

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 572
SENATE BILL 118

AN ACT TO CHANGE THE PROCESS OF APPEALING UNDER THE STATE
PERSONNEL ACT CERTAIN PERSONNEL DECISIONS OF LOCAL
APPOINTING AUTHORITIES.

The General Assembly of North Carolina enacts:

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

"§ 126-37. Personnel Commission to review Administrative Law Judge's recommended decision and make final decision.

(a) 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, except as provided in subsection (b1) of this section. 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.~~

(b1) In appeals involving local government employees subject to this Chapter pursuant to G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this Chapter is found or in any case where a binding decision is required by applicable federal standards, the decision of the State Personnel Commission shall be

advisory to the local appointing authority. The State Personnel Commission shall comply with all requirements of G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90 days of receipt of the advisory decision of the State Personnel Commission, issue a written, final decision either accepting, rejecting, or modifying the decision of the State Personnel Commission. If the local appointing authority rejects or modifies the advisory decision, the local appointing authority must state the specific reasons why it did not adopt the advisory decision. A copy of the final decision shall be served on each party personally or by certified mail, and on each party's attorney of record.

(b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6 of this Chapter has occurred or in any case where a binding decision is required by applicable federal standards shall be heard as all other appeals, except that the decision of the State Personnel Commission shall be final.

(c) If the local appointing authority is other than a board of county commissioners, the ~~employee-local appointing authority~~ 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 receipt~~ 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. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. ~~The case shall be~~

~~conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the State Personnel Commission shall be advisory only and not binding on the local appointing authority, unless (1) the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. The case shall be conducted in the same manner as other contested cases under this Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these two cases, the State Personnel Commission's decision shall be binding. binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority."~~

Sec. 3. This act becomes effective January 1, 1995, and applies to cases filed on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives