

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 23, 1980

Honorable Spencer Apollonio
Commissioner
Department of Marine Resources
State House
Augusta, Maine 04333

Dear Commissioner Apollonio:

This will respond to your request for an opinion about the application of Chapter 269, P.L. 1979, to certain confidential employees in your Department and the Departments of Inland Fisheries and Wildlife and Public Safety.

FACTS

You tell us that three confidential law enforcement positions, one in your agency and one each in the Departments of Inland Fisheries and Wildlife and Public Safety, have been adversely affected by not being granted non-standard pay status which you assert is similar and equitable treatment as provided in § 7 of Chapter 269. This state of facts has resulted in those confidential command positions receiving \$997.60 less annually than the captain positions they direct and supervise. These positions compare as follows:

<u>Class Code</u>	<u>Title</u>	<u>Range</u>	<u>Bargaining Unit</u>	<u>Weekly Salary Range</u>
9004	<u>Chief of Marine Patrol</u>	30	X	\$360.80-\$479.60
9507	Marine Patrol Captain	27 Non-Standard	D	\$375.20-\$498.40
9515	<u>Game Warden Colonel</u>	30	X	\$360.80-\$479.60
5914	Game Warden Major	27 Non-Standard	D	\$375.20-\$498.40
7006	<u>State Police Major</u>	30	X	\$360.80-\$479.60
7004	State Police Captain	27 Non-Standard	D	\$375.20-\$498.40

N.B. All incumbents in these classes are at the maximum of the Salary Range.

* Confidential command positions underlined.

QUESTION

You ask whether the confidential command positions referred to above are entitled to non-standard pay status as part of the "similar and equitable treatment" provision of § 7, Chapter 269, P.L. 1979.

ANSWER

The confidential command positions referred to above are not entitled to consideration for non-standard pay status under the "similar and equitable treatment" provisions of § 7, Chapter 269, P.L. 1979.

REASONING.

Chapter 269 accomplishes four legislative objectives. First, it ratifies and provides funding for the bargaining agreements between the State and the Maine State Employees Association, hereinafter "MSEA," for the administrative services, professional and technical services, operations, maintenance and support services, law enforcement and supervisory services bargaining units. Second, it extends treatment similar and equitable to that received by covered employees to confidential and probationary employees in classifications included in bargaining units covered by the bargaining agreement. Third, it increases the mileage rate for use of privately-owned automobiles on State business to 18 cents per mile. Fourth, it extends treatment similar and equitable to the salary provisions of the supervisory services unit agreement to unclassified employees whose salaries are subject to the Governor's determination and to classified and unclassified employees whose salaries are not subject to the Governor's determination but who are excluded from bargaining.

The issue raised by your inquiry requires delineation of the differences between the Legislature's second and fourth objectives, i.e., the differences in the treatment required by § 7 and by §§ 9 and 10 of Chapter 269.

The pertinent language of § 7 is:

"Employees in classifications which are in * * * [the bargaining units covered by the agreements between the State and the MSEA] * * *, but who are excluded pursuant to the Maine Revised Statutes, Title 26, Section 979-A, subsection 6, paragraphs C and E^{1/} shall be given similar and equitable treatment to employees covered by the agreements."

The pertinent language of §§ 9 and 10 is:

"Sec. 9. With respect to individual unclassified employees whose wage rates are subject to the Governor's determination, the Governor may grant similar and equitable treatment consistent with the salary provisions agreed to in the supervisory services bargaining unit."

1/ Title 26, § 979-A(6)(C) and (E) include employees:

- (C) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such persons and the Governor, a department head or body having appointive power within the Executive Department; or
- (E) who has been employed less than 6 months.

"Sec. 10. With respect to classified and unclassified employees whose wage rates are not subject to determination by the Governor and not in classifications within any bargaining unit, the authorities responsible for determining the wage rates of such employees shall grant similar and equitable treatment consistent with the salary provisions agreed to in the supervisory services bargaining unit."

Sections 7, 9 and 10 are clearly different in scope and coverage. Section 7 requires treatment similar and equitable to employees covered by the agreements, whereas sections 9 and 10 restrict such treatment to the salary provisions agreed to in the supervisory services bargaining unit agreement. Extension of such treatment is mandatory in § 7, subject to the Governor's discretion in § 9 and required of salary-setting authorities in § 10. Section 7 coverage is limited to employees in classifications in the covered bargaining units but excluded from bargaining by 26 M.R.S.A. § 979-A, sub-§ 6, ¶¶ C and E. Section 9 coverage is limited to individual unclassified employees whose salaries are determined by the Governor. Finally, § 10 coverage is limited to classified and unclassified employees whose salaries are not subject to the Governor's determination and who are not in classifications within any bargaining unit.

The language of § 7, "* * * similar and equitable treatment to employees covered by the agreements * * *," clearly contemplates extension of all the contractual benefits to § 7 employees. But what does the language of §§ 9 and 10, "* * * similar and equitable treatment consist with the salary provisions agreed to in the supervisory services bargaining unit * * *," indicate? Clearly, it does not encompass extension of the entire contract. The best indication of the scope of the words "salary provisions" is the statement of fact of L.D. 1597, the bill which, upon enactment, became Chapter 269, Public Laws of 1979. The L.D. 1597 statement of fact reads, in pertinent part:

"The economic features covering state officers and employees not eligible for collective bargaining are comparable to the salary provisions for the supervisory unit, including the retroactive lump sum payment of \$15 per week for each week worked during the period July 1, 1978 to April 1, 1979, salary schedule

increases of \$16 or 6%, whichever is greater, effective April 1, 1979, and \$15 or 6%, whichever is greater, effective July 1, 1979. Section 8 also increases the mileage allowance for employees not subject to collective bargaining agreements to 18 cents per mile."

It seems clear from the statement of fact that "* * * similar and equitable treatment consistent with the salary provisions agreed to in the supervisory services bargaining unit * * * " means: (1) the retroactive lump sum payment; (2) a salary schedule increase of \$16 or 6% beginning April 1, 1979; and (3) a salary schedule increase of \$15 or 6% beginning July 1, 1979. It is equally clear that it does not include any of the other economic provisions of the supervisory services bargaining unit agreement, such as eligibility for the non-standard work week premium contained in Article X, Section C. This conclusion is necessary if effect is to be given to the limiting language ("salary provisions") used by the Legislature in §§ 9 and 10, which is in sharp contrast with the all-inclusive language found in § 7.

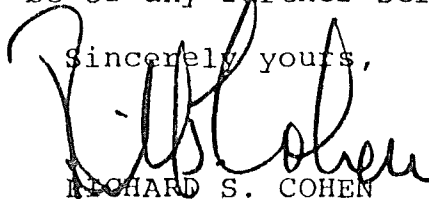
The three employees about whom you ask are in classified positions not in classifications within any bargaining unit. As classified employees, they clearly do not come within the coverage of § 9 because § 9 covers unclassified employees only. Because they are in classifications not assigned or within any bargaining unit, they are not covered by § 7. They are thus covered by § 10 as classified employees whose salaries are set by the classification and compensation plan (the Commissioner of Personnel) and not by the Governor, and who are not within classifications within any bargaining unit. Accordingly, these employees may not secure the benefits of eligibility for non-standard pay status under § 7, Chapter 269, P.L. 1979.

Responsibility for the assignment of classes to a non-standard pay status and the creation of a non-standard pay process was delegated to the State Personnel Board by Chapter 247, Part D, § 6 of the Private and Special Laws of 1975. That responsibility now belongs to the Commissioner of Personnel under the contracts and under 5 M.R.S.A. § 631. To secure the benefits of non-standard pay status for the confidential command positions of Chief of Marine Patrol, Game Warden Colonel, and State Police Major, application for that status would have to be made to the Commissioner of Personnel in accordance with and subject to the standards set forth in Personnel Bulletin 5.8A

and Chapter 5 of the Personnel Rules. The decision of the Commissioner of Personnel as to whether these positions qualify in accordance with those standards would be final and as a matter of compensation not appealable to the State Employees Appeals Board under Chapter 63 of Title 5.

In closing, I would note that it is my understanding that the Governor has included language to resolve this problem prospectively in his pay bill for managerial and confidential employees. I hope this information is helpful. Please feel free to contact me if I may be of any further service.

Sincerely yours,



RICHARD S. COHEN
Attorney General

RSC:mfe