

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

June 15, 1987

Honorable Dan A. Gwadosky
Chairman, Joint Standing Committee on
State and Local Government
Maine House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Representative Gwadosky:

I am writing in response to your letter of this date, inquiring whether the establishment of standards for the creation of job classification specifications by the Director of the Bureau of Human Resources, pursuant to 5 M.R.S.A. § 7061, is under current law a mandatory subject of collective bargaining, pursuant to 26 M.R.S.A. § 979-D. For the reasons which follow, it is the Opinion of this Department that the establishment of such standards is not at present a subject required by law to be collectively bargained.

In 1974, the Maine Legislature enacted the "State Employees Labor Relations Act," P.L. 1973, ch. 774, which, among other things, enacted 26 M.R.S.A. § 979-D, concerning the conduct of collective bargaining for state employees generally. Subsection (1)(E) of that section deals with the question of the specific employment matters which are to be the subject of collective bargaining. The subsection was the subject of one substantive amendment, which occurred in 1985. P.L. 1985, ch. 289. The subsection is quite detailed in its enumeration of the specific matters that are to be the subject of collective bargaining, but nowhere on its face makes any reference to the establishment by the Bureau of Human Resources (or its predecessor, the Department of Personnel) of standards for the creation of job classification specifications. Therefore, it is quite clear that as the law stood in 1985, there was no requirement that the State Government collectively bargain over the establishment of such standards.

The question which you raise involves determining the meaning of a provision which was added to the State Personnel Laws as part of a major reorganization of the personnel functions of the State which occurred in 1986. This provision, which appears as the last paragraph of 5 M.R.S.A. § 7061,^{1/} specifies that in setting the duties and responsibilities for all positions in the state service and in establishing classes for those positions, the Director of the Bureau of Human Resources shall be "subject to the requirements of Title 26, section 979-D, subsection 1, paragraph E." The question presented is whether, in enacting this new provision, the Legislature intended to add the establishment of standards for the preparation of job classification specifications to the list of collective bargaining subjects contained in Section 979-D.

The legislative history concerning the addition of this provision to the Personnel Laws is silent as to the Legislature's specific intention. Nonetheless, the full context of the provision, as well as its plain meaning, make it clear to this office that the provision was not intended to expand the list of subjects of collective bargaining contained in Section 979-D.

The section in which the provision appears, 5 M.R.S.A. § 7061, is the section which gives the Director of the Bureau of Human Resources all of his basic powers with regard to the establishment of job classifications for the state service. Thus, if the provision were read to add the matter of establishing standards for the preparation of job classification specifications to the list of collective bargaining subjects, it would also have to be read to add every other responsibility of the Director concerning the classification process to the list of collective bargaining subjects as well. Such a reading would effect a major alteration in the relation between the State Government and its employees who are members of collective bargaining units. In the absence of some indication that the Legislature intended such a significant consequence, this Department cannot read as much into its enactment of the provision in question. cf. State of Maine v. Maine State Employees Association, 443 A.2d 948 (Me. 1982) (Law Court declines to add to list of mandatory bargaining subjects contained in Section 979-D a subject not specifically mentioned therein). Rather, it would appear that the provision was simply designed to insure that whatever

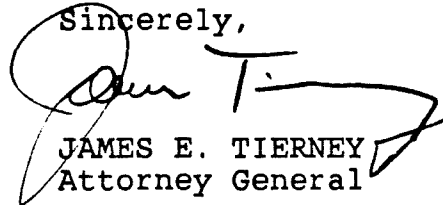
^{1/} Section 7061 replaced without other amendment 5 M.R.S.A. § 633, which was first enacted in 1937, P.L. 1937, ch. 221, § 9, and was not amended in substance until its replacement.

action the Director takes with regard to the classification process is not inconsistent with any collective bargaining agreement reached pursuant to Section 979-D.

This Department understands that the reason why the question which you pose has arisen is that a bill is at present pending before the Legislature which would expressly add the matter of the establishment of standards for the preparation of job classification specifications to the list of mandatory collective bargaining subjects contained in Section 979-D. See Legislative Document No. 1689, "AN ACT to Amend the Civil Service Law to Set Standards for the Creation of Job Classification Specifications." If this matter is already the subject of collective bargaining, by virtue of the reference to Section 979-D contained in Section 7061, then this legislation would be unnecessary. Since this Department is of the view, however, that the reference to Section 979-D in Section 7061 was not intended to expand the list of matters subject to collective bargaining, the enactment of the bill would have legal effect.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Rep. John L. Martin,
Speaker, Maine House of Representatives

Sen. John L. Tuttle, Jr.
Senate Chairman, Joint Standing
Committee on State and Local Government

Sen. Beverly M. Bustin
Rep. Elaine LaCroix
Rep. Omar P. Norton
Co-sponsors of L.D. 1689