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HB 1206/96 - JUD

1997 Regular Session
7lr2708

By: Delegates Bissett and Grosfeld

Introduced and read first time: February 10, 1997
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 20, 1997

CHAPTER ____

1 AN ACT concerning

2 **Law Enforcement Officers' Bill of Rights - Hearing Boards - Composition and Authority**

3 FOR the purpose of altering provisions of the Law Enforcement Officers' Bill of Rights
4 regarding the establishment and authority of an alternate hearing board; allowing
5 certain binding arbitration; requiring a certain governmental agency that has
6 recognized a certain collective bargaining representative to negotiate with the
7 representative, at the representative's request, an alternate method of forming a
8 hearing board; requiring a hearing board to recommend a certain punishment under
9 certain circumstances; ~~repealing the requirement that a chief personally disclose~~
10 ~~and provide to an officer certain information before increasing a recommended~~
11 ~~penalty of the hearing board~~; requiring a certain governmental agency that has
12 recognized a certain collective bargaining representative to agree, at the
13 representative's request, to make the hearing board's disciplinary recommendations
14 final and binding on all parties; making a hearing board's recommendations
15 appealable under certain circumstances; making technical changes; and generally
16 relating to the authority of a certain hearing board.

17 BY repealing and reenacting, with amendments,
18 Article 27 - Crimes and Punishments
19 Section 727(d) and 731(b), (c), and (d)
20 Annotated Code of Maryland
21 (1996 Replacement Volume)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article 27 - Crimes and Punishments**

2 727.

3 (d) "Hearing board" means:

4 (1) A board which is authorized by the chief to hold a hearing on a
5 complaint against a law enforcement officer and which consists of not less than three
6 members, except as provided in paragraphs (2) and (3) of this subsection, all to be
7 appointed by the chief and selected from law enforcement officers within that agency, or
8 law enforcement officers of another agency with the approval of the chief of the other
9 agency, and who have had no part in the investigation or interrogation of the law
10 enforcement officer. At least one member of the hearing board shall be of the same rank
11 as the law enforcement officer against whom the complaint has been filed.

12 (2) (i) [The provisions of this paragraph may not be the subject of
13 binding arbitration.

14 [(ii)] An agency or an agency's superior governmental authority that has
15 recognized and certified an exclusive collective bargaining representative [may] SHALL,
16 AT THE REPRESENTATIVE'S REQUEST, negotiate with the exclusive collective bargaining
17 representative an alternate method of forming a hearing [board] BOARD, INCLUDING
18 BINDING ARBITRATION.

19 [(iii)] (II) A law enforcement officer may elect the alternate method of
20 forming a hearing board instead of the method described in paragraph (1) of this
21 subsection if the law enforcement officer works within an agency described in
22 subparagraph [(ii)] (I) of this paragraph and the law enforcement officer is included in
23 the collective bargaining unit.

24 [(iv)] (III) An agency described in subparagraph [(ii)] (I) of this
25 paragraph shall notify the law enforcement officer in writing before the formation of the
26 hearing board that the law enforcement officer may elect an alternate method of forming
27 a hearing board if one has been negotiated under this paragraph.

28 [(v)] (IV) If the law enforcement officer elects an alternate method of
29 forming a hearing board under this paragraph, the alternate method shall be used to form
30 the hearing board.

31 [(vi)] (V) An agency or an exclusive collective bargaining
32 representative may not require a law enforcement officer to elect an alternate method of
33 forming a hearing board under this paragraph.

34 [(vii)] (VI) If the law enforcement officer has been offered summary
35 punishment, an alternate method of forming a hearing board may not be used.

36 (3) If a law enforcement officer is offered summary punishment imposed
37 pursuant to § 734A and refuses, the chief may convene a one-member or more hearing
38 board and the hearing board shall have only the authority to recommend the sanctions as
39 provided in this subtitle for summary punishment. If a single member hearing board is
40 convened, that member need not be of the same rank. However, all other provisions of
41 this subtitle shall apply.

3

1 731.

2 (b) After the disciplinary hearing and a finding of guilt, the hearing board [may]
 3 SHALL recommend punishment as it deems appropriate under the circumstances,
 4 including but not limited to demotion, dismissal, transfer, loss of pay, reassignment, or
 5 other similar action which would be considered a punitive measure.

6 (c) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
 7 SUBSECTION, THE written recommendations as to punishment are not binding upon the
 8 chief. Within 30 days of receipt of the hearing board's recommendations, the chief shall
 9 review the findings, conclusions, and recommendations of the hearing board and then the
 10 chief shall issue a final order. The chief's final order and decision is binding and may be
 11 appealed in accordance with this subtitle. Before the chief may increase the
 12 recommended penalty of the hearing board, the chief personally shall:

13 [(1)] (I) Review the entire record of the hearing board proceedings;

14 [(2)] (II) Meet with the law enforcement officer and permit the law
 15 enforcement officer to be heard on the record; ~~AND~~

16 ~~(3)~~ (III) Disclose and provide to the officer in writing at least 10 days prior
 17 to the meeting any oral or written communication not included in the hearing board
 18 record on which the decision to consider increasing the penalty is based, in whole or in
 19 part; and

20 ~~(4)~~ ~~(III)~~ (IV) State on the record the substantial evidence relied on to
 21 support the increase of the recommended penalty.

22 (2) AN AGENCY OR AN AGENCY'S SUPERIOR GOVERNMENTAL
 23 AUTHORITY THAT HAS RECOGNIZED AND CERTIFIED AN EXCLUSIVE COLLECTIVE
 24 BARGAINING REPRESENTATIVE SHALL, AT THE REPRESENTATIVE'S REQUEST,
 25 AGREE TO MAKE THE HEARING BOARD'S DISCIPLINARY RECOMMENDATIONS FINAL
 26 AND BINDING ON ALL PARTIES. A HEARING BOARD'S DISCIPLINARY
 27 RECOMMENDATIONS ARE APPEALABLE IN ACCORDANCE WITH THIS SUBTITLE.

28 (d) (1) Notwithstanding any other provisions of this subtitle, the decision of the
 29 hearing board, both as to findings of fact and punishment, if any, is final:

30 (i) If ~~if~~ a chief is an eyewitness to the incident under investigation};
 31 or

32 (ii) If an agency or its superior governmental authority has agreed with
 33 an exclusive collective bargaining representative recognized or certified under applicable
 34 law that the decision is final.

35 [(2) The provisions of paragraph (1)(ii) of this subsection may not be the
 36 subject of binding arbitration].

37 [(3)] (2) The decision then may be appealed in accordance with § 732 of
 38 this subtitle.

39 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 40 October 1, 1997.

