

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 843

Session of
1975

INTRODUCED BY IRVIS, RHODES AND ITKIN, MARCH 18, 1975

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 19, 1975

AN ACT

1 Amending the act of August 10, 1951 (P.L.1189, No.265),
2 entitled, as amended, "An act regulating the appointment,
3 promotion, suspension, reduction, removal and reinstatement
4 of employes (except superintendents, assistant
5 superintendents, inspectors, chief clerks and school guards)
6 in bureaus of police in cities of the second class; and
7 defining the powers and duties of civil service commissions
8 in such cities for such purposes," providing for a Police
9 Trial Board and creating a Police Trial Board Council.

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

12 Section 1. Section 7, act of August 10, 1951 (P.L.1189,
13 No.265), entitled, as amended, "An act regulating the
14 appointment, promotion, suspension, reduction, removal and
15 reinstatement of employes (except superintendents, assistant
16 superintendents, inspectors, chief clerks and school guards) in
17 bureaus of police in cities of the second class; and defining
18 the powers and duties of civil service commissions in such
19 cities for such purposes," amended December 22, 1965 (P.L.1177,
20 No.465), is amended to read:

21 Section 7.--(a) No employe [in the competitive class] in any
22 bureau of police in any city of the second class, except any

1 such employe who has been convicted of a felony and whose
2 appellate remedies have been exhausted shall be removed,
3 discharged or suspended for a period exceeding ten days as a
4 penalty, or reduced in rank or pay without his written consent,
5 except for just cause, which shall not be religious or
6 political; nor, in any event, except by the decision of [a
7 court, either of trial or inquiry, duly determined and certified
8 in writing to the mayor and approved in writing by the mayor:
9 Provided, however, That any such employe who is suspended for a
10 period of ten days or less shall, at his option, be granted a
11 court hearing. Such court shall be composed of three persons
12 employed in the competitive class of said bureau of police equal
13 or superior in rank therein to the accused. Such decision shall
14 only be determined by trial of charges, with plain
15 specifications made by or lodged with the director of the
16 department of public safety, of which trial the accused shall
17 have due notice, and at which he shall have the right to be
18 present in person and represented by a brother employe or any
19 attorney-at-law to act as his counsel. The persons composing
20 said court shall be selected as follows: The director of the
21 department of public safety shall in the presence of the employe
22 charged and his brother officer or the attorney-at-law acting as
23 his counsel, as aforesaid, cause the names of at least fifty
24 employes of the bureau of police who hold a position in the
25 competitive class equal or superior in rank to the employe
26 charged, to be written upon separate slips of paper of the same
27 size, color and texture, and folded or rolled so that the names
28 thereon cannot be distinguished until drawn as hereinafter
29 provided, cause said slips to be placed in a box or other
30 receptacle properly adapted for the drawing therefrom of names

1 by law, as hereinafter provided. Said fifty names so deposited
2 shall be provided as follows: The director of the department of
3 public safety shall supply twenty-five thereof and the employee
4 charged shall supply twenty-five thereof. When said names shall
5 have been so deposited in the box or receptacle, the same shall
6 be thoroughly shaken by some disinterested person until the
7 slips of paper have been thoroughly mixed, and thereupon such
8 disinterested person shall draw therefrom singly and by law
9 seven names, and the director of the department of public safety
10 and the person charged shall each in order be entitled to
11 exercise alternate challenges until the names of three persons
12 are left and said three persons shall compose the court, either
13 of trial or inquiry, as the case may be. In the event that there
14 should not be fifty employes of the bureau of police holding
15 positions in the competitive class equal or superior in rank to
16 the employe under charges, then the names of all such employes
17 equal or superior in rank to the employe under charges shall be
18 so placed in said box and drawn therefrom and the court of trial
19 or inquiry selected in the manner hereinabove described or as
20 nearly in such manner as may be possible under the
21 circumstances. Any employe so charged may waive by his written
22 consent the selection of a board by agreeing to the board that
23 has already been chosen. Any employe so charged, if he shall
24 demand it in writing, shall be furnished promptly, without cost
25 or expense to him a transcript of the testimony taken before
26 said court of inquiry or trial, duly certified by the official
27 reporter.

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

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

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

27 (b) As used in this act:

28 "Board" means the Police Trial Board.

29 "Council" means the Police Trial Board Council.

30 "Director" means the director of the department of public

1 safety of cities of the second class.

2 "Panel" means six members of the Police Trial Board Council,
3 appointed to serve either in the category of police bureau non-
4 civil service level representatives, police bureau civil service
5 level representatives or the Mayor's Commission on Human
6 Relations representatives.

7 (c) There is hereby established in cities of the second
8 class, the Police Trial Board Council which shall be the source
9 of individuals who shall constitute the Police Trial Boards,
10 which boards are to be convened by the director of the
11 department of public safety under the following circumstances:

12 (1) Where an officer of the police bureau has been ordered
13 suspended for more than ten days, reduced in rank or pay, or
14 discharged from service; or

15 (2) Where requested by the Mayor's Commission on Human
16 Relations on the basis of a complaint by a citizen; or

17 (3) On his own initiative.

18 (d) The Police Trial Board Council shall consist of eighteen
19 members categorized into three panels of six individuals each.
20 The director of the department of public safety shall appoint a
21 panel of six non-civil service level employees of the police
22 bureau below the rank of superintendent and a panel of six civil
23 service level employees of the police bureau, and, the Mayor's
24 Commission on Human Relations shall appoint a panel of six
25 individuals, not employees of any governmental body, to serve as
26 members of the council. At least two members of each panel shall
27 be from minority racial groups. The term of appointment shall be
28 for a period of three years: Provided, however, That of the
29 members initially appointed, one-third shall be appointed for
30 one year, one-third for two years and one-third for three years

1 in each of the three original panels appointed. Terms of
2 appointment shall be limited to two but any member who has
3 previously served may be reappointed after an absence of one
4 year. Appointments to the Police Trial Board Council shall be
5 made on the basis of knowledge of and sensitivity to community
6 affairs and police procedures. Appointees beginning their first
7 term on the council shall undergo orientation in trial board
8 procedure, police policy and community affairs from the city
9 solicitor's office and the Police Bureau's Community Affairs
10 Division, which shall include guidelines as to the assessment of
11 penalties in cases of judgments against police officers.

12 (e) The Police Trial Board shall consist of three members
13 chosen from each of the three panels of the Police Trial Board
14 Council. The director of the department of public safety shall
15 select one name from the panel of non-civil service category
16 members; the accused shall select one name from the panel of
17 civil service category members; and the Mayor's Commission on
18 Human Relations shall select one name from the panel of
19 representatives chosen by the mayor's commission. The three
20 names shall constitute the trial board and the chairman shall be
21 the senior police officer of those chosen. No member of the
22 council shall sit on more than two consecutive trial boards. The
23 board shall have the power to hold hearings, subpoena witnesses,
24 compel their attendance, administer oaths, take testimony of any
25 person under oath or affirmation and, in connection therewith,
26 to require the production for examination of any books and
27 papers relating to any matter under investigation where a
28 complaint has been properly filed. In case of contumacy or
29 refusal to obey a subpoena issued to any person, the
30 Commonwealth Court or any court of common pleas within the

1 jurisdiction of which the hearing is to be held or the said
2 person charged with contumacy or refusal to obey is found,
3 resides or transacts business, upon application by the board,
4 may issue to such person an order requiring such person to
5 appear before the board, there to produce documentary evidence,
6 if so ordered, or there to give evidence touching the matter in
7 question, and any failure to obey such order of the court may be
8 punished by said court as a contempt thereof. No person shall be
9 excused from attending and testifying, or from producing
10 records, correspondence, documents or other evidence in
11 obedience to the subpoena of the board, or of any individual
12 board member, on the ground that the testimony or evidence
13 required of him may tend to incriminate him or subject him to a
14 penalty or forfeiture, but no person shall be prosecuted or
15 subjected to any penalty or forfeiture for or on account of any
16 transaction, matter or thing concerning which he is compelled,
17 after having claimed his privilege against self-incrimination,
18 to testify or produce evidence, except that such person so
19 testifying shall not be exempt from prosecution and punishment
20 for perjury committed in so testifying. The immunity herein
21 provided shall extend only to natural persons so compelled to
22 testify. The case in support of the complaint shall be presented
23 before the board by an attorney appointed by the director of
24 public safety. The respondent may file a written, verified
25 answer to the complaint and appear at such hearing in person or
26 otherwise, with or without counsel, and submit testimony. The
27 complainant may likewise appear at such hearing in person or
28 otherwise, with or without counsel, and submit testimony. The
29 board or the complainant shall have the power reasonably and
30 fairly to amend any complaint, and the respondent shall have

1 like power to amend his answer. The board shall not be bound by
2 the strict rules of evidence prevailing in courts of law or
3 equity. The testimony taken at the hearing shall be under oath
4 and be transcribed.

5 If, upon all the evidence at the hearing, the board shall
6 find by a two-thirds vote that the charges made in a complaint,
7 in fact, are valid, it shall:

8 (1) In cases where an officer has been penalized by a
9 superior, consider the justice of the penalty and reduce,
10 increase or eliminate the penalties assessed against the
11 officer;

12 (2) In cases of a complaint by a citizen, determine and
13 order an appropriate penalty for the offense as charged.

14 (3) In cases of a complaint by the director of the
15 department of public safety, determine and order an appropriate
16 penalty for the offense as charged.

17 If, upon all the evidence, the board shall find a respondent
18 has not engaged in any unlawful act, the board shall state its
19 findings of fact, and shall issue and cause to be served on the
20 complainant an order dismissing the said complaint as to such
21 respondent. The board shall convey the findings of the hearing
22 to the complainant, the director of the department of public
23 safety and the accused within five days of the close of the
24 hearing. In any case where a penalty has been levied the accused
25 shall have the right to appeal to the court of common pleas of
26 the county within which the hearing was held.

27 Any complaint filed pursuant to this section must be so filed
28 within two years after the alleged act. Any complaint may be
29 withdrawn at any time by the party filing the complaint.

30 (f) The complainant or the board may secure enforcement of

1 the order of the board, or other appropriate relief by the court
2 of common pleas of the county within which the hearing was held.
3 When the board has heard and decided any complaint brought
4 before it, enforcement of its order shall be initiated by the
5 filing of a petition in such court, together with a transcript
6 of the record of the hearing before the board, and issuance and
7 service of a copy of said petition as in proceedings in equity.
8 When enforcement of a board order is sought, the court may make
9 and enter, upon the pleadings, testimony and proceedings set
10 forth in such transcript, an order or decree enforcing,
11 modifying and enforcing as so modified, or setting aside, in
12 whole or in part, the order of the board, and the jurisdiction
13 of the court shall not be limited by acts pertaining to equity
14 jurisdiction of the courts. An appeal may be taken as in other
15 civil actions. Any failure to obey an order of the court may be
16 punished by said court as a contempt thereof. The board's copy
17 of the testimony shall be available at all reasonable times to
18 all parties for examination without costs, and for the purpose
19 of enforcement or judicial review of the order. The case shall
20 be heard without requirement of printing. Except as otherwise
21 provided herein, any order of the board may be reviewed under
22 the provisions of the act of June 4, 1945 (P.L.1388, No.442),
23 known as the "Administrative Agency Law."

24 Section 2. Section 8 of the act is amended to read:

25 Section 8. After full and complete hearing, the [court of
26 trial or inquiry] Police Trial Board shall determine its
27 decision which shall be promptly certified in writing to the
28 mayor, [After approval by the mayor in writing, the director of
29 the department of public safety shall notify the accused in
30 writing of such decision, including the penalty, if any.] the

1 accused, the complainant, the director of the department of
2 public safety, and where applicable, the civil service
3 commission. In every case of [such] removal, discharge,
4 suspension, reduction or fine, [the complete record of the
5 proceedings and decision of the court of trial or inquiry,
6 approval by the mayor, and notice of the director of the
7 department of public safety shall be furnished forthwith to the
8 civil service commission and entered upon its records. Within
9 ten days following the receipt of the written notice of the
10 director of the department of public safety, if served
11 personally, or within ten days from the date of the mailing of
12 such written notice by the director of the department of public
13 safety to the last known address of the accused employe, the
14 accused employe shall have the right to appeal to the civil
15 service commission of such city. The civil service commission
16 shall review the entire record, including the testimony before
17 the court of trial or inquiry, and shall have the right to
18 affirm, modify or revoke the decision of the court of trial or
19 inquiry. The civil service commission, in arriving at its
20 decision, may permit the taking of additional testimony, but
21 shall not be bound to do so. If the civil service commission
22 shall fail to sustain the decision of removal of the officer,
23 the person sought to be removed shall be reinstated with full
24 pay for the entire period during which he has been prevented
25 from performing his usual employment, and no charges shall be
26 recorded against him. In the event the decision shall be
27 modified or sustained by the civil service commission, the
28 person penalized shall have the right to appeal, by petition to
29 the court of common pleas of the county, within thirty days
30 after receipt of written notice of such action by the civil

1 service commission. It shall be the duty of the civil service
2 commission to give such notice.] the person penalized shall have
3 the right to appeal to the court of common pleas of the county
4 within which jurisdiction the hearing was held. In every case so
5 appealed to the court of common pleas of the county, the court
6 shall hear the charges made against the accused de novo. Notice
7 of the taking of such appeal shall be served on the city
8 solicitor within ten days following the taking of the appeal.
9 The court shall fix a time and place for hearing, shall make
10 findings of fact and conclusions of law, and file a decision.
11 The issue before the court shall be whether the action of the
12 trial [court] board shall be affirmed or modified in any respect
13 or whether the charges should be dismissed. Where any
14 [policeman] person has been suspended by the action of the trial
15 [court] board and the charges are dismissed on appeal, [the
16 policeman] he shall receive full compensation for the entire
17 period of suspension.

18 Section 3. This act shall take effect in 60 days.