

No. 1990-17

AN ACT

HB 1179

Amending the act of August 10, 1951 (P.L.1189, No.265), entitled, as amended, "An act regulating the appointment, promotion, suspension, reduction, removal and reinstatement of employes (except superintendents, assistant superintendents, inspectors, chief clerks and school guards) in bureaus of police in cities of the second class; and defining the powers and duties of civil service commissions in such cities for such purposes," further providing for positions in the competitive class of the civil service, for examinations, for reinstatement of employees, for eligibility for promotion and appointment, for filling vacancies, for the composition of police trial boards, for removal, discharge and suspension, and for reductions in force.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3 of the act of August 10, 1951 (P.L.1189, No.265), entitled, as amended, "An act regulating the appointment, promotion, suspension, reduction, removal and reinstatement of employes (except superintendents, assistant superintendents, inspectors, chief clerks and school guards) in bureaus of police in cities of the second class; and defining the powers and duties of civil service commissions in such cities for such purposes," amended June 16, 1972 (P.L.459, No.143), is amended to read:

Section 3. Each applicant for original appointment to any position in the competitive class in any bureau of police in any city of the second class shall undergo a physical examination, subsequent to a mental examination but prior to appointment, which shall be conducted by a commission composed of doctors of medicine appointed for that purpose by the mayor. Said commission shall certify to the civil service commission that the applicant is free from bodily or mental defects, deformity or disease that might incapacitate him from the performance of the duties of the position he is seeking. No application for such appointment shall be received from any person who is under eighteen years of age or over thirty-five years of age at the date of his application. **[Any city of the second class may by ordinance require a person appointed as a policeman who is not a resident of said city of the second class to become a resident of said city as a condition of his continued employment, but not sooner than three months following the completion of his probationary period.]** *A person applying for appointment shall not be required to be a resident of the city at the time of application for original appointment. The person shall, however, be required to become a bona fide resident of the city at the time of employment, and city residency must be maintained for the entire period of employment.* Any applicant for reinstatement as a member of the bureau of police who shall have served as an employe in such bureau of police for a period of more than six months, and who at the time of his application for reinstatement shall be a resident of such city, shall be eligible for such reinstatement, even though such applicant shall be over the age of thirty-five years.

All original appointments to the position of police officer in the bureau of police shall be for a probationary period of six months. If at any time during the probationary period the conduct or capacity of the probationer has not been satisfactory to the appointing officer, the probationer shall be notified, in writing, that he will not receive absolute appointment, whereupon his employment shall cease; otherwise, his retention in the service shall be equivalent to final appointment.

Section 2. Section 7 of the act, amended December 22, 1965 (P.L.1177, No.465), is amended to read:

Section 7. [No employe in the competitive class in any bureau of police in any city of the second class, except any such employe who has been convicted of a felony and whose appellate remedies have been exhausted shall be removed, discharged or suspended for a period exceeding ten days as a penalty, or reduced in rank or pay without his written consent, except for just cause, which shall not be religious or political; nor, in any event, except by the decision of a court, either of trial or inquiry, duly determined and certified in writing to the mayor and approved in writing by the mayor: Provided, however, That any such employe who is suspended for a period of ten days or less shall, at his option, be granted a court hearing. Such court shall be composed of three persons employed in the competitive class of said bureau of police equal or superior in rank therein to the accused. Such decision shall only be determined by trial of charges, with plain specifications made by or lodged with the director of the department of public safety, of which trial the accused shall have due notice, and at which he shall have the right to be present in person and represented by a brother employe or any attorney-at-law to act as his counsel. The persons composing said court shall be selected as follows: The director of the department of public safety shall in the presence of the employe charged and his brother officer or the attorney-at-law acting as his counsel, as aforesaid, cause the names of at least fifty employes of the bureau of police who hold a position in the competitive class equal or superior in rank to the employe charged, to be written upon separate slips of paper of the same size, color and texture, and folded or rolled so that the names thereon cannot be distinguished until drawn as hereinafter provided, cause said slips to be placed in a box or other receptacle properly adapted for the drawing therefrom of names by law, as hereinafter provided. Said fifty names so deposited shall be provided as follows: The director of the department of public safety shall supply twenty-five thereof and the employee charged shall supply twenty-five thereof. When said names shall have been so deposited in the box or receptacle, the same shall be thoroughly shaken by some disinterested person until the slips of paper have been thoroughly mixed, and thereupon such disinterested person shall draw therefrom singly and by law seven names, and the director of the department of public safety and the person charged shall each in order be entitled to exercise alternate challenges until the names of three persons are left and said three persons shall compose the court, either of trial or inquiry, as the case may be. In the event that there should not be fifty employes of the bureau of police holding positions in the competitive class equal or superior in rank to

the employe under charges, then the names of all such employes equal or superior in rank to the employe under charges shall be so placed in said box and drawn therefrom and the court of trial or inquiry selected in the manner hereinabove described or as nearly in such manner as may be possible under the circumstances. Any employe so charged may waive by his written consent the selection of a board by agreeing to the board that has already been chosen. Any employe so charged, if he shall demand it in writing, shall be furnished promptly, without cost or expense to him, a transcript of the testimony taken before said court of inquiry or trial, duly certified by the official reporter.

The persons comprising said court shall be sworn by the director of the department of public safety to perform their duties impartially and without fear or favor.

The persons comprising said court shall select one of their number as chairman, who shall have the same authority to issue and enforce process to secure the attendance of witnesses and administer oaths to witnesses as is possessed by any justice of the peace of the Commonwealth. Such charges may be of disability for service, in which case the court shall be one of inquiry, whose decision may be for the honorable discharge of the employe concerned; or, of neglect or violation of law or duty, inefficiency, intemperance, disobedience of orders, or unbecoming official or personal conduct, in which cases the court shall be one of trial, and its decision shall authorize the director of public safety to impose fines and pecuniary penalties, to be stopped from pay, or to suspend from pay or duty, or both, for a period fixed by them, not exceeding one year, or to dismiss from the service. It shall be lawful for the director of the department of public safety, at his discretion, to suspend from duty before trial any employe charged, as aforesaid, until such trial can be had, with or without pay as such court shall afterwards determine, but no trial shall be delayed for more than ten days following the date of suspension.]

Any employe [in the competitive class] in any bureau of police in any city of the second class convicted of a felony shall be summarily dismissed from employment by the director of the department of public safety.

Section 3. Section 8 of the act is repealed.

Section 4. The act is amended by adding a section to read:

Section 9.1. (a) No employe in the competitive or non-competitive class in the bureau of police, except any such employe who has been convicted of a felony and whose appellate remedies have been exhausted, shall be removed, discharged, suspended, demoted or placed on probation, except for just cause which shall not be religious or political. The procedure for an employe to challenge a removal, discharge or suspension or placement on probation is subject to collective bargaining. Collective bargaining concerning the procedure shall commence within thirty days of the effective date of this amendatory act. Collective bargaining and, in the event of a collective bargaining impasse, arbitration shall be conducted in accordance with the act of June 24, 1968 (P.L.237, No.111), referred to as the Policemen and Firemen Collective Bargaining Act, except that the time to request collective

bargaining provided for in section 3 shall not apply if this amendatory act takes effect on a date that makes compliance with section 3 impossible.

(b) Any procedure adopted by the employer and the employe bargaining representative, either by agreement or through arbitration, must culminate in arbitration before a panel consisting of one arbitrator appointed by the employer, one arbitrator appointed by the bargaining representative of the employe and a neutral arbitrator selected by the arbitrators appointed by the parties. If the parties are unable to agree upon a neutral arbitrator, the American Arbitration Association or its successor shall be requested to submit the names of seven disinterested persons qualified to act as the neutral arbitrator. From such list in the first arbitration conducted under this section, the employe bargaining representative and employer, in that order, shall strike one name until six names have been eliminated. In the second and subsequent arbitrations, the striking order shall alternate between the employe bargaining representative and the employer. The person whose name remains will act as the neutral arbitrator. The decision of the arbitration panel will be final and binding on all parties. The city shall pay the cost of arbitration.

(c) In addition to the requirements confirmed in subsection (a), any procedure adopted or awarded must grant the employe the right to file an initial grievance against the employer. The employe must be provided the opportunity to be informed of and to respond to any charges made against him prior to being suspended or discharged from employment.

(d) The arbitration panel and procedure provided for in subsection (b) shall terminate on January 1, 1995.

Section 5. This act shall take effect in 60 days.

APPROVED—The 20th day of March, A. D. 1990.

ROBERT P. CASEY