

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 5, 1974

To Governor Kenneth M. Curtis

Dept. Executive Department

From Jon A. Lund, Attorney General

Dept. Attorney General

Subject Legal effect of the State Employees Labor Relations Act upon the State Employees Appeals Board

This is a response to your inter-departmental memorandum dated August 14, 1974 posing two questions regarding the present grievance procedure set forth in 5 M.R.S.A. § 751-753, which questions are as follows.

1. Whether the grievance arbitration procedure of the State Employees Labor Relations Act alters the legal effect of the present grievance procedure of the State Employees Appeals Board, prior to adoption of specific grievance procedures in a collective bargaining agreement between the Public Employer and a bargaining agent for State Employees?

2. Whether prior to the certification of an exclusive bargaining agent, the public employer may, through the head of a department, continue to meet with representatives of the Maine State Employees Association (or any other organizations), for discussions of employees' problems?

In answer to the first question, attention is directed to 26 M.R.S.A. § 979-K which provides that

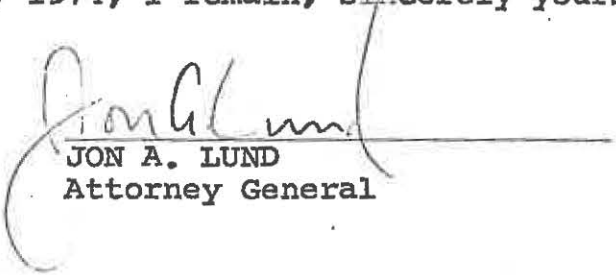
"An agreement between a bargaining agent and the public employer may provide for binding arbitration as the final step of a grievance procedure, provided that any such grievance procedure shall be exclusive and shall supersede any otherwise applicable grievance procedure provided by law. If no such provision is contained in the collective bargaining agreement, the parties shall submit their differences for resolution by the State Employees Appeals Board."

Therefore, until an agreement exists between a bargaining agent and the public employer, the grievance procedure set forth in 5 M.R.S.A. § 751-753 (State Employees Appeals Board) continues in legal effect. It is only when an agreement provides for binding arbitration as a final step of a grievance procedure that the State Employees Appeals Board would no longer have jurisdiction over grievances between employees and their public employer.

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With respect to the second question, attention is directed to 5 M.R.S.A. § 753 wherein it is stated that the employee "or his representative, or both" shall attempt to adjust a dispute existing between the state employee and the agency of the state by whom he is employed. Therefore, prior to certification of an exclusive bargaining agent, the public employer, through its appropriate department heads, may continue to meet with the employee or his representative, or both, respecting grievances. The law gives the employees the right to choose his representative and so long as the Maine State Employees Association, or any other organizations, have standing to represent state employees, department heads may meet with such organizations representing employees in grievances.

Trusting this memorandum serves to answer the questions posed in your writing of August 14, 1974, I remain, sincerely yours.



JON A. LUND
Attorney General

JAL/bls