

STATE OF NEW YORK

4784--A

2021-2022 Regular Sessions

IN ASSEMBLY

February 8, 2021

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil service law, in relation to hearing procedures for certain public employees

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

1 Section 1. Subdivision 2 of section 75 of the civil service law, as
2 amended by chapter 226 of the laws of 1994, is amended and a new subdi-
3 vision 2-a is added to read as follows:

4 2. Procedure; New York city employees. [~~An~~] For any employee in the
5 service of the city of New York described in paragraph (a), (b), (c),
6 (d), or (e) of subdivision one of this section, if such employee [~~who~~]
7 at the time of questioning appears to be a potential subject of disci-
8 plinary action, he or she shall have a right to representation by his or
9 her certified or recognized employee organization under article fourteen
10 of this chapter and shall be notified in advance, in writing, of such
11 right. [~~A state employee who is designated managerial or confidential~~
12 ~~under article fourteen of this chapter, shall, at the time of question-~~
13 ~~ing, where it appears that such employee is a potential subject of~~
14 ~~disciplinary action, have a right to representation and shall be noti-~~
15 ~~fied in advance, in writing, of such right.~~] If representation is
16 requested a reasonable period of time shall be afforded to obtain such
17 representation. If the employee is unable to obtain representation with-
18 in a reasonable period of time the employer has the right to then ques-
19 tion the employee. A hearing officer under this section shall have the
20 power to find that a reasonable period of time was or was not afforded.
21 In the event the hearing officer finds that a reasonable period of time
22 was not afforded then any and all statements obtained from said ques-
23 tioning as well as any evidence or information obtained as a result of
24 said questioning shall be excluded, provided, however, that this subdi-

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

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1 vision shall not modify or replace any written collective agreement
2 between a public employer and employee organization negotiated pursuant
3 to article fourteen of this chapter. A person against whom removal or
4 other disciplinary action is proposed shall have written notice thereof
5 and of the reasons therefor, shall be furnished a copy of the charges
6 preferred against him or her and shall be allowed at least eight days
7 for answering the same in writing. The hearing upon such charges shall
8 be held by the officer or body having the power to remove the person
9 against whom such charges are preferred, or by a deputy or other person
10 designated by such officer or body in writing for that purpose. In case
11 a deputy or other person is so designated, he or she shall, for the
12 purpose of such hearing, be vested with all the powers of such officer
13 or body and shall make a record of such hearing which shall, with his or
14 her recommendations, be referred to such officer or body for review and
15 decision. The person or persons holding such hearing shall, upon the
16 request of the person against whom charges are preferred, permit him or
17 her to be represented by counsel, or by a representative of a recognized
18 or certified employee organization, and shall allow him or her to summon
19 witnesses in his or her behalf. The burden of proving incompetency or
20 misconduct shall be upon the person alleging the same. Compliance with
21 technical rules of evidence shall not be required.

22 2-a. Procedure; non-New York city employees. For any employee
23 described in paragraph (a), (b), (c), or (e) of subdivision one of this
24 section not in the service of the city of New York, the following proce-
25 cedure shall apply: An employee under this subdivision who at the time of
26 questioning appears to be a potential subject of disciplinary action
27 shall have a right to representation by his or her certified or recog-
28 nized employee organization under article fourteen of this chapter and
29 shall be notified in advance, in writing, of such right. A state employ-
30 ee who is designated managerial or confidential under article fourteen
31 of this chapter, shall, at the time of questioning, where it appears
32 that such employee is a potential subject of disciplinary action, have a
33 right to representation and shall be notified in advance, in writing, of
34 such right. If representation is requested a reasonable period of time
35 shall be afforded to obtain such representation. If the employee is
36 unable to obtain representation within a reasonable period of time the
37 employer has the right to then question the employee. A hearing officer
38 under this section shall have the power to find that a reasonable period
39 of time was or was not afforded. In the event the hearing officer finds
40 that a reasonable period of time was not afforded then any and all
41 statements obtained from said questioning as well as any evidence or
42 information obtained as a result of said questioning shall be excluded,
43 provided, however, that this subdivision shall not modify or replace any
44 written collective agreement between a public employer and employee
45 organization negotiated pursuant to article fourteen of this chapter. A
46 person against whom removal or other disciplinary action is proposed
47 shall have written notice thereof and of the reasons thereof, shall be
48 furnished a copy of the charges preferred against him or her and shall
49 be allowed at least eight days for answering the same in writing. The
50 hearing upon such charges shall be held by a hearing officer who shall
51 be a member of the American Arbitration Association, and such hearing
52 officer shall be selected by the mutual agreement of the person against
53 whom disciplinary action is proposed and of the employing officer or
54 body. If such mutual agreement cannot be reached, then the hearing offi-
55 cer shall be selected pursuant to the rules of the American Arbitration
56 Association. Such hearing officer shall, for the purpose of such hear-

ing, 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 and decision, be referred to such officer or body for implementation. The hearing officer 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 on 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. The hearing officer shall be paid a fee which is equivalent to the normal and customary fee paid to him or her for services as an arbitrator under the auspices of the American Arbitration Association. Provided, however, that the provisions of this subdivision shall not supersede or apply to an existing hearing officer policy and procedure that is the result of a collective bargaining agreement between an employer and a recognized or certified employee organization or any hearing officer policy and procedure currently existing for state employees designated managerial or confidential which was in effect on the effective date of this subdivision.

§ 2. Subdivision 3 of section 75 of the civil service law, as amended by chapter 710 of the laws of 1984, is amended to read as follows:

3. Suspension pending determination of charges; penalties; New York city employees. ~~[Pending]~~ For any employee in the service of the city of New York described in paragraph (a), (b), (c), (d), or (e) of subdivision one of this section, pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or 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 officer or 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 officer or 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.

§ 3. Subdivision 3-a of section 75 of the civil service law, as added by chapter 753 of the laws of 1990, is amended and a new subdivision 3-b is added to read as follows:

3-a. Suspension pending determination of charges and penalties relating to police officers of the police department of the city of New York. ~~[Pending]~~ Notwithstanding the provisions of subdivision three of this section, pending the hearing and determination of charges of incompetency or misconduct, a police officer employed by the police department of the city of New York may be suspended without pay for a period not exceeding thirty days. If such officer is found guilty of the charges, the police commissioner of such department may punish the police officer

1 pursuant to the provisions of sections 14-115 and 14-123 of the adminis-
2 trative code of the city of New York.

3 3-b. Suspension pending determination of charges; penalties; non-New
4 York city employees. For any employee described in paragraph (a), (b),
5 (c), or (e) of subdivision one of this section not in the service of
6 the city of New York, pending the hearing and determination of charges
7 of incompetency or misconduct, the officer or employee against whom such
8 charges have been preferred may be suspended for a period not exceeding
9 thirty days. The suspension shall be with pay, except the employee may
10 be suspended without pay if the employee has entered a guilty plea to or
11 has been convicted of a felony crime concerning the criminal sale or
12 possession of a controlled substance or a precursor of a controlled
13 substance. If such officer or employee is found guilty of the charges,
14 the penalty or punishment may consist of a reprimand, a fine not to
15 exceed one hundred dollars to be deducted from the salary or wages of
16 such officer or employee, suspension without pay for a period not
17 exceeding two months, demotion in grade and title, or dismissal from the
18 service; provided, however, that the time during which an officer or
19 employee is suspended without pay may be considered as part of the
20 penalty. If he or she is acquitted, he or she shall be restored to his
21 or her position. If such officer or employee is found guilty, a copy of
22 the charges, his or her written answer thereto, a transcript of the
23 hearing, and the determination shall be filed in the office of the
24 department or agency in which he or she has been employed, and a copy
25 thereof shall be filed with the civil service commission having juris-
26 isdiction over such position. A copy of the transcript of the hearing
27 shall, upon request of the officer or employee affected, be furnished to
28 him or her without charge.

29 § 4. This act shall take effect immediately.