

MAINE STATE LEGISLATURE

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September 18, 1968

Sumner J. Goffin, Esquire
Wilson, Steinfeld, Murrell & Goffin
85 Exchange Street
Portland, Maine 04111

Dear Mr. Goffin:

Re: Extent of Authority for the State
Employees Appeals Board

SYLLABUS:

The State Employees Appeals Board does not have the authority to resolve the question concerning merit increases; may not alter the time periods in 5 M.R.S.A. § 753; does not have the right to issue subpoenas and subpoenas duces tecum; and a dismissal of an employee prior to the enactment of the statute is not a proper subject for appeal to the State Employees Appeal Board.

FACTS:

The Chairman of the State Employees Appeal Board has requested a reply to the following questions re the 1967 Public Laws of Maine, Chapter 539, An Act Establishing a State Employees Appeal Board.

QUESTION NO. 1:

Since 5 M.R.S.A. § 752 establishes the authority of the State Employees Appeal Board and in so doing sets up the following exceptions, "except in matters of classification and compensation", is a question concerning a merit increase resolvable by the board?

QUESTION NO. 2:

May the time elements in 5 M.R.S.A. § 753 be altered or changed by rule or regulation of the board?

QUESTION NO. 3:

How effective and enforceable are the rules and regulations of the board and how may they be enforced?

QUESTION NO. 4:

Does the board have the right to issue subpoenas and subpoenas duces tecum?

QUESTION NO. 5:

Is a dismissal a year or more prior to the enactment of the statute a proper subject for appeal to the board?

ANSWER NO. 1:

No.

ANSWER NO. 2:

No.

ANSWER NO. 3:

Without seeing the proposed rules and regulations, I do not have sufficient information to answer this question.

ANSWER NO. 4:

No.

ANSWER NO. 5:

No.

REASONS:

In our opinion a merit increase is directly related to compensation and hence falls within the exception to the board's authority; thus, the board may not resolve a question concerning a merit increase.

The time periods in 5 M.R.S.A. § 753 are statutory and statutes may not be changed by rule or regulation.

Certain rules and regulations of the board might be effective and enforceable, but without knowing the nature of the rules and regulations I do not have sufficient information to answer this question.

If the board were to have subpoena power, it would require statutory authority. The statute is silent as to subpoenas and on this basis we conclude the board does not have the right to issue subpoenas and subpoenas duces tecum.

A dismissal at any time prior to the enactment of the statute would not have followed the procedure for settlement set forth in 5 M.R.S.A. § 753. It would be thus impossible for the board to hear an appeal.

Very truly yours,

Jerome S. Matus
Assistant Attorney General

JSM:H