

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 394  
HOUSE BILL 376

AN ACT TO MAKE THE DECISION OF SUPERIOR COURT BINDING WHEN IT AFFIRMS THE DECISION OF THE PERSONNEL COMMISSION AND TO REQUIRE THAT NOTICE BE GIVEN TO THE COUNTY WHEN A LOCAL EMPLOYEE FILES AN ACTION PURSUANT TO G.S. 126-37 AGAINST MOST LOCAL APPOINTING AUTHORITIES AND TO MAKE THAT ENSUING DECISION OF SUPERIOR COURT BINDING ON THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-37 reads as rewritten:

**"§ 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.**—(a)

The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission. Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority.

(b) An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial de novo. In such an action brought by a local employee under this section, the defendant shall be the local appointing authority. If superior court affirms the

decision of the Commission, the decision of superior court shall be binding on the local appointing authority.

(c) If the local appointing authority is other than a board of county commissioners, the employee must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the filing of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

Sec. 2. This act is effective upon ratification and applies to all pending proceedings; provided, local employees shall have 60 days from the effective date to give notice to the county as provided in subsection (c) of this section.

In the General Assembly read three times and ratified this the 17th day of June, 1987.