave of absence from their position. In the event that such notice and copy of the charges are not furnished within the forty-five day period, such charges against the employee shall be presumed invalid**. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

§ 2. This act shall take effect immediately.