STATE OF NEW YORK

7245

2019-2020 Regular Sessions

IN ASSEMBLY

April 18, 2019

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the removal and discipline of part-time teaching assistants

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

Section 1. The education law is amended by adding a new section 3020-c to read as follows:

§ 3020-c. Removal and other disciplinary action of part-time teaching assistants. 1. Removal and other disciplinary action. A teaching assistant employed by a public school district or a board of cooperative educational services less than full-time in the unclassified civil service who since his or her last entry into service has completed at least five years of continuous service in the unclassified civil service shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

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 the civil service law 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

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

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shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of the civil service law. A person against whom removal or 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 or her and shall be allowed at least eight days for answering the same in writing. 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 or she 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 or her 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 or her to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him or her to summon witnesses in his or her 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.

3. Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an employee is suspended without pay may be considered as part of the penalty. If he or she is acquitted, he or she shall be restored to his or her position with full pay for the period of suspension less the amount of any unemployment insurance benefits he or she may have received during such period. If such employee is found guilty, a copy of the charges, his or her written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he or she has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him or her without charge.

4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges or, provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

§ 2. This act shall take effect immediately.