

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date February 3, 1977

Roger V. Snow, Chairman

Dept. Temporary Compensation Review Board

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject Step Assignment within Established Pay Ranged for Unclassified Employees

This responds to your request for an opinion dated January 20, 1977, raising certain questions regarding Temporary Compensation Review Board authority to set salaries for certain unclassified employees. This opinion is limited to Temporary Compensation Review Board authority over the salaries of unclassified employees whose salaries are not subject to determination by the Governor and were not subject to Governor and Council determination prior to January 4, 1977. The salaries of employees whose salaries are now subject to determination by the Governor and whose salaries were subject to determination by the Governor and Council prior to January 4, 1977, are outside the jurisdiction of the Temporary Compensation Review Board as indicated in the opinion of this date to O. W. Seibert attached hereto.

You have posed the following questions:

"1. May the Temporary Compensation Review Board assign to any step within the salary range those unclassified employees, whose assignment to a range as recommended by the study, has been appealed pursuant to §§ 6 and 2 of Part D?"

"2. If your answer to the first question is in the affirmative, we would request your opinion on whether the aforementioned sections require that the Board determine to which step within the salary range each appeal unclassified position will be assigned?"

ANSWER:

The Temporary Compensation Review Board's jurisdiction is limited to setting ranges. It may assign steps within salary ranges for unclassified employees only where necessary to meet the requirement of Part D, section 2, that the assigned step provide an increase over current actual salary (immediately prior to the first pay period in November).

DISCUSSION:

This office has already addressed the question of pay plan control of salaries of unclassified employees by its opinion to Marion M. Klappmeier, R.N. dated September 21, 1976. A copy of that opinion is attached for reference. That opinion indicated that it was necessary to read P. & S.L. 1975, c. 147, Part D, section 2, to allow appointing authorities some degree of flexibility in salary setting to avoid any conflicts with statutes giving appointing authorities the power to set salaries for unclassified employees. Accordingly, that opinion indicated that the authority of Part D, section 2, either operating directly or operating as a result of an appeal to the Temporary Compensation Review Board extended to setting the range within which unclassified employees were to be paid, but that setting steps was limited to the requirement that unclassified employees within a certain range be at a step which granted them a pay increase over their current actual salary in the pay period immediately preceding the first pay period in November.* Once the range, and if necessary, the step were set, the appointing authority retained the power to increase salaries of unclassified employees within the range but above the step specified by operation of Part D, section 2.

As to the Temporary Compensation Review Board, this intent is further confirmed by the language of section 6 which indicates that the Board's decision-making authority is limited to decisions related to salary ranges:

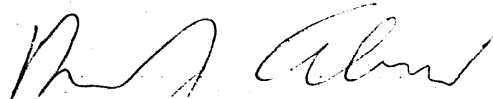
"The decision of the Board on any appeal concerning assignment of position or classification to a salary range shall be final and binding on the parties, except as hereinafter provided." (Emphasis added.)

This, of course, is modified by the directive of section 2 that employees be assigned a step in their determined range which is above current actual salary. However, the jurisdiction of the Temporary Compensation Review Board is limited to determining ranges. It only determines steps where necessary to provide an increase in salary above current actual salary. Thus, the Temporary Compensation Review Board would only address the question of steps in circumstances where the current actual salary of an individual affected by its decision was above step A of the assigned range. Further, it should be noted

* Unless they were already above step G, in which case they continued to receive their then current salary.

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that as the Temporary Compensation Review Board may only deal with general positions and not salaries of the many individuals who may fill a particular unclassified position, there may be instances where the Temporary Compensation Review Board would set the range without knowledge of the specific salaries of all the individuals to which it applies. In such cases, the steps of those individuals, within the range, would be set by operation of law at the step resulting in an increase over current actual salaries, unless the current salary exceeded step G of the recommended range, in which case the current actual salary would continue in effect. Thus, the Temporary Compensation Review Board need only set ranges for unclassified employees, leaving the steps to be set by operation of law.



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