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:

Section 1. Subdivision 2 and paragraph (a) of subdivision 2-a of section 75 of the civil service law, subdivision 2 as amended by chapter 226 of the laws of 1994 and paragraph (a) of subdivision 2-a as added by chapter 674 of the laws of 2022, are amended and a new subdivision 2-b is added to read as follows:

2. Procedure**; New York city employees**. [~~An~~] **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, if such** employee [~~who~~] at the time of questioning appears to be a potential subject of disciplinary action**, he or she** 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

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

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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 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.

(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 **and for the purpose described in subdivision two-b of this section**. 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:

(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.

2-b. Procedure; 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, the following procedure shall apply: An employee under this subdivision 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 other disciplinary action is proposed shall have written notice thereof and of the reasons thereof, 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 a hearing officer who shall be selected by the mutual agreement of the person against whom disciplinary action is proposed and of the employing officer or body. If such mutual agreement cannot be reached, then the hearing officer shall be selected from a list of seven names to be provided by the public employment relations board pursuant to subdivision two-a of this section. The parties shall select the hearing officer by alternately striking names from the list of seven. Such hearing officer 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 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 cost incurred in obtaining the 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 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-

sion without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service. If he or she is acquitted, he or she shall be restored to his or her position. 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.

§ 4. This act shall take effect immediately.