

STATE OF NEW YORK

3748--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 7, 2023

Introduced by M. of A. PHEFFER AMATO, BRONSON, GUNTHER -- 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 and paragraph (a) of subdivision 2-a of
2 section 75 of the civil service law, subdivision 2 as amended by chapter
3 226 of the laws of 1994 and paragraph (a) of subdivision 2-a as added by
4 chapter 674 of the laws of 2022, are amended and a new subdivision 2-b
5 is added to read as follows:

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

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

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

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

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

54 (ii) the claim or defense was commenced or continued in bad faith
55 without any reasonable basis in law or fact. If the claim or defense was
56 promptly discontinued when the party learned or should have learned that

1 the claim or defense lacked such reasonable basis, the hearing officer
2 may find that the party did not act in bad faith. A person served with
3 charges may then, however, elect in writing to proceed with a hearing
4 pursuant to the procedures established in subdivision two of this
5 section in lieu of the procedures set forth in this subdivision.

6 2-b. Procedure; non-New York city employees. For any employee
7 described in paragraph (a), (b), (c), or (e) of subdivision one of this
8 section not in the service of the city of New York, the following proce-
9 cedure shall apply: An employee under this subdivision who at the time of
10 questioning appears to be a potential subject of disciplinary action
11 shall have a right to representation by his or her certified or recog-
12 nized employee organization under article fourteen of this chapter and
13 shall be notified in advance, in writing, of such right. A state employ-
14 ee who is designated managerial or confidential under article fourteen
15 of this chapter, shall, at the time of questioning, where it appears
16 that such employee is a potential subject of disciplinary action, have a
17 right to representation and shall be notified in advance, in writing, of
18 such right. If representation is requested a reasonable period of time
19 shall be afforded to obtain such representation. If the employee is
20 unable to obtain representation within a reasonable period of time the
21 employer has the right to then question the employee. A hearing officer
22 under this section shall have the power to find that a reasonable period
23 of time was or was not afforded. In the event the hearing officer finds
24 that a reasonable period of time was not afforded then any and all
25 statements obtained from said questioning as well as any evidence or
26 information obtained as a result of said questioning shall be excluded,
27 provided, however, that this subdivision shall not modify or replace any
28 written collective agreement between a public employer and employee
29 organization negotiated pursuant to article fourteen of this chapter. A
30 person against whom removal or other disciplinary action is proposed
31 shall have written notice thereof and of the reasons thereof, shall be
32 furnished a copy of the charges preferred against him or her and shall
33 be allowed at least eight days for answering the same in writing. The
34 hearing upon such charges shall be held by a hearing officer who shall
35 be selected by the mutual agreement of the person against whom discipli-
36 nary action is proposed and of the employing officer or body. If such
37 mutual agreement cannot be reached, then the hearing officer shall be
38 selected from a list of seven names to be provided by the public employ-
39 ment relations board pursuant to subdivision two-a of this section. The
40 parties shall select the hearing officer by alternately striking names
41 from the list of seven. Such hearing officer shall, for the purpose of
42 such hearing, be vested with all the powers of such officer or body and
43 shall make a record of such hearing which shall, with his or her recom-
44 mendations and decision, be referred to such officer or body for imple-
45 mentation. The hearing officer holding such hearing shall, upon the
46 request of the person against whom charges are preferred, permit him or
47 her to be represented by counsel, or by a representative of a recognized
48 or certified employee organization, and shall allow him or her to summon
49 witnesses on his or her behalf. The burden of proving incompetency or
50 misconduct shall be upon the person alleging the same. Compliance with
51 technical rules of evidence shall not be required. The cost incurred in
52 obtaining the independent hearing officer shall be divided equally
53 between the parties; provided that as may be determined upon the circum-
54 stances of the case, the hearing officer shall be authorized to allocate
55 such cost on the basis of the frivolous nature of any claim made or any
56 defense interposed in the manner provided for in paragraph (a) of subdi-

vision two-a of this section. 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 pursuant to the provisions of sections 14-115 and 14-123 of the administrative code of the city of New York.

3-b. Suspension pending determination of charges; penalties; non-New York city employees. For any employee described in paragraph (a), (b), (c), or (e) of subdivision one of this section not in the service of the city of New York, 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 for a period not exceeding thirty days. The suspension shall be with pay. 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, suspen-

1 sion without pay for a period not exceeding two months, demotion in
2 grade and title, or dismissal from the service. If he or she is acquit-
3 ted, he or she shall be restored to his or her position. If such officer
4 or employee is found guilty, a copy of the charges, his or her written
5 answer thereto, a transcript of the hearing, and the determination shall
6 be filed in the office of the department or agency in which he or she
7 has been employed, and a copy thereof shall be filed with the civil
8 service commission having jurisdiction over such position. A copy of the
9 transcript of the hearing shall, upon request of the officer or employee
10 affected, be furnished to him or her without charge.

11 § 4. This act shall take effect immediately.