



SPONSOR: Sen. Walsh & Rep. Osienski  
Rep. Heffernan

DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

SENATE BILL NO. 239

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO HEARING OFFICERS WITHIN THE DEPARTMENT OF LABOR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 23, Title 19 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 2301. Definitions. As used in this chapter:

4 (14) "Hearing officer" means a hearing officer ~~appointed~~ pursuant to § 2301B of this title.

5 § 2301B. Hearing officers.

6 (a) There is hereby created within the Department of Labor the full-time position of hearing officer. With respect  
7 to cases arising under Part II of this title, the hearing officers shall ~~have:~~ have the following:

8 (1) All powers and duties conferred or imposed upon such hearing officers by law or by the Rules of  
9 Procedure for the Industrial Accident ~~Board;~~ Board.

10 (2) The power to administer oaths and ~~affirmations;~~ affirmations.

11 (3) The power, with consent of the parties, to hear and determine any prehearing matter pending before the  
12 Board. In such circumstances, the hearing officer's decision has the same authority as a decision of the Board and is  
13 subject to judicial review on the same basis as a decision of the ~~Board;~~ Board.

14 (4) The power, with consent of the parties, to conduct hearings, including any evidentiary hearings required  
15 by Part II of this title, and to issue a final decision determining the outcome of such hearings. In such circumstances,  
16 the hearing officer's decision has the same authority as a decision of the Board and is subject to judicial review on the  
17 same basis as a decision of the ~~Board;~~ Board.

18 (5) The hearing officer shall have the responsibility for advising the Board regarding legal issues and writing  
19 the Board's decision with respect to any hearing conducted by the Board at which such hearing officer has been  
20 assigned by the Department. The hearing officer shall not participate in the deliberations of the Board with respect to  
21 the determination of matters before the Board or vote on any matter to be decided by the Board, but may be present  
22 during such deliberations for the purpose of providing legal ~~advise;~~ advice.

23 (6) With respect to any matter to which they are assigned responsibility in accordance with Part II of this title,  
24 the same authority as the Board would have to conduct or dispose of such matter in accordance with Part II of this title  
25 and the Board's Rules of Procedure. In such circumstances, any reference in Part II of this title or the Board's Rules of  
26 Procedure to the Board shall also refer to the hearing officer when such hearing officer is assigned responsibility in  
27 accordance with Part II of this title.

28 (b) Hearing officers shall be appointed by the Secretary of Labor and shall serve for a term of 5 years; provided  
29 however, that the initial hearing officers may be appointed to terms shorter than 5 years, but not less than 3 years, to ensure  
30 staggered term expirations. Labor. Appointees shall be residents of the State, shall be duly admitted to practice law before  
31 the Supreme Court of this ~~State~~ State, and shall may not engage in the practice of law ~~nor~~ or any business, ~~occupation~~  
32 occupation, or employment inconsistent with the expeditious, ~~proper~~ proper, and impartial performance of their duties. ~~The~~  
33 ~~number of hearing officers from 1 major political party shall not exceed a majority of 1.~~ Individuals appointed as hearing  
34 officers under this section shall take the oath or affirmation prescribed by article XIV, § 1 of the Delaware Constitution  
35 before they enter upon the duties of their office.

36 (c) Hearing officers shall report to and be supervised by a chief hearing officer, who shall be designated by the  
37 Secretary of Labor. ~~Reappointments shall be at the discretion of the Secretary of Labor. The salary of a hearing officer shall~~  
38 ~~not be reduced during the term being served below the salary fixed at the beginning of that term.~~

39 (d) The removal of a hearing officer by the Secretary of Labor, ~~after consultation with the Chairperson of the~~  
40 ~~Board, during the term of appointment may be made for just cause. For the purposes of this subsection only, "just cause"~~  
41 ~~shall be defined as including, but not limited to, reduction in force, inefficiency or unsatisfactory performance of duties.~~  
42 ~~The employee may contest the removal and file for binding arbitration and an arbitrator will be appointed jointly by the~~  
43 ~~Chairperson of the Merit Employees Relations Board and the Secretary of the Department of Human Resources to~~  
44 ~~determine the matter.~~ Labor must be made in accordance with State Merit Rules.

#### SYNOPSIS

This Act removes the 5-year term limit imposed upon hearing officers appointed by the Secretary of Labor. It also removes the political party affiliation rule when considering new candidates for the hearing officer position.

The Act removes references to reappointments and clarifies that the removal of a hearing officer is made consistent with the State Merit Rules.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Walsh