

Opinion No. 62-138

November 5, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Milton E. Scudder, Director, State Personnel, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Does an employee covered by Personnel Act have a right to a Personnel Board hearing on his dismissal when the reason given for the dismissal is administrative change and a reduction in personnel?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 13 of the Personnel Act provides that any employee who is dismissed may appeal to the Personnel Board and "have the right to be heard publicly and to present facts pertinent to the appeal." There is no limitation placed on this right.

Section 15 of the Personnel Act prohibits the firing of an employee "because of political or religious opinions or affiliation." It further prohibits the firing of an employee for refusing to contribute to a political organization.

It is our opinion that any employee who is discharged, no matter what reason the employer may give in the termination notice, is entitled to a full hearing before the Board in order that the Board can make a determination as to whether the firing was justified or not.

If a discharged employee could not have a hearing simply because the reason stated in the termination notice was reduction in force, then the right to a hearing could easily be circumvented by an employer disposed to do so.

The Legislature intended no such result. It intended that if a covered agency is pursuing an objectionable firing practice, the employee, the Personnel Board and the public are entitled to be made fully aware of this fact.