ASSEMBLY, No. 1662

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:
Assemblyman GORDON M. JOHNSON
District 37 (Bergen)

SYNOPSIS

Transfers all probation functions and employees to Bureau of Probation in State Parole Board.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT concerning probation officers, supplementing chapter 4 of Title 30 of the Revised Statutes, and amending P.L.1968, c.303.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) All of the functions, powers and duties of the New Jersey State Judiciary concerning probation, except as herein otherwise provided, are hereby transferred to the Bureau of Probation in the State Parole Board and shall be exercised by the Chairman of the State Parole Board. Unless otherwise specified in this act, this transfer shall be subject to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.). All records, equipment, and other personal property, appropriations, and any unexpended balances of funds appropriated or otherwise available to the New Jersey State Judiciary pertaining to probation officers subject to the provisions of this act shall be transferred to the Bureau of Probation in the State Parole Board pursuant to the "State Agency Transfer Act."

2. (New section) All probation officers appointed pursuant to N.J.S.2A:168-5, including supervisory employees and those who are case-related professional employees, and all employees who are subject to the New Jersey State Judiciary contracts for the professional supervisors unit and case-related professionals unit are hereby transferred from the New Jersey State Judiciary to the Bureau of Probation in the State Parole Board.

3. (New section) a. Nothing in this act, including any provision concerning the transfer or use of funds or property, shall be construed to alter or modify the responsibilities and specifications for any probation officer position which are applicable prior to the effective date of this act.

b. The implementation of this act in and of itself shall not be construed to alter or modify the assignment of any probation officer existing prior to the effective date of this act.

c. Nothing in this act shall be construed to alter or modify the rights and privileges granted to probation officers pursuant to the provisions of P.L.2001, c.362 (C.2B:10A-1 et seq.) and any judicial determinations concerning that act.

4. (New section) Whenever any statute, rule, regulation, order, contract, tariff, document, reorganization plan, or judicial or administrative proceeding concerning probation officers refers to the New Jersey State Judiciary or the Administrative Office of the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

Courts, the reference shall mean and refer to the Bureau of Probation in the State Parole Board, unless otherwise stated in this act.

5. (New section) a. The contracts concerning employee organizations representing probation officers who are supervisory employees and those who are case-related professional employees which expire on June 30, 2008, or any successor agreement, shall continue in full force and effect until the expiration date; provided, however, that the employee organizations and the Chairman of the State Parole Board, immediately upon the effective date of this act, shall negotiate any changes appropriate to these contracts as a result of the transfer. In addition, such employees shall be subject to the rules and regulations of the Public Employment Relations Commission, except as modified herein, in connection with successor agreements to those which expire June 30, 2008.

b. This act shall not be construed to transfer any employee who is represented by any other employee organization; provided, however, this act shall be construed to transfer Chief Probation Officers and Assistant Chief Probation Officers to the Bureau of Parole in the State Parole Board.

c. Notwithstanding any law, rule, regulation, contract, or agreement to the contrary, the categories of employees represented in the Judiciary professional supervisors unit and case-related professional unit shall continue as they existed prior to the effective date of this act after the transfer of probation functions, powers and duties to the State Parole Board.

6. (New section) All employees transferred pursuant to the provisions of this act shall be employees of the Bureau of Probation in the State Parole Board and shall retain their career service employment status and collective bargaining status, including all rights of tenure, retirement, pension, disability, leave of absence or similar benefits, held on the effective date of this act.

7. (New section) Any act which is inconsistent with this act shall be considered modified or repealed. The modification shall be consistent with the provisions of this act.

8. Section 7 of P.L.1968, c.303 (C.34:13A-5.3) is amended to read as follows:

7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial

executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, <u>or for employee organizations with members who are probation officers,</u> no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes, by the majority of the employees voting in an election conducted by the commission as authorized by this act or, at the option of the representative in a case in which the commission finds that only one representative is seeking to be the majority representative, by a majority of the employees in the unit signing authorization cards indicating their preference for that representative, shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. An authorization card indicating preference shall not be valid unless it is printed in a language understood by the employees who signs it.

Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Except as otherwise provided herein, the procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L.1968, c.303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S.53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year.

Where the State of New Jersey and the majority representative have agreed to a disciplinary review procedure that provides for binding arbitration of disputes involving the major discipline of any

public employee protected under the provisions of this section, other than public employees subject to discipline pursuant to R.S.53:1-10, the grievance and disciplinary review procedures established by agreement between the State of New Jersey and the majority representative shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, major discipline shall mean a removal, disciplinary demotion, suspension or fine of more than five days, or less where the aggregate number of days suspended or fined in any one calendar year is 15 or more days or unless the employee received more than three suspensions or fines of five days or less in one calendar year.

In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.

(cf: P.L.2005, c.380, s.1)

9. This act shall take effect on the first day of the fourth month after enactment.

STATEMENT

This bill creates a Bureau of Probation in the State Parole Board. Except as provided in the bill, all of the functions, powers, and duties of the New Jersey State Judiciary concerning probation are transferred to the Bureau of Probation in the State Parole Board. The transfer would be subject to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

Under the provisions of the bill, all probation officers and those employees who are subject to the professional case-related contract and the professional supervisors contract are transferred from the New Jersey State Judiciary to the Bureau of Probation in the State Parole Board.

The bill provides that contracts concerning probation officers who are supervisory employees and those who are case-related professional employees would continue in full force and effect until their expiration. Any changes appropriate to these contracts as a result of the transfer would immediately be negotiated by probation officers' employee organizations and the State Parole Board.

The bill further specifies that all transferred employees would be employees of the Bureau of Probation in the State Parole Board and would retain their career service employment status and collective bargaining status, including all rights of tenure, retirement, pension, disability, leave of absence or similar benefits, held on the bill's effective date.

Finally, the bill amends section 7 of P.L.1968, c.303 (C.34:13A-5.3) to permit the employee organizations which have represented probation officers prior to the enactment of this bill to continue their representation.