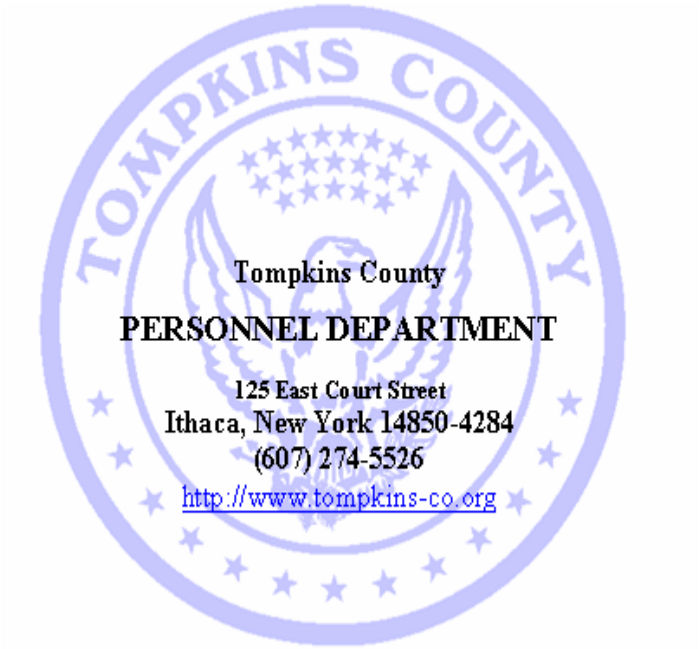
CIVIL SERVICE IN NEW YORK STATE



HISTORY AND OVERVIEW

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CIVIL SERVICE IN NEW YORK STATE

History and Overview

"To the victor belong the spoils." Nowhere was that adage truer than in New York State in the eighteenth and nineteenth centuries. The spoils system flourished from the first day of office of George Clinton, first governor of New York, in 1777 until modification of the Constitution in 1883. This type of system continued to thrive for many years without regard to which party was in power. This political patronage system was administered through Albany's infamous Council of Appointment, which doled out thousands of state jobs to the party faithful.

In 1821, a new state constitution was adopted that removed the power of appointment from the hands of the Council of Appointment and gave it solely to the governor of the state, requiring him to have approval of the state senate in order to make appointments. Unfortunately, this charter revision resulted in the rise of the "Albany Regency," which, in its early days, was used extensively by Governors Martin Van Buren (later our 8th president) and William L. Marcy (later a U.S. senator). These politicians used the Albany Regency to control job appointments for their own political gain.

It took the assassination of President James A. Garfield in 1881, to create an outrage sufficient to result in the demise of the spoils system in New York State. [President Garfield was assassinated by a disgruntled office seeker: I often wonder if this person was seeking work with the newly established United States Postal Service.] Many individuals and reform groups worked diligently for years to remove the enormous power of patronage from the hands of the governor but for the most part, their pleas to Congress fell on deaf ears.

The swell of public indignation was so great that in 1882 the various anti-spoils factions coalesced into a genuine reform movement whose voices were so loud and insistent that even the most influential power brokers could not resist their call for an equitable civil service law and bipartisan civil service system. At the federal level, the Pendleton Bill was passed by Congress in the closing days of 1882 and swiftly signed into law by President Chester Arthur on January 16, 1883. This new federal law embodied an entirely new model – the concept of merit and fitness as qualifiers for appointment.

New York State wasted no time adopting a civil service law of its own. Within a few months, Assemblyman Theodore Roosevelt routed a bill through the state legislature and Governor Grover Cleveland signed the measure into law on May 4, 1883. This law provided for a New York State Civil Service Commission consisting of three commissioners: two from one party and one from the other. Appointments to the new commission were made by the governor and they wasted no time getting together. The first meeting of the newly formed New York State Civil Service Commission was May 31, 1883.

Within the year, new legislation was enacted that extended the concept of merit system administration to municipal levels of government. [Unfortunately, possibly due to slow postal service, word of this new law did not get to some of the towns and villages in Tompkins County until the late 1990s. However, I digress.] From 1883 until 1889, this new civil service system remained controversial because the commission appointments were political appointments. If the actions of the appointees did not please the governor, he would simply remove them and seat new commissioners who were more inclined to do his bidding.

1894 was a landmark year for civil service in New York State. A constitutional convention was called and some changes were made to the constitution of New York State. Elihu Root and Joseph Choate used their influence at the constitutional convention to insert a seemingly innocuous statement into Article V, Section 6 of the Constitution of New York State. On the surface, the statement was so uncomplicated and innocent that few could see any possible reason to vote against it. As a result, article V, Section 6 of the Constitution was modified to read: **"Appointments and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive, ..."** Little did the politicians of New York State understand the far reaching implications that this simple little sentence would have on appointments in New York State.

What the politicians didn't realize is that the Civil Service Commission would take this statement literally and implement a competitive civil service testing program. They also created a Municipal Services Division and Local Examinations Section to implement this process on a local level. Of course, it was not long before someone decided to contest the validity of requiring appointees to be tested and took the matter to the courts. The courts ruled that the amendment to the constitution meant exactly what it said. All political entities in New York State are now required to fill their vacancies on the basis of merit and fitness through a competitive examination process.

For many years, those in power simply chose to ignore this new constitutional amendment or bastardized the process so much that the appointing authorities were still able to achieve their goal of hiring friends, family and political patrons. In an effort to take the teeth out of the constitution, in 1897, Governor Frank S. Black passed the Black Law, which removed the exclusive right to give examinations from the hands of the state Civil Service Commission and handed it right back over to the local government entities. The examination requirement was still there, but the foxes were once again guarding the henhouse.

Rough Rider Teddy Roosevelt succeeded Mr. Black as governor in 1899, took up his old cause of a fair and impartial civil service system and had Senator Horace White draft and sponsor new legislation that would replace the Black Law. This legislation, which tightened up several of the loopholes in the existing system and gave the power of examination back to the commission, became known as the White Law. Future abuses became more difficult. Governor Roosevelt may have chosen Senator White to sponsor this legislation to serve as the total antithesis of the Black Law, since Senator White's Legislation became known as the White Law. Coincidental? I think not.

Because the New York State Merit System exists directly within the wording of the constitution, there is no possibility of achieving any substantial change to the civil service system without calling another constitutional convention. There are a couple of reasons why it is not likely that this will happen any time in the near future. A constitutional convention requires a ¾ majority vote and most politicians are reluctant to modify the structure of our most fundamental document. As a result, Article V, Section 6 of the New York State Constitution remains in effect and unchanged to this day. All the while, the Municipal Services Division (including the state and local examinations sections) has continued to expand and perform the function, which is their charge.

Other than minor modifications of the Civil Service law, there have only been a few milestones in recent civil service history. The Condon-Wadlin Act was adopted in 1947 with the purpose of prohibiting strikes by public employees. Severe penalties were imposed on strikers. First, any striker immediately had his or her employment situation terminated. They could only be re-employed under the following conditions: the compensation to which they return could be no more than that which preceded the strike; they could get no pay increases for three years; and their continued employment was subject to a five-year probationary period.

In 1963 the Condon-Wadlin act was amended to penalize the strikers two days' pay for each day that they were on strike. However, in 1965, the five-year probationary period was reduced to one year and they could receive a raise within six months of returning to employment. Unfortunately, this provision expired and the law reverted to the original terms as specified in the previous paragraph. A twelve-day New York City transit strike in 1966 resulted in then governor Nelson Rockefeller appointing a commission to propose changes to the Condon-Wadlin act.

This commission was headed up by George W. Taylor; a professor of industrial research at the University of Pennsylvania Wharton School. He later went on to serve as a labor relations advisor to several different presidents; Roosevelt, Truman, Eisenhower, Kennedy and Johnson. Curiously enough, Mr. Taylor was a strong proponent of the strike as a private sector bargaining tool. As a result, it must have frustrated him mightily to have to work within the constraints of the Condon-Wadlin Act. On September 1, 1967, the Public Employees Fair Employment Act, or Taylor Law, was adopted.

The Taylor Law upheld some of the concepts of the Condon-Wadlin Act such as the prohibition against strikes, but expanded New York State public employees' rights by enabling them to organize, establish unions and collectively bargain with their employers. The law also provided employees with binding arbitration through the Public Employees Relations Board (PERB) in the event if an impasse in contract negotiations.

The PERB cabinet consists of three governor appointed members, no more than two of which can be of the same political party. The law also provides a very comprehensive framework from which to carry out the mission of promoting "harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government."

The Taylor Law was modified in 1969 to prohibit unfair labor practices. In 1971, certain management and confidential employees were excluded from coverage. There were many other relatively minor changes between 1971 and today. Binding arbitration was provided for certain groups in 1974. The agency shop fee was made mandatory for state units and a mandatory subject of negotiation for municipalities and other entities in 1977. However, in 1992, the agency fee deduction was made mandatory for all public employees represented by a union. In 1982, employers were required to continue the terms and conditions of expired contracts until a successor agreement could be reached.

In my opinion, the amendment with possibly the most far-reaching consequences is compulsory interest arbitration. Compulsory interest arbitration removes the incentive for unions to bargain in good faith. Arbitrators often compel employers to provide compensation and benefits above those that the union could have negotiated. Since each new contract builds on a previous one, it is in the union's best interest to go to impasse and hope that they are assigned an arbitrator who is favorable to labor. It is also my opinion that the cumulative effect of the imposition of ever expanding salary and benefits over a period of years by an outside force with no knowledge or consideration of the local tax base will ultimately have catastrophic consequences for the taxpayer.

The functions of PERB are to provide for an orderly administration of the Taylor Law, perform dispute and impasse resolution services, adjudicate improper practice claims, designate management and confidential positions, determine when a strike situation exists and impose penalties on the union and members, propose changes in the law to the Legislature, provide education to the labor relations community and the public, and provide grievance and interest arbitration panels from which employers/unions may mutually choose an arbitrator.

Recent changes to the examination process occurred when Governor George Pataki took office. One of his lofty goals was a total reform the New York State civil service system. Unfortunately, as with so many others who preceded him, that pesky wording in Article V, Section 6, of the NYS Constitution stood in his way. Since he could not change the constitution, he decided to focus on making this cumbersome and archaic system as efficient as possible.

Governor Pataki took a two-pronged approach. One idea was to take advantage of the latest technology, automate and create a totally paperless system. To date the Municipal Services Division has nearly achieved that goal. Many entities submit their annual reports, order their examinations, and receive confirmations, exam scopes, and exam results back through a secure on-line web site.

As far as the civil service process itself, the Governor found that the only reform that could be legally implemented without changing the constitution (and upon which he could gain consensus), is a change in the method of scoring examinations. For many years, civil service examinations were scored on a point-by-point basis. What Governor Pataki and many others recognized is that there is no way that any test is accurate enough to differentiate one candidate from another on a point-by-point basis.

Section 61, subsection 1, of the New York State Civil Service law is the "Rule of Three" upon which the selection process is predicated. This section of the law requires public employers to choose from among the top three candidates who are willing to accept appointment. It goes on to say that anyone with a score that is equal to the score of the person in the number three position on the list is also reachable and eligible for permanent appointment. Therefore, what Pataki was able to do is potentially provide appointing authorities with more than three people from which to choose.

This is the concept behind the term "Band Scoring." Band scoring is simply the concept of grouping individual test scores into a functionally equivalent band. All candidates who obtain a perfect test score get a band score of 100. Candidates who score in the 95th to 99th percentile are lumped together in the second band of 95. Those in the 90th to 94th percentile are grouped in the third band with a score of 90, and so on.

Just so that you are clear on this concept, I am going to take a moment to expand upon the practical application. Keep in mind that the words "willing to accept such appointment" are key since each written declination allows every candidate below the declining individual to move up "one position on the list."

Say we have a Caseworker list with three candidates with scores of 100, thirteen candidates with scores of 95, and some additional candidates below these who are irrelevant for the purpose of this exercise. Initially, there is one candidate in the number three position on the list with a tie score of 100. Without declinations, the appointing authority is restricted to choosing from among these top three or not filling the position at all.

However, if any one of the top three candidates should choose to decline this particular vacancy, then a candidate with a score of 95 would roll into the number three position on the list. Because the law says that anyone with a score equal to, but beyond, the number three position on the list is also reachable, the appointing authority now has fifteen candidates "among the top three" and immediately reachable for permanent appointment. Obviously, it does not work this way every time; however, the governor has created the potential to have more than three candidates from which to choose.

Examination/eligible list administration and labor relations are only a couple of responsibilities assigned to State and local entities. I am going to touch on various pertinent sections of the New York State Civil Service law in an attempt to give you an overview of what civil service consists of at the local level.

The local Legislature determines the form of civil service administration. Section 15 of the Civil Service law provides for three different methods of administering civil service. An entity can have a Civil Service Commission, a Personnel Officer or a Regional Civil Service Commission or Regional Personnel Officer. Section 16 enables the legislative body to change the form of administration at any time. Section 17 defines the jurisdiction of each commission or personnel officer. It also provides the ability to conduct examinations and establish lists at its own expense. Most entities leave the job of exam creation to the examiners at the State level.

Section 20 of the Law commands local entities to promulgate and maintain a set of local rules whose purpose is to further refine and define the spirit and intent of the Constitution and New York State Civil Service law. Procedures for adopting and amending the text and appendices of those rules are spelled out therein. Section 21 provides a commission or personnel officer with the authority to conduct such investigations as necessary to carry out the duties and responsibilities of the office. This would include background checks, reference checks, criminal history checks, drug testing, etc.

Section 22 indicates that before any new position in the jurisdiction can be created or any existing position can be reclassified, the appointing authority must provide a duties statement to the civil service office. It is the civil service office's responsibility to work collaboratively with the appointing authority to create, classify and certify an official civil service job description. Section 23-4a of the law is particularly useful in helping appointing authorities to reach a particular candidate.

This section of the law enables a commission or personnel officer to certify a list by residency. That is, the appointing authority can request that only residents of a given geographic or political area be certified for appointment. Section 25 enables the State to overturn any action taken by a local commission or personnel officer. Section 26 provides for local entities to provide an annual report to NYS. Section 27 prohibits a commissioner of personnel officer from holding any other office or from serving as an officer of any political party in order to avoid a conflict of interest.

Section 35 of the law defines all positions that are not covered by civil service. These are called “Unclassified” positions and are basically comprised of all elected officers, some political appointees, boards of elections, teachers and supervisors in school districts, all teachers and other professional university and community collage employees. Sections 40 through 45 of the law basically outline the remaining four classes of civil service.

Any title excluded from the Competitive class must be listed as such in the local civil service rules. Exempt class employees are “at will” and serve at the pleasure of an Unclassified (usually elected) appointing authority. The appointing authority is limited to a certain number of Exempt class employees as specified in the local rules. In addition, as vacancies occur, the position must be evaluated within four months of such vacancy as to the appropriateness of the position remaining Exempt. The term Exempt has a different meaning in civil service law from that specified in the Federal Fair Labor Standards Act. Exempt employees may be exempt or non-exempt under FLSA. The two should not be confused.

The definition of a Non-competitive class employee is one for which it is not practical to determine the merit and fitness of an applicant through competitive examination. The only test is whether or not the candidate meets the minimum qualifications of the position.

The difference between a Non-competitive and Labor class employee is that Non-competitive employees can gain some civil service protections after serving for at least five years, whereas, Labor class employees are totally “at-will” and can never gain rights under the law. That is not to say that Labor class employees can not negotiate some protections as a term or condition of their employment through the collective bargaining process. It simply means that the law provides Labor class employees with no protections. Labor class employees are generally unskilled workers for which no qualifications exist.

Section 44 of the law brings us to the Competitive class, which is the class of workers to which the preponderance of civil service law speaks. These are “all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination.” What many entities do not realize is that they can not simply create a new position/title in any classification other than the competitive class. The law provides for all positions “hereafter created, of whatever functions, designations or compensation, in each and every branch of the classified service, except such positions as are in the exempt class, the non-competitive class or the labor class.” To be clear, all newly created positions are automatically created in the competitive class unless some action is taken to petition the State Civil Service Commission for approval to remove such title from the competitive class.

Section 50 of the law covers examinations. It outlines what positions are covered (competitive positions), how examinations are to be announced, the method for applying to take the examination, and acceptable reasons for disapproving candidates who might otherwise meet the minimum qualifications. It includes a provision for an examination fee (or not) and payment to the state for their exam preparation services. This section ensures that examinations shall be practical, relate to the subject matter, and fairly test all subjects. It provides for a review of the examination questions and answers. This section enables a commission or personnel officer to limit eligibility to take the exam to one particular sex "when the duties of the position involved relate to the institutional or other custody or care of persons of the same sex. . ." Section 50 provides for alternate test dates for those who have an acceptable reason.

Subsection 11 of this Section make it unlawful to impersonate another to take a test, attempt to procure any other person to falsely impersonate someone to take a test on his or her behalf, possess and/or attempt to use or sell any of the official test questions or answers or disclose questions or answers to another party. It makes it illegal to destroy, falsify or conceal records or results of examinations. The penalty for any or all of these is a misdemeanor with a sentence of a maximum of six months incarceration or a fine of one thousand dollars or both. A candidate would also be banned from participating in any civil service examination for five years. Section 51 of the law provides for filling vacancies by conducting examinations that are open to the public.

However, Section 52 of the law indicates that where practical promotion shall be made from among internal candidates with due weight given to seniority. Seniority credits are applied to raw scores before the band-scoring formula is applied. This section also provides promotion opportunities to people who are on a leave of absence or who have been laid off and are on "preferred lists."

Section 52 provides for non-competitive promotion exams (when the promotion field consists of three or fewer employees) departmental, interdepartmental and intergovernmental promotion exams. An employee is considered to be promoted if he or she receives an increase in salary or other compensation beyond that fixed for the labor grade of the position. This section also enables non-competitive class employees who hold at least two years of service the opportunity to promote provided that an open-competitive examination is held as a backup.

Section 55 of the law provides equal opportunity for blind, physically and mentally disabled candidate. This section allows an employer to make a non-competitive appointment to an entry-level competitive class position if the person seeking employment has been determined by the State Commission for the Blind or the State Department of Vocational and Educational Services for Individuals with Disabilities (VESID) as having a qualifying disability. Once these individuals gain employment, they are enabled to take promotion examinations under the previously mentioned Section 52.

Section 56 of the law regulates the establishment and sets the duration of eligible lists. Lists can be established for as little as one year (and can be extended on a year-for-year basis) to a maximum of four years.

Section 57 enables commissions or personnel officers to conduct certain examinations on what is called a continuous recruitment basis. This facilitates the creation of a continuously rolling list wherein names are interfiled after testing and others drop off either as they are appointed, decline or their period of eligibility expires.

Section 58 outlines the requirements for the employment of Police Officers (including Deputy Sheriffs). These requirements are that he must be no less than twenty, nor more than thirty-five, years of age in order to be eligible for appointment. The exception to the maximum age limit is that a candidate can subtract time spend on active military duty from his age. At the minimum, a candidate must be a high school graduate or possess a General Equivalency Diploma. Many agencies have adopted higher educational standards for their entry level police officers. A police officer must also satisfy some fairly stringent height, weight, physical and medical fitness standards as adopted by the New York State Bureau of Municipal Police. The candidate must be of good moral character. A record of disrespect for the law does not create a good impression with a Police Chief or the Sheriff.

In addition, Officers who wish to promote must have first received a permanent competitive class appointment as a police officer. Many candidates get their foot in the door by taking part-time Non-competitive class appointments in Towns and Villages. This enables them to attend Police Academy, making them a much more attractive candidate for appointment if reachable on the eligible list. The wording and intent of Section 58 is such that if you wish to be a full-time police officer or supervisory officer you must obtain your employment through the competitive process.

Section 60 defines the process by which eligible lists are certified to appointing authorities for their use in making permanent appointments. This law also provides for the certification of a list on the basis of sex when the duties involved relate to the institutional or custodial care of people of the same sex. Corrections Officers are a prime example of a situation in which only female Officers can supervise female inmates. This was recognized by the authors and promulgated in this rule.

We talked about Section 61 earlier in this paper when discussing the "Rule of Three", so I will not go into further detail about that. However, Subsection 2 of this rule is important in that it addresses proper position classification and provides a prohibition against "out-of-title work." No person shall be required to perform duties that are not reasonably related to their title. In addition, out-of-title work is not creditable toward qualifying for a promotion examination. This section also requires potential employers to notify candidates who were certified for consideration for a job but not selected. One would think this is common sense, but obviously this was an attempt to legislate morality. Notifying candidates as to their status is not only required, it is also the polite thing to do.

Section 62 of the law requires all new employees to pledge a constitutional oath upon appointment. Generally, this is included as part of the application form and is pledged with a signature. Native Americans are granted an alternative oath, but must pledge none the less.

Section 63 outlines a probationary period for every employee. The details of the probation are not contained within the law but are defined in the Local Civil Service Rules. More importantly, this section of the law requires employers to hold the position of an employee pending completion of probation in a higher title or their return. This encumbrance creates myriad of problems in departments with large numbers of employees that have very linear promotion lines. It has a tendency to create a domino effect. A principal encumbers a senior slot which then requires the senior to encumber an entry level position. If the principal does not pass their exam, does not successfully complete probation, or elects to return to their old slot of their own volition then he or she bumps the senior who in turn bumps the entry level person who ends up drawing unemployment through no fault of their own.

Temporary appointments are now tightly controlled. This is one area in which the old timers used to circumvent the civil service system. Section 64 authorizes appointments without examination for less than three months, even in the face of an existing eligible list. In the absence of an eligible list, temporary appointments can be made for up to six months without ordering an examination. In an exceptional situation, this temporary appointment can be extended to as much as one year.

A temporary appointment from three to six months can be made from an existing eligible list without regard to the eligible's standing on that list. Anything beyond six months must be made from among the top three candidates willing to accept such appointment. Temporary employees do not enjoy any of the rights afforded to permanent competitive class employees.

Often, vacancies occur for which no civil service list exists. The temporary appointment is of an indefinite nature and is called a "provisional" appointment. Provisional employees have no right to their position. They must take the next examination that comes up, pass, score among the top three, and be doing a good job.

Section 65 outlines the requirements of this type of appointment. The law indicates that no provisional appointment shall continue for a period in excess of nine months. The reality is that the examination process at the State level is so flawed that most provisional employees are virtually assured of being provisional beyond the statutory nine-month period. This is one of the reasons that Governor Pataki chose to implement his reforms, to reduce the number of people who are provisional for years. Oddly enough, there are still certain exams that are only given every other year virtually assuring that this statutory requirement will never be met.

The law also requires the termination of provisional appointments within two months following establishment of the eligible list. A provisional appointment can be terminated in one of two ways. If the incumbent is among the top three on the list, it can mature into a permanent appointment. If the incumbent is not reachable on the list or did not pass, they would have to be reinstated to a position that was being held for them (if any) or their employment must be terminated. The only way that a failing candidate can obtain a successive provisional appointment (second chance) is if there are two or fewer candidates on the resulting list. The only way to get a third and final provisional appointment would be if there were absolutely no candidates on the list willing to accept the appointment.

Transfers are a common method of recruiting trained staff. According to Section 70, a transfer does not have to be title-for-title, but the essential components of the examination would have to be very similar and the qualifications for the position would have to be equal to or higher than those required for the position from which transfer is requested.

Occasionally, it is necessary to transfer the functions from one department of government to another. In this case, the local legislature can adopt a resolution to transfer personnel upon transfer of the function. If they are civil service employees, their seniority travels with them for the purpose of examinations, retirement service credit and layoff. However, other fringe benefits may or may not travel with them.

Section 71 of the law grants individuals who have been injured on the job at least one-year leave of absence. If able to work, they are reinstated within one year. If they are unable to return to work by the end of that year, it is the employee's responsibility to make application for a medical examination to determine fitness for return to work. If they are released to return to work but there is no work or no position, they have the right to be placed on a preferred list for reinstatement for up to four years.

When an employee is unable to perform the essential functions of their position due to a disability other than Workers Compensation, Sections 72 and 73 of the law applies. These sections enable the employer to require an independent medical examination. If the medical professional determines that the employee is unable to perform the duties of the position, he or she is placed on a medical leave of absence. The employee is entitled to draw all accumulated fringe time to his or her credit. There is an appeal process contained within the law. However, the bottom line is that if the employee is absent from his or her position for a cumulative period of one year, the employment situation may be terminated, releasing the encumbrance on the position. This is always unfortunate but is sometimes necessary in order for the employer to move on and get back to the work of government.

Section 75 of the law provides an employee with their discipline and discharge rights. I will go into these in greater detail in another paper but the gist of this section is that all permanent competitive class employees, certain veterans, and non-competitive employees with at least five years of service have the right to a formal hearing process prior to the imposition of discipline or termination for misconduct or incompetence. An employee may be suspended without pay for 30-days pending determination of the charges. However, (and this is one area in which PERB is quite weak) once the 30-days of unpaid suspension has passed, the employee can either remain suspended with pay or brought back to work.

Typically, it takes five to six months for the process to grind through the PERB arbitration process and it would be quite expensive to have someone sitting at home with full pay for the next four or five months pending arbitration. Most employers elect to bring the employee back to work and let PERB set the final penalty. If PERB determines guilt, by law the only penalties that can be imposed are one or more of the following; a written reprimand to the employee's file, a fine not to exceed $100 to be deducted from the salary or wages of the employee, suspension without pay not to exceed two months, demotion in grade and title, or (depending on the severity of the charges) dismissal from the service. The statute of limitations for disciplinary proceedings is eighteen months from the date of the alleged incompetence or misconduct. The appeal process for discipline is contained within Section 76 of the law. If ordered by the court to reinstate, the employer is required by Section 77 to make whole with regard to compensation.

Occasionally, municipalities are required to streamline their workforce due to economy, consolidation or the outright abolition of certain functions. Section 80 of the law provides for an orderly reduction of force. Layoffs are performed in the inverse order of seniority. That is, those with the least seniority are the first to go. This section also directs local civil service agencies to adopt a local rule to further refine and define the layoff process. This local rule (ours happens to be Section XXV) would clarify bump and retreat rights. Section 80 basically governs the creation of seniority rosters.

Section 81 defines and directs employers to establish "Preferred Lists" from which reinstatement is made. An employee's eligibility on a preferred list is good for four years. As the economy improves or the function gets reinstated, the names on the preferred list are certified by seniority, those with the greatest seniority receiving first preference for reinstatement.

Section 85 plays directly off of Article V, Section 6, of the Constitution of New York State. This section defines the terms "veteran", "non-disabled veteran" and "disabled veteran" referenced in the constitution. It also goes on to specify the time frames that are considered to be war or conflict periods. A veteran will only get extra credit added to his final exam score if he or she was active during an official war or conflict period. Non-disabled veterans are entitled to five points to be added to an open-competitive list or two and one-half points added to a promotional eligible list. Disabled veterans are entitled to ten points on an open-competitive list or five points on a promotional list.

All veterans' credits are added to the final score, not a raw score. There is the possibility that a disabled veteran could actually end up with an open-competitive list score of 110. What is not common knowledge is that these points can be applied to as many eligible lists as you wish. However, they can only be used for appointment once in a lifetime. Regardless of the number of lists to which you have applied the points, you have not actually used them until you receive an appointment in which those extra points were necessary to place you among the top three on an eligible list. Once that situation exists and the permanent appointment has been made, the credits have been used.

The "Duties of Public Officers" begins at Section 95 of the Civil Service law. This is the section of law of which most towns, villages and school districts would prefer to remain blithely unaware. Section 95 directs "all officers of the state or any civil division thereof to conform to and comply with and aid in all proper ways in carrying into effect the provisions of civil service law." Section 96 indicates that a public officer can not require an employee to sign any document waiving the rights provided by civil service law. Section 97 requires appointing officers to conform to the letter of the law and local rules. It directs them to appoint competitive class employees from eligible lists and to report all appointments made in any classification to their local civil service office for tracking. Subsection 2 of this rule requires the personnel officer or civil service commission to maintain an official roster of employees in all civil divisions under its jurisdiction.

Section 100 of the law requires appointing authorities to certify their payroll at least once per year. The civil service office looks for violations of the law and is responsible for notifying the disbursing officer. If no action is taken to resolve the issue, payroll certification is withdrawn and all salaries paid out of compliance become the personal liability and responsibility of the person signing the paycheck. In addition, Section 101 makes it a misdemeanor to continue to pay salary in violation of the law.

Section 102 enables any taxpayer to take action in the Supreme Court to restrain illegal payment of salary or compensation. Unfortunately, judgments are proactive only. However, action can be taken by taxpayers or a municipal civil service commission or personnel officer to recover sums illegally paid directly from appointing authorities and fiscal officers. All money received from the appointing authority and/or fiscal officer goes directly to the state with the exception being that the taxable costs of such action can be given to the taxpayer making such claim.

Section 105 is a curious law making anyone who advocates the overthrow of government ineligible for employment. This must have been a cold war era law as it specifically states that "membership in the communist party of the United States of America or communist party of the state of New York shall constitute prima facie evidence of disqualification for appointment or retention in any office or position in the service of the state or any city or civil division thereof." A civil servant may also be removed for treasonable or seditions acts or utterances.

Section 107 addresses politics in the workplace. Political affiliations (with the exception of Unclassified appointments in Boards of Elections) should be irrelevant to employment in New York State. This section prohibits employers from asking or for using knowledge of an employee or candidate's political affiliation in a discriminatory manner. This prohibition also addresses political assessments and influence pedaling.

You will note gaps in the numbering sequence. Some sections of the law have been abolished or repealed. Others I have passed over as being irrelevant to the administration of civil service at the local level. The sections contained within this paper, however, are the backbone of civil service as it exists and is administered in Tompkins County.

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