

VETO MESSAGE - No. 33

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 4357, entitled:

"AN ACT to amend the civil service law, in relation to independent hearing officers for disciplinary hearings"

NOT APPROVED

This bill which is essentially identical to bills that were vetoed 7 times by Governors Cuomo and Pataki would provide that no represented public employee covered by Civil Service law Section 75 may be discharged without a hearing before an independent adjudicator. The bill sets forth the procedure for such a hearing, including selection of the hearing officer and the sharing of costs between the employer and employee. The Governor's Office of Employee Relations, the Division of the Budget, the Department of Correctional Services, the Division of State Police, the New York Conference of Mayors and Municipal Officials, and the Mayor of the City of New York all object to the enactment of this bill.

Section 75 already sets forth certain requirements for disciplinary proceedings, including notice of the charges and a hearing. Supporters of the bill argue that this process is controlled by the employer, and therefore inherently unfair. While such concerns are understandable, they are not the only interests at stake in the disciplinary process. The public also has a strong interest in allowing government the flexibility to remove employees who violate significant disciplinary rules, or otherwise pose a danger to public or interfere with government operations. The degree of that interest will vary depending on the particular function of the unit at issue, and I do not believe a "one size fits all" approach to the protections afforded employees facing discharge is appropriate.

In addition, many public employers already negotiate or otherwise adopt a wide variety of disciplinary procedures above and beyond the basic statutory protections set forth in Civil Service Law Section 75, and this process reflects the give and take of collective bargaining, and the needs of the particular employer and its employees. In some instances, these proceedings involve an independent hearing officer like that created under this bill. In other instances particularly in the law enforcement field the employer typically retains greater control over the process. While the bill would permit negotiated procedures to continue in addition to those provided for under the bill, it would replace every carefully bargained agreement on procedures that do not meet the bill's standard. In my view, this is an unwarranted interference with the collective bargaining process.

Finally, bifurcating disciplinary procedures into those for discharge and those for imposition of lower penalties could provide problematic. The bill requires an employer to decide at the outset of proceedings what penalty will be imposed. Any decision by an employer that an infraction is sufficiently grave to warrant discharge would be

tantamount to a decision to cede control over the ultimate outcome. That dilemma may well lead employers to impose a lesser sanction even when discharge is appropriate, to avoid the expense and uncertainty of a hearing before an independent officer.

The bill is disapproved.

(signed) ELIOT SPITZER