

MAINE STATE LEGISLATURE

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STATE OF MAINE
ONE HUNDRED AND EIGHTH LEGISLATURE
COMMITTEE ON STATE GOVERNMENT

January 23, 1978

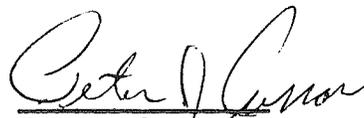
Rep. John Martin, Chairman
Legislative Council
State House
Augusta, Maine 04333

Dear Representative Martin:

Enclosed is the report of the State Government Committee on intermittent employees, pursuant to HP 1760.

Sincerely yours,


Donald Collins
Senate Chairman


Peter Curran
House Chairman



108TH LEGISLATURE

REPORT OF THE STATE
GOVERNMENT COMMITTEE
ON INTERMITTENT
EMPLOYEES
(PURSUANT TO HP 1760)

Senate

Donald F. Collins, Senate Chairman
Olympia J. Snowe
Roland D. Martin

House

Peter J. Curran, House Chairman
Judy C. Kany
Anne J. Bachrach
G. William Diamond
Stephanie Locke
Barry L. Valentine
Nancy N. Masterton
Eugene L. Churchill
Robert G. Stubbs
James A. Silsby



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5	Correspondence illustrating the problem of an inter- mittent employee in the Department of Manpower Affairs
6	Draft Legislation to implement this report



II. PURPOSES OF STUDY

HP 1760 which authorizes this study, directs the State Government Committee to study the status of intermittent employees of the State of Maine and to report its findings and recommendations to the Legislature.

II. PROCEDURE OF COMMITTEE

Budget limits were placed on all Joint Standing Committees for studies conducted after the end of the First Regular Session of the 108th Legislature. To accommodate these limits, subcommittees were assigned to complete preliminary work on the several studies done by the State Government Committee. The subcommittee for this study included Representative Eugene Churchill, chairman, and Representatives Stephanie Locke and Barry Valentine.

The subcommittee's findings and recommendations were reviewed at a meeting of the full Committee, at which instructions were given for the preparation of this report. The full committee voted in favor of publication of the findings and recommendations of the subcommittee, and for subsequent hearing of the Bill included in this report. The vote did not constitute endorsement by the Committee of either the findings or recommendations.

Representatives of the following were contacted during the study:

Department of Personnel

Department of Manpower Affairs

Bureau of Alcoholic Beverages

Maine State Employees Association

American Federation of State, County, and Municipal Employees.

III. BACKGROUND

A. Definition of "Intermittent Employee" ^{a/}

All classified State employees are assigned to a "position" which is defined as:

"Position" means a group of current duties and responsibilities assigned or delegated by competent authority, requiring the full time, part time or intermittent employment of one person.

Four types of positions are further identified:

1. "Permanent Position" -- a position to be paid from State funds and the duration of which is not limited to a particular season of the year or for a particular period of time.
2. "Seasonal Position" -- a position established for less than full year periods and \longleftrightarrow expected to be of a regularly recurring nature.
3. "Project Position" -- a position which is restricted to a planned work program to be completed within a specified limited period of time and which is not of a seasonal or regularly recurring nature.
4. "Limited Position" -- a position, as authorized by the State Budget Officer, of other than project nature which, because of budgetary limitations, has a time limit set at the time of establishment.

Employment under each of the 4 types of positions may be:

1. "Full-time Employment" -- employment normally expected for at least the standard work week (40 hours) for the class and agency.
2. "Part-time Employment" -- employment for less than the standard work week for the class and agency, on regularly scheduled hours per week for the position.
3. "Intermittent Employment" -- employment from time to time to work irregular hours or weeks; effective October 11, 1977, an intermittent position may not be established when it will be used in excess of 19 hours per week or 25 weeks per year.

a/

The definitions below are based upon Rule 1.3 and Personnel Bulletin 8.1 of the Department of Personnel

B. Number of Intermittent Employees

There are, therefore, 12 types of employment offered in the classified service, 4 of which are intermittent. Appendix 2 is a table which shows the organizational location of these positions. As of September 30, 1977, there were 735 intermittent positions established, of which 425 were filled. (i.e., an employee has been assigned to the position, although he did not necessarily work that day), and 310 were vacant. The largest numbers of intermittents are located in the Employment Security Commission and in the Bureau of Alcoholic Beverages.

C. Pay, Benefits, and "Status" of Intermittent Employees

An intermittent employee is always paid at the first step in the pay range for which the position is rated. Unlike other employees, the intermittent employee may not advance to the second and subsequent steps due to longevity.

With respect to benefits, intermittents:

1. May not accrue vacation or sick leave, or take paid holidays.
2. May voluntarily participate in retirement and insurance programs if permitted by the retirement system to do so; the retirement board permits them to participate in the retirement but not in the insurance program; participation in the retirement program is on less favorable terms than participation by other employees (e.g., full-time employees earn 1.6 days retirement credit for 1 day's work, intermittents earn 1 day's credit for 1 day's work), however, the retirement board is considering making the terms identical.

"Status" refers to special privileges given to certain State employees relating to personnel actions affecting them such as hiring, firing, promotions, transfers, and discipline. All full-time permanent State employees who are not on a probationary appointment (i.e., most State employees) have "status." By Personnel Department rule, no intermittent employee has status.

One illustration of a typical application of status follows. Prior to appointing an individual to a full-time permanent position, a "register" is established containing the names of individuals eligible to be appointed. The register is established on the basis of their having obtained a satisfactory examination score and on the basis of their "status." Persons must be appointed to positions from the register only in the following order: 1st -- certain persons with status who were laid off; 2nd -- persons with status who are employed by the hiring agency who are seeking a promotion; 3rd -- persons with status, who are employed by other State agencies and who are seeking a promotion; 4th -- other persons without status, including intermittent employees.

D. Opportunity for Legislative Control

Intermittent employment is virtually unaffected directly by the statutes. The system of intermittent employment has been developed administratively (i.e., by rule and other administrative action) with respect to:

1. Establishing and abolishing positions (intermittent positions are not authorized by Legislature);
2. Establishing rates of pay, benefits, and policies on status; and
3. Appointing intermittent employees.

Intermittent employment is affected indirectly by Legislative action. For example, expenditures for intermittent salaries are counted in the limit on an agency for expenditures for salaries. But there is no Legislative limit on the number of intermittent employees.

It would be possible to put the entire system of intermittent employment in the statutes, if that were determined to be appropriate.

II MANAGEMENT AND LABOR POSITIONS ON THE ISSUE OF INTERMITTENT EMPLOYMENT

A. Management

Appendix 3 is a copy of Personnel Bulletin 8.1, dated October 11, 1977; which sets out the policy of the Department of Personnel for intermittent employees:

1. Intermittent positions and employment are a legitimate and required part of the State personnel system.
2. Intermittent positions should be limited to situations requiring employment only from time to time to work irregular hours or weeks; and such positions should be established only where they will be used not more than 19 hours per week nor more than 25 weeks per year.
3. Employees in intermittent positions should have no status; may not accrue vacation or sick leave or take paid holidays; and may voluntarily participate in retirement or insurance programs, subject to approval by the retirement system.

In addition, by Bulletin 8.1 the Department has required agencies to review existing intermittent positions to determine whether they are valid as defined.

Appendix 4 gives the positions of the major employers of intermittent employees, the Department of Manpower Affairs and Bureau of Alcoholic Beverages.

B. Labor

Representatives of unions which attended the hearing:

1. Believe that there is a place for intermittent positions and employment in the State personnel system,
2. Believe that the use of the intermittent position has been abused -- i.e., that this type of position has been used when some other type of position should have been used, and that the intermittent category has been used to avoid the additional out-of-pocket costs (e.g., salary and benefits) and restriction of the Personnel Law. (e.g., use of appointment registers).
3. Want (a) establishment and use of intermittent positions and (b) the salaries, benefits, and opportunities to acquire status by incumbents of these positions to be brought under and made more like the system for full-time permanent employees.

MSEA is representing an employee of the Employment Security Commission who is attempting to be reclassified from an intermittent position. Appendix 5 contains some correspondence relative to that employee which illustrates the issue of lack of status.

C. Comment

It is not clear whether Bulletin 8.1 would remedy any "abuses" of the establishment and use of intermittent positions that might exist:

1. It is not clear from the Bulletin what is to be done by an agency or the Department of Personnel if an invalid intermittent position is discovered. Section 1 under "Guidelines" simply requires the agency to determine whether such positions are "valid." Section 1 under "Procedures" seems to limit the Department's authority to approve establishment of positions to new positions.
2. As a practical matter, if an intermittent position is found to be invalid and it is determined that it should be reclassified as a position subject to Legislative approval, the position could not be used until the Legislature approved it.
3. Beginning in January, 1977, many State employees will become eligible for the first time for unemployment insurance. In order to be eligible, an employee needs

only to have earned, in the last 5 completed calendar quarters, a total of \$900, including \$250 in each of 2 of those 5 quarters. This eligibility rule clearly would cover at least some intermittents. It is not certain what incentive this will provide with respect to the hiring and use of intermittents, but it could encourage either (a) a proliferation of many intermittent positions and employment of a large number of individuals to avoid eligibility; or (b) more extensive use of a smaller number of intermittents to reduce unemployment costs; or (c) more limited use of positions other than full time to reduce unemployment costs.

III. RECOMMENDATIONS

The Committee recommends legislation to accomplish the following:

1. Every employee of the State who is newly employed or re-employed shall, on the first day of such employment, be informed in writing of his rate of pay, benefits, conditions of employment, and rights (including the right to appeal decisions made with respect to his employment).
2. Intermittent employees of the State shall be permitted to participate more fully in the State's personnel system. After completion of the full-time equivalent of 6 months employment by the State (i.e., 1040 hours of work), an intermittent employee shall be eligible to earn vacation and sick days on a pro rata basis; to receive pro rata holiday pay if he works on the days before and after the holiday; to receive an increase in salary to the next step on the same basis as full-time employees (i.e., after completing 2080 hours of work); to participate in health and hospitalization insurance on a basis reflecting less than full-time employment; and to be entitled to "status". The subcommittee recommends that intermittent employees not be eligible for the State life insurance plan, because of the difficulty of devising a rational system to calculate coverage and the potential for abuse.
3. All the provisions of number 2 above shall be subject to any changes contained in a collective bargaining agreement signed by the State and a labor union.

Appendix 6 contains draft Legislation to implement this report.

APPENDICES

APPENDIX 1

HP 1760

STATE OF MAINE

In House

~~Ordered~~

Whereas, there are large numbers of state employees presently designated as "intermittent employees" pursuant to Personnel Rule 1.3 (10); and

Whereas, many of these employees have been and are employed on a regular and nearly full-time basis; and

Whereas, these employees perform duties identical or ^{to} similar/duties performed by permanent state employees; and

Whereas, these employees do not enjoy any of the same benefits and protections afforded permanent employees, such as vacation leave, sick leave, health and accident insurance, retirement benefits and promotional rights; and

Whereas, certain state employees are not receiving equal pay for equal work; now, therefore, be it

Ordered, the Senate concurring, that the Joint Standing Committee on State Government undertake a study of the status of all intermittent employees employed by the State of Maine; and be it further

Ordered, that the Commissioner of Personnel immediately undertake an investigation of the status of these employees and supply to the Joint Standing Committee on State Government such information, including the names, service history and employment status of all intermittent employees presently employed or employed

H.P. 1760

since July of 1966 by the State of Maine, as may be necessary for the committee to make recommendations to alleviate the inequities suffered by these employees without jeopardizing their continued employment; and be it further

Ordered, that the committee shall complete this study no later than December 1, 1977, and submit to the Legislative Council within the same time period its findings and recommendations, including copies of any recommended legislation in final draft form; and be it further

Ordered, upon passage in concurrence, that a suitable copy of this order shall be forwarded to members of the committee.

HOUSE OF REPRESENTATIVES
READ AND PASSED

JUN 23 1977

SENT UP FOR CONCURRENCE

Edwin Quill
ORDERED SENT FORTHWITH CLERK

IN SENATE CHAMBER
TABLED BY SEN. SEN. SPEERS
OF DE LORRAINE

JUN 28 1977

PENDING *Passage*
MAY H. ROSS, Secretary

IN SENATE
TAKEN FROM TABLE ON MOTION
BY SEN. SPEERS AND ON FURTHER
OF DE LORRAINE

JUL 11 1977

MOTION BY SEN. SPEERS
OF DE LORRAINE
INDEFINITELY POSTPONE
IN NON CONCURRENCE
SENT DOWN FOR CONCURRENCE

Ordered sent forthwith

Name:

(Talbot)

Town: Portland

HOUSE OF REPRESENTATIVES
UNDER SUSPENSION OF RULES
HOUSE RECEDED & CONCURRED

JUL 11 1977

Edwin Quill
CLERK

Cosponsored by:

Mary Najarian
(Najarian)

Town: Portland

APPENDIX 2

Intermittent Positions in State Government

- Notes:
1. List shows all intermittent positions established as of September 30, 1977, and whether they were filled or vacant on that day. "Filled" indicates that one person is available to work when the position is to be used; it does not necessarily indicate that the individual actually worked on September 30.
 2. Intermittent positions may be permanent, seasonal, project, or limited positions, and are so identified by agency on the table that follows.

Department	Filled					Vacant					Total				
	Permanent	Seasonal	Project	Limited	Total Filled	Permanent	Seasonal	Project	Limited	Total Vacant	Permanent	Seasonal	Project	Limited	Total
9. Transportation															
a. Other	8			8							8			8	
b. Bureau of Waterways	1			2		1		1		3				3	
10. Mental Health & Corrections															
a. Augusta Mental Health Institute	2			2		2		2		4				4	
b. Military & Naval Childrens Home	2			2		2		2		4				4	
c. Pineland Center	1			1		1		1		2				2	
d. Elizabeth Levinson Center	2	2		4			1	1		3				3	
e. Acrostown residential center						1	1	1		3				3	
f. Bangor Mental Health Institute							9	9		18				18	
g. Maine Youth Center							1	1		2				2	
11. Marine Resources		2		2											
12. State Department															
a. other						4		4		8				8	
b. Motor Vehicle	12			12		4		4		16				16	
13. Maine Sardine Industry		3		3			1	1		4				4	
14. Passenger Tramway Safety Board	1			1		1	2	3		6				6	
15. State Lottery	2			2						2				2	

	Filled					Vacant					Total				
	Permanent	Seasonal	Project	Limited	Total Filled	Permanent	Seasonal	Project	Limited	Total Vacant	Permanent	Seasonal	Project	Limited	Total
16. Chief Medical Examiner						1					1				
17. Environmental Protection							2			2		2			2
18. Law Enforcement & Planning Agency								1	1				1	1	
19. Valuation Appeals Board	1				1						1				1
20. State Employees appeals Board	1				1						1				1
TOTAL	298	55	60	17	425	131	89	75	15	310	934	144	135	32	735

21 Most of these positions may be VACANT -- PERSONNEL Department records are unclear.

APPENDIX 3
PERSONNEL BULLETIN 8.1

STATE OF MAINE
DEPARTMENT OF PERSONNEL

October 11, 1977

Personnel Bulletin 8.1

To: All Agency Heads

Purpose: To establish guidelines and procedures for establishing and maintaining intermittent and project positions and employees.

Definitions:

A. Intermittent Position or Employee:

One established or hired from time to time to work irregular hours or weeks.

The intermittent has no status and may not accrue vacation or sick leave, or take paid holidays, but may voluntarily participate in retirement or insurance programs if permitted by the retirement system.

B. Project Position or Employee:

Is one restricted to a planned work program to be completed within a specified limited period of time and which is not of a seasonal or regularly recurring nature. The Project has no status and may not accrue vacation or sick leave, or take paid holidays. The project employee may participate in the retirement program and the insurance programs on a voluntary basis, subject to approval by the retirement system.

Guidelines:

1. Agencies shall examine all existing intermittent and project positions to determine that these positions are valid intermittent or project as defined.

2. Intermittent positions may not be established when they will exceed:

a. more than 19 hours per week; or b. more than 25 weeks per year. If these maximums are to be exceeded the positions are more properly established as part-time or seasonal part-time positions.

3. Project positions may not be established when they exceed six months in duration. Project positions may be extended to a maximum of one year with the approval of the Commissioner of Personnel. If this maximum is exceeded or expected to be exceeded, these positions are more properly established as permanent full time, limited period-full time, permanent part-time or limited period part-time or seasonal full or part time position.

4. Permanent or Seasonal positions established to replace intermittent or project positions shall not exceed legislative position counts.

Procedures:

1. Agencies which desire to establish new intermittent or project positions shall prepare a Form FJA1 and submit it to the Department of Personnel for analysis.

2. Once the position has been approved for fill action, a Form 15 for non-automated and a turn around form for automated agencies will be submitted.

3. Applications completed by the nominee will be submitted with the Form 15 or turn around form.

4. Nominees shall not be employed until the Form 26 or turn around form has authorized payment and the nominee has been qualified.

5. Agencies shall monitor time and attendance reports and halt any practice that exceeds the criterion established by paragraph 2 of the foregoing guidelines.

6. There shall be automatic ceilings placed on salary payments that exceed the hourly and annual criterion established by the guidelines. Agencies will be notified by hold check notices when hours and weeks worked exceed maximums.

7. Agencies may request and receive temporary relief from the maximums established by the guidelines by providing full written justification to the Commissioner.

8. Agencies may exceed established maximums established to cope with emergency situations that may arise without receiving the prior approval of the Commissioner. The Personnel Department will be notified in writing of the duration and nature of the emergency within 48 hours of the decision to use emergency authority.

Implementation: This bulletin is effective upon receipt. Questions may be directed to Jan LaPointe, Jeannie Johnson
- 289-2611.

APPENDIX 4

The current positions of the
Department of Manpower Affairs
and the Bureau of Alcoholic
Beverages.

STATE OF MAINE

Inter-Departmental Memorandum Date Nov 22, 1977

Rep. Churchill; Rep. Locke; Rep. Valentine;

Intermittent Employees Study Subcommi

To Staff Assistant E. William Brown

Dept. Committee on State Government

From Keith H. Ingraham, Director

Dept. Bureau of Alcoholic Beverages

Subject Intermittent Employees

As a result of a meeting held by your Committee on November 2, 1977, the Bureau of Alcoholic Beverages wishes to submit the following brief as requested by you.

It is the position of the Bureau that we do not object to Intermittent employees receiving the benefits of earned vacation time and earned sick leave credits in accordance with regular full-time employees.

We do object to limiting their employment to any specific number of hours or weeks per year.

We also object to the 15-day notice of layoffs and must have the flexibility to hire on an emergency basis and to fill positions while regular employees are on sick leave.

Due to the administrative recordkeeping, we request that vacation time and sick leave time not be credited unless an employee has worked a total of three months, at which time the earned credits would be made retroactive.

We feel that it is important to this Bureau to have the flexibility to hire promptly, without having to wait for an established roster or to clear through the Department of Personnel. It is to our advantage to continue to hire persons with work experience and we do intend to use these people rather than to use different people to avoid paying the benefits.

KHI:cas

cc Fred Haywood, Department of Personnel
David Campbell, Administrative Services

STATE OF MAINE

Inter-Departmental Memorandum Date December 2, 1977

To William Brown, Staff Assistant Dept. Legislature

From Emilien A. Levesque, Commissioner  Dept. Manpower Affairs

Subject POSITION PAPER ON INTERMITTENT EMPLOYEES

Please find attached a position paper submitted for review by the intermittent employees study committee. This paper outlines the Department of Manpower Affairs' response to the discussions and materials presented at the subcommittee meeting which was held on November 2, 1977.

We hope that this paper will be of value to the study committee as we have attempted to address each major issue involved in its relationship to our situation.

FAJ:nlc

cc - Commissioner Stolt, Department of Personnel

I. BACKGROUND ON USE OF INTERMITTENT POSITIONS BY THE DEPARTMENT OF MANPOWER AFFAIRS

The use of intermittent employees by the Department of Manpower Affairs is isolated primarily to use by the Unemployment Compensation (UC) Division with such utilization further relegated to the seventeen local offices of the UC Division. The basic tenet supporting the use of intermittent personnel is the fact that significant fluctuations in claims and related activities are experienced in the various local offices and additional temporary staff is required to process such workloads. The use of intermittent personnel, normally, is directly related to actual workload fluctuations which in turn, determine fiscal requirements.

A brief summary of the unemployment insurance program budget and staffing system will illustrate the UC Division's unique requirement for temporary personnel. Cost Model studies are conducted periodically to monitor the changing needs of the unemployment insurance program and to measure and analyze all functions and activities which reflect cost and staff requirements. The result of such studies is the development of a productivity factor, or minutes-per-unit (MPU), for each activity that has an identifiable workload count associated with it. After review by the U. S. Department of Labor and the Office of Management and Budget, these MPU's are allocated to the State agencies for use in developing operating base budgets. Coinciding with the assignment of MPU's, base workload allocations are negotiated at the regional/state levels with final allocations considered operating agreements between the regional offices and the states. These workload allocations are applied to the MPU's in order to develop base budgeted staffyears. For workloads above the base allocation, additional staffyear requirements are funded via the contingency process using the same methodology of applying MPU's to actual workloads. The basic formula is as follows: $\text{actual workload} \times \text{MPU} \div \text{hours in budget period} = \text{earned staffyears}$. It is the contingency (above the base) workload which necessitates the use of intermittent employees. Since the contingency process stipulates that the UC Division is funded for the lesser of the earned or used staffyears, personnel requirements for each organizational unit are determined and monitored by a sophisticated staffing system developed by the Cost Model management system.

II. RECENT EXPANDED USE OF INTERMITTENT EMPLOYEES

The dramatic claims load increase since the fall of 1974 has resulted in a corresponding increase in the use of intermittent personnel. This workload increase is augmented by the above mentioned fluctuations in the workload during the fiscal year. The seventeen local offices varied from a low of 165 earned staffyears in the early fall of 1976 to a high of 315 earned staffyears in the winter months of 1977. Even with a base permanent staff of 160 employees in the local offices, the requirement for temporary staff reaches substantial proportions in peak workload periods. The traditional peak workload period encompasses the latter part of November until early April with another peak period during the month of July. Intermittent personnel are employed during these periods to insure that individual local offices maintain expeditious and efficient control of claims activities. The use of intermittent employees was designed to provide local office managers with the means to adjust staff in relation to workload fluctuations and still maintain effective operations.

II. RECENT EXPANDED USE OF INTERMITTENT EMPLOYEES - Continued

With the moratorium on hiring imposed upon the Department of Manpower Affairs by the Executive Office, intermittent employees have increasingly been used to compensate for permanent position vacancies. This may be illustrated in a comparison of intermittent staff utilization for the months of September, 1976, and September, 1977. The month of September was selected because this month normally represents a relatively low-workload period, thus limiting the need for intermittent staff. In September, 1976, intermittent employees comprised 39 equivalent staffyears, or 19 percent of the total staffyears used for claims activities (this includes the seventeen local offices, the Benefit Section, and the Special Payment Unit). For the month of September, 1977, intermittent employees represented 53 equivalent staffyears, or 27.4 percent of the total staffyears used for claims activities. This use of intermittent personnel is even more significant when one considers that in eight local offices, intermittents comprised at least 30 percent of the total staffyears used. During October, 1977, intermittent employees represented over one-third of the total staffyears used in the Benefit Section and the Special Payment Unit, two organizational units which do not normally employ intermittent personnel.

We must emphasize that although we recognize such use of intermittent employees represents an "abuse" of intermittent positions, the UC Division had to resort to the excessive use of intermittents in an effort to compensate for our inability to hire permanent employee replacements.

III. LABOR'S POSITION CONCERNING INTERMITTENT POSITIONS

Labor representatives have cited three basic issues relative to the use of intermittent employees. These three issues are as follows: The alleged abuse of the positions, the lack of benefits provided for intermittent employees, and the lack of status of these positions. In the above narrative, we have attempted to respond to the charges of "abuse" and to indicate that such misuse of intermittents was purely involuntary.

From a management perspective, the UC Division offers no opposition to labor's argument relative to the benefits which should be allotted intermittent employees. We have the capability and resources to fund additional costs for accrued leave, paid holidays, and personnel benefits to include retirement and medical coverage and we would not oppose the enactment of such measures. Another problem indirectly related to this which labor omitted is the question of what classification(s) would these less than full-time positions be assigned. To avoid further discrepancies in the employment of intermittent positions, it would be necessary to review each position to determine whether or not the duties performed are representative of the duties specified in the Claims Interviewer I classification. Implementation of this action may pose another problem in the area of recruitment which we will discuss in the following paragraph.

The third issue is that of status for intermittent positions. During calendar year 1977, the Employment Security Commission has been restricted to requesting only agency promotional registers in order to fill permanent position vacancies. Because of this limitation, the UC Division has been unable to select qualified intermittent personnel as vacancies occurred within the Division since these employees have no status, and, therefore, appear only on the open competitive registers. The majority of the present local office

III. LABOR'S POSITION CONCERNING INTERMITTENT POSITIONS - Continued

permanent position vacancies within the UC Division could be filled by qualified intermittent employees if it were not for their lack of "status" in regard to personnel actions. However, granting status to intermittent positions may create an obstacle in recruitment. Presently, intermittent employees are hired in a non-competitive environment requiring only that they meet the minimum qualifications for a specific classification. The acquisition of status for these positions may mandate that intermittent employees be recruited and selected on a competitive basis. This may impede our efforts to respond promptly to workload increases.

This issue of status also has an impact upon the allegations of "abuse" discussed earlier. As we have illustrated, although the lack of status has prevented the UC Division from offering permanent employment to qualified intermittents, the non-competitive recruitment practices have allowed some intermittents an opportunity for employment that the restrictions of position status might have otherwise prohibited.

IV. THE DEPARTMENT OF PERSONNEL'S POSITION CONCERNING INTERMITTENT POSITIONS

Irrespective of labor's position, the UC Division must address the policy established in Personnel Bulletin 8.1 as it pertains to intermittent positions. There is still some clarification necessary in the interpretation of the guidelines which establish maximum utilization. It appears from the guidelines that intermittent positions can be established not to exceed 19 hours per week or no more than 25 weeks per year. Applying these guidelines, an intermittent position could be used for a maximum of 988 to 1,000 hours per year, depending upon which criteria is used. However, if these criteria were designed to be interpreted as conjunctive, the maximum that an intermittent could be employed would be 475 hours per year. Should the conjunctive interpretation be correct, the UC Division must seriously consider the possibility of establishing these positions as either part-time or seasonal positions or a combination of part-time and seasonal. However, part-time and seasonal positions are positions with status, therefore, the issue of management flexibility would have to be confronted. It would be necessary that the UC Division retain the flexibility that currently exists in order that we maintain effective staff utilization at the local office level in relation to workload fluctuations. Although the UC Division can designate the primary periods of peak activity by local office, some semblance of flexibility must be established in order to cope with emergency situations such as an unexpected increase in the workload or a sharp reduction in claims activity, either of which might significantly alter staff requirements. We must reiterate that contingency funds for the UC Division are approved at the lesser of the earned or used staffyears, thus we cannot afford the risk of 15-day notices to lay-off seasonal or part-time employees nor can we afford to restrict the use of less than full-time to arbitrary limits.

V. CONCLUSION

From a practical standpoint, with the policy established for intermittent positions in Personnel Bulletin 8.1, it may be necessary for the Department of Manpower Affairs and the Department of Personnel to negotiate an alternative which, through compromise, hopefully will be compatible with the Department of Personnel, labor representatives, and the employees themselves as well as satisfy the unique management/staffing needs of the unemployment insurance program.

V. CONCLUSION - Continued

With no staffing level yet established for the Department of Manpower Affairs by the Executive Office, we are unable at this time to propose any viable alternatives. Any proposal offered in an effort to resolve this situation would be based merely on speculation since we do not know the level of personnel resources which we will be allowed to maintain nor do we know the composition of the staff in terms of permanent and less than full-time positions.

APPENDIX 5

Correspondence illustrating the problem of an intermittent employee in the Department of Manpower Affairs.



DEPARTMENT OF PERSONNEL

AUGUSTA, MAINE 04333

207 - 289 - 2821

E OF MAINE

October 18, 1977

Representative Mary Najarian
172 Pleasant Avenue
Portland, Maine 04103

Dear Representative Najarian:

Thank you for your letter of October 2, 1977, concerning the use of intermittent employees. I hope this response will help you better understand the intermittent position and the limitations connected with this type of employment.

Elaine M. Grenier, the Clerk-Typist II, referred to in your correspondence has no status as an intermittent and, therefore, pursuant to Personnel Law and Rules, cannot be reclassified. Persons holding positions which are to be reclassified have rights to the reclassified position only if they are status employees. Status is obtained through a competitive examination process not required of intermittent employees. Other persons who were reclassified into the Claims Interviewer I positions had permanent status as established through the competitive examination process. The newly published Personnel Bulletin 8.1 (attached to this letter) addresses the intermittent situation and gives guidance concerning the staffing of these positions. I hope this bulletin will give you better insight into how these positions may be used. Also, attached is a copy of my response to Ms. Trahey concerning this matter.

Mrs. Grenier is currently on the Claims Interviewer I register, but whether or not she will be referred to a vacancy is dependent upon whether or not Manpower Affairs wishes to promote from within or to request an open competitive certification, and upon Mrs. Grenier's standing on the register. As you probably know, our registers are made up of several categories which include individuals with layoff rights (first priority), agency promotional rights (second priority), statewide promotional rights (third priority), re-employment rights (fourth priority), and open competitive rights (last priority). Mrs. Grenier is in the open competitive category of the register and, unfortunately for her, there are many individuals with agency and statewide promotional rights on the registers. Since they will receive selection priority, unless Manpower Affairs requests and receives permission to use another register, it is unlikely that Mrs. Grenier will be selected for a full-time Claims Interviewer I position.



STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA, MAINE 04333

October 2, 1977

Robert J. Stolt, Commissioner
Department of Personnel
State Office Building
Augusta, Maine 04333

Dear Commissioner Stolt:

I have received a copy of a letter written to you September 23, 1977, by Ms. Wanda Trahey, Employee Representative of the MSEA. For your convenience I will quote the pertinent paragraph from her letter to you.

"A situation presently exists in the Department of Manpower Affairs relative to this problem" (the misuse of intermittent employees in state service). "In this particular office all employees classified as permanent Clerk Typist II's were reclassified to Claims Interviewer I's. An intermittent employee in a Clerk Typist II classification, employed in that office for almost a year, performing the same duties as the permanent CT II's who were reclassified, has been advised that because she has no status she cannot receive a reclassification to a permanent Claims Interviewer I position. Vacancies presently exist in the Claims Interviewer I position in that office."

I do not overstate my reaction to the above personnel policy when I say that I find it completely incomprehensible. Any policy as absurd and irrational as this should be terminated at once. I would like to request that you personally intercede on behalf of the employee referred to above and permit her to be granted permanent status as a Claims Interviewer I.

Thank you for your consideration of this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Mary Najarian".

Mary Najarian
Representative, Portland

cc: Ms. Helen Trahey
Members of the Personnel Board
State Government Committee
Mr. Bill Brown, Legislative Aide

September 23, 1977

Robert J. Stolt, Commissioner
Department of Personnel
State Office Building
Augusta, Maine 04333

Dear Commissioner Stolt:

A study order emerged from the 108th Legislative Session pertaining to the investigation of the misuse of intermittent employees in state service.

A situation presently exists in the Department of Manpower Affairs relative to this problem. In this particular office, all employees classified as permanent Clerk Typist II's were reclassified to Claims Interviewer I's. An intermittent employee in a Clerk Typist II classification, employed in that office for almost a year, performing the same duties as the permanent CT II's who were reclassified, has been advised that because she has no status she cannot receive a reclassification to a permanent Claims Interviewer I position. Vacancies presently exist in the Claims Interviewer I position in that office.

Your department was given the responsibility of correcting the misuse of intermittents.

Would you please advise me at your earliest convenience of what progress is being made in this area and what action you plan to take to correct these situations.

Sincerely,

Wanda I Trahey
Employee Representative

WIT/dd

cc: Representative Mary Najarian
Representative Gerald E. Talbot

October 18, 1977

Our records indicate that Mrs. Grenier is not on the Clerk Typist Register. I would recommend that she qualify for that register and try to get permanent status as a Clerk Typist. In this way she would be eligible for a Claims Interviewer I position using agency promotional rights.

Employees are made aware of the limitations imposed on the intermittent position when they are hired. They are also informed that they must go through the examination process, be placed on a register, certified and then selected in order to be a full-time employee in a competitive position. Deviation from this procedure is contrary to the State Merit System which insures that recruitment, retention and promotion of employees is done fairly and equitably. The two Claims Interviewer I vacancies referred to in your letter have been filled by individuals selected from the register.

Be assured all intermittent positions are being carefully reviewed and that action will be taken to resolve any problems.

Sincerely,



Robert J. Stolt
Commissioner

RJS/mg

Enclosures 2

cc: Members of the Personnel Board
State Government Committee
Wanda Trahey, MSEA
William Brown, Legislative Aide ✓

APPENDIX 6
DRAFT LEGISLATION
TO IMPLEMENT
THIS REPORT

AN ACT to Clarify the Status of Intermittent State Employees

Sec. 1. 5 MRSA §553-A, is enacted to read:

'§553-A. Appointing authority obligation to inform employee

Every appointing authority shall inform in writing every employee holding a position subject to appointment by the appointing authority, of the following:

A. The employee's rate of pay, and the circumstances under which that rate may be changed, including longevity and merit increases;

B. The nature and costs of benefits available to State employees generally, the nature and costs of benefits available to the employee, and the circumstances under which the employee's benefit eligibility or cost may be changed; for the purpose of this subparagraph, the word "benefits" shall mean, but not be limited to:

- (1) vacation, holiday, and sick leave;
- (2) insurance programs;
- (3) retirement programs; and
- (4) any other gain made available by the State to any of its employees, whether in cash or in kind.

C. The rights of State employees and of the employee, including the right to appeal decisions made with respect to his employment.

Sec. 2. 5 MRSA §559 is enacted to read:

§559. Intermittent employees

It shall be the policy of the State to permit all employees of the State to participate to the fullest extent possible in the benefits of the Civil Service system for classified and unclassified employees. This policy shall be extended to full-time, part-time, intermittent, and all other categories of employees.

The Commissioner of Personnel shall, not later than the effective date of this statute, adopt rules to assure the attainment of this policy for intermittent employees. At a minimum, the rules shall:

1. Define intermittent positions, and shall in the definition limit the use of any position to employment for not more than 19 hours per week or 25 weeks per year;

2. Provide that a person who, subsequent to the effective date of this Act, has been employed in an intermittent position for more than 1040 hours shall:

A. Be eligible to accrue and use vacation and sick leave days at the same rate, pro rata, as full-time State employees;

B. Be eligible to receive holiday pay at the same rate, pro rata, at the same rate as full-time State employees, provided the intermittent employee works on the days before and after the holiday;

C. Be eligible to receive an increase in salary to the next step on the same basis as full-time employees (i.e., after completing 2080 hours of work);

D. Be considered a classified employee for the purposes of:

Eligible registers;

Classification of positions;

The Compensation plan;

Promotion in the classified service;

Provisional, emergency, exceptional and temporary appointments;

Probationary period;

Transfer;

Reinstatement;

Demotion;

Suspension, layoff and dismissal;

Leave of absence and resignation;

Personnel records;

In-service training;

Service ratings; and

Certification of payrolls.

E. Be eligible to participate on a pro rata basis in the retirement program for State employees; and

F. Be eligible to participate in health and hospitalization insurance programs at rates of participation reduced to reflect the less than full-time status.

The provisions of all or any part of this section shall not apply if provided pursuant to Title 26, chapter 9-B.

Statement of Fact

This Bill is the result of a study conducted by State Government Committee of the 108th Legislature pursuant to HP 1592. Copies of the report of the committee are available in the Committee's hearing room in the State House in Augusta.

Section 1 of the Bill provides that every employee of the State, be informed in writing of his rate of pay, benefits, conditions of employment, and employee rights (including the right to appeal decisions made with respect to his employment). This requirement may be met simply through the publication of a booklet which is given to each employee. The Department of Personnel has begun to prepare such a book.

Section 2 of the Bill requires the Commissioner of Personnel to adopt rules which provide that Intermittent employees of the State shall be permitted to participate more fully in the State's personnel system. After completion of the full-time equivalent of 6 months employment by the State (i.e., after completing 2080 hours of work); to participate in health and hospitalization insurance and retirement programs; and to be entitled to "status" (special privileges given to state employees relating to personnel actions, such as hiring, promoting, and firing). The bill does not provide that intermittent employees shall be eligible for the State life insurance plan, because of the difficulty of devising a rational system to calculate coverage and the potential for abuse.

All the provisions of section 2 of the Bill shall be subject to any changes contained in a collective bargaining agreement signed by the State and a labor union.

It is not possible to specify the cost impact of this legislation because of the lack of any data with which to make an estimate. For example, in conducting the study the committee was told that there is no data in the possession of either the Department of Personnel or the State agencies hiring intermittent employees to indicate: (a) the number of hours worked by intermittents and (b) whether and to what extent intermittents are now granted the various benefits mandated for them by the bill. Any additional cost imposed by this bill will have a direct relationship to these two variables. However, enactment of this bill will impose some, additional cost in State funds, since it is known that at least some agencies do not make available all of the benefits to intermittent employees.