STATE OF NEW YORK

9614

IN ASSEMBLY

March 28, 2022

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 independent hearing officers for certain disciplinary hearings

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

Section 1. Short title. This act shall be known and may be cited as the "New York State firefighter bill of rights act".

§ 2. Section 75 of the civil service law is amended by adding a new subdivision 2-a to read as follows:

2-a. Independent hearing officer. (a) Notwithstanding any other provision of law to the contrary, including but not limited to subdivision four of section seventy-six of this title, any paid officer or member of an organized fire company or fire department of a city of less than one million population, or town, village or fire district who is represented by a certified or recognized employee organization pursuant to article fourteen of this chapter shall not be subjected to the penalty of dismissal from service or any other discipline if the hearing, upon such charge, has been conducted by someone other than an independent hearing officer to be agreed to by the employer and the person against whom disciplinary action is proposed. If the parties are unable to agree upon a hearing officer, the hearing officer shall be selected from a list of seven names to be provided by the public employment relations board. The public employment relations board shall maintain a list of independent hearing officers for this purpose. The parties shall select the hearing officer by alternately striking names from the list of seven. The hearing officer shall be vested with all powers of the appointing authority, shall conduct and make a record of the hearing, and shall render a final decision. The cost incurred in obtaining such independent hearing officer shall be divided equally between the parties; provided that as may be determined upon the circumstances of the case, the hearing officer shall be authorized to allocate such cost on the basis of the frivolous nature of any claim made or any defense interposed. In order to find a claim or defense to be frivolous, the hearing officer must find at least one of the following:

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

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(i) the claim or defense was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the action or to harass or maliciously injure another; or

(ii) the claim or defense was commenced or continued in bad faith without any reasonable basis in law or fact. If the claim or defense was promptly discontinued when the party learned or should have learned that the claim or defense lacked such reasonable basis, the hearing officer may find that the party did not act in bad faith. A person served with charges may then, however, elect in writing to proceed with a hearing pursuant to the procedures established in subdivision two of this section in lieu of the procedures set forth in this subdivision.

(b) The rights set forth in paragraph (a) of this subdivision shall be in addition to, and shall not supplant, modify or replace any rights provided to an employee pursuant to agreements negotiated by a public employer and an employee organization pursuant to article fourteen of this chapter, or pursuant to any other provision of law, including but not limited to other provisions of this section.

§ 3. Subdivision 4 of section 201 of the civil service law, as amended by chapter 606 of the laws of 1992, is amended to read as follows:

4. The term "terms and conditions of employment" means:

(a) salaries, wages, hours and other terms and conditions of employment provided, however, that such term shall not include any benefits provided by or to be provided by a public retirement system, or payments to a fund or insurer to provide an income for retirees, or payment to retirees or their beneficiaries. No such retirement benefits shall be negotiated pursuant to this article, and any benefits so negotiated shall be void.

(b) in addition, the terms and conditions of employment for firefighters shall include discipline and disciplinary procedures including alternatives to any statutory disciplinary system, provided, however, that any right of firefighters under the terms of any state law to elect coverage under either a statutory disciplinary system or a disciplinary system established by collective negotiations shall not be impaired, unless any such state law authorizes exclusivity of a negotiated disciplinary system and provided further that no provision contained in the town law, general city law, second class cities law, general municipal law, municipal home rule law, county law, or other state, local, special law or charter provision, or any special police act or other special act created by local law or charter or otherwise created, or this chapter shall prevent or impair the right to collective bargaining for or modification of disciplinary procedures.

§ 4. Section 204-a of the civil service law is amended by adding a new subdivision 4 to read as follows:

4. The terms of any current or expired agreement or interest arbitration award between any public employer and any public employee organization representing firefighters relating to the discipline of any firefighters shall be deemed valid and enforceable from the effective date of this subdivision.

§ 5. This act shall take effect on the first of March next succeeding the date on which it shall have become a law and shall apply to proceedings commenced on or after such effective date. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the provisions of this act on its effective date are authorized to be made and completed on or before such effective date.