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CIVIL SERVICE APPEALS BOARD
Department of Administrative and
Financial Services

2013 GOVERNMENT EVALUATION ACT REPORT



Submitted to the Joint Standing Committee
for State and Local Government

December, 2013



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
STATE CIVIL SERVICE APPEALS BOARD
74 STATE HOUSE STATION AUGUSTA, MAINE 04333

TRACY B. BIGNEY
CHAIR

REBECCA A. GRAHI
ROBERT W. BOWER, JR., ESQ.
ASIGAIL YACOBEN
DANIEL CASAVANT

January 17, 2014

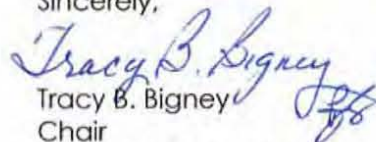
Joint Committee for State & Local Government
100 State House Station
Augusta, ME 04333-0100

Dear Senator Lachowicz, Representative Graham
and Members of the Committee for State and Local Government:

Pursuant to the Government Evaluation Act, Title 3 of the Maine Revised Statutes, Chapter 35, and at the request of the Committee, enclosed with this letter is the 2013 Program Evaluation Report of the Maine State Civil Service Appeals Board, for your review.

I look forward to the review process and appearing before the Committee on February 3, 2014 to present this report and answer any questions posed by members of the Committee. In the interim, please contact the Board Secretary, at 624-7411 if there is any further information we may provide.

Sincerely,



Tracy B. Bigney
Chair
Maine State Civil Service Appeals Board

TBB/ps

cc: File

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A. ENABLING LEGISLATION

5 §7081. Membership; term; compensation

The State Civil Service Appeals Board, established by section 12004-B, subsection 4, shall be composed of 5 members with experience in personnel management or labor relations. No more than 3 members of the board may be of the same political party. No member may be a state employee. [1989, c. 503, Pt. B, § 24 (amd).]

Each member shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over State Government and to confirmation by the Legislature. [1985, c. 785, Pt. B, § 38 (new).]

One member of the appeals board shall be designated by the Governor as chairman. Except as otherwise provided by law, each member shall be appointed for a term of 4 years and until his successor has been appointed and qualified. Any vacancy shall be filled for the unexpired portion of the term by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over State Government and to confirmation by the Legislature. [1985, c. 785, Pt. B, § 38 (new).]

The members of the board shall be compensated as provided by chapter 379. [1985, c. 785, Pt. B, § 38 (new).]

5 §7082. Powers and duties of the State Civil Service Appeals Board

The State Civil Service Appeals Board shall be an impartial board and: [1985, c. 785, Pt. B, § 38 (new).]

1. Administer subchapter. Shall administer this subchapter. In exercising its authority, the board may adopt policies and procedures to administer this subchapter. The appeals board shall employ, subject to the Civil Service Law, assistants as may be necessary to carry out this subchapter; [1985, c. 785, Pt. B, § 38 (new).]

2. Adopt rules. Shall adopt rules necessary to effectuate the purposes of this subchapter; [1985, c. 785, Pt. B, § 38 (new).]

3. Report. Shall report biennially to the Governor and Legislature facts and recommendations relating to the administration and needs of the board; [1985, c. 785, Pt. B, § 38 (new).]

4. Mediate grievances and disputes. May mediate the final settlement of all grievances and disputes between individual state employees, both classified and unclassified, and their respective state agencies. All complaints between a state employee and the state agency by which he is employed shall be made and heard in the manner provided by this chapter for the mediation and settlement of the complaints. During the procedure for settlement, an employee may be represented at each step by his designated representative. The decision of the appeals

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board shall be final and binding upon the state agency and state employees involved in the dispute, and shall supersede any prior action taken by the state agency with reference to the employment and working conditions of the employees.

A. In the course of any investigation under this chapter, any member of the appeals board may subpoena and require the attendance of witnesses and the production thereby of books, papers, public records and other documentary evidence pertinent to that investigation. In the case of the refusal of any person to comply with any subpoena issued under this subsection or to testify to any matter regarding which he may be lawfully interrogated, the Superior Court in any county on application of any one of the members of the board may issue an order requiring that person to comply with the subpoena and to testify. Any failure to obey the order of the court may be punished by the court as a contempt of the court; and [1985, c. 785, Pt. B, § 38 (new).]

[1985, c. 785, Pt. B, § 38 (new).]

5. Hear appeals. May hear appeals in accordance with this subchapter. Except where otherwise provided by a governing bargaining agreement, any employee or appointing authority aggrieved by the determination of the Director of Human Resources concerning the classification of positions, the allocation of new positions or the reallocation of existing positions in the classified service may appeal from the determination to the State Civil Service Appeals Board. The appeal must be made within 30 days after receipt of written notice of the determination from the director. The employee or appointing authority, or his representative, shall be afforded a public hearing before the appeals board. The appeals board shall examine and review the appeal and, upon the vote of at least 3 of its members, make changes in such classification, allocation or reallocation as may be just and equitable. Determinations of the appeals board shall be transmitted to the State Budget Officer, the Director of Human Resources, and the employees and department heads affected by the determinations.

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A. Any classification of a position and any allocation or reallocation of a position made by the director or the appeals board pursuant to this section shall become effective on the first day of the fiscal year following approval by the State Budget Officer and the appropriation of funds for the classification, except that the State Budget Officer may, if he determines that sufficient funds exist, authorize an effective date prior to the first day of the ensuing fiscal year. [1985, c. 785, Pt. B, § 38 (new).]

B. Any request for classification of positions, the allocation of new positions or the reallocation of existing positions in the classified service or the unclassified service shall be processed by the director and the director's determination made within 25 days from the date of filing the request with the Bureau of Human Resources. Any employee or appointing authority that is a party to the request may appeal to the appeals board within 10 days after the expiration of the 25 days allotted for the process of the requests for hearing and review. The appeals board shall examine and review the appeal and make such changes as provided in this section. The appeals board's decision in the appeal shall be given within 30 days after the hearing on the appeal has been concluded. [1985, c. 785, Pt. B, § 38 (new).]

C. A hearing before the appeals board is an adjudicatory proceeding under the Maine Administrative Procedure Act, chapter 375, and shall be held in accordance with chapter 375, subchapter IV. [1985, c. 785, Pt. B, § 38 (new).]

[1985, c. 785, Pt. B, § 38 (new).]

5 §7083. Procedure for settlement

A grievance or dispute between a state employee and the agency of the State by whom he is employed shall be entertained by the board upon the application of the employee, provided that there shall have been compliance with the following requirements: [1985, c. 785, Pt. B, §38 (new).]

1. Adjust dispute. That the employee aggrieved or his representative, or both, shall have attempted to adjust the dispute through oral communication with the employee's immediate supervisor within 7 working days of the time that the employee is aware of the grievable incident. The immediate supervisor is then required to render an oral decision to the employee within 3 working days; [1985, c. 785, Pt. B, §38 (new).]

2. Grievance in writing. If the employee is dissatisfied with the oral decision of his immediate supervisor, he or his representative, or both, may, before the end of the 10th working day following the day of the oral decision, present the grievance to his supervisor again, this time in written form. The supervisor is then required to make his decision in writing and present it to the employee within 10 working days; [1985, c. 785, Pt. B, §38 (new).]

3. Appeal to the department head. If the employee is dissatisfied with the supervisor's written decision, he or his representative, or both, then may, before the end of the 20th working day following receipt of the decision, appeal in writing to the department head. The department head shall meet with the employee or his designated representative, or both, within 20 working days of receipt of the employee's notice of dissatisfaction and attempt to adjust the dispute. Within 5 working days, the department head shall render a decision in writing to the aggrieved employee and his representative; [1985, c. 785, Pt. B, §38 (new).]

4. Appeal to Director of Human Resources. If the classified employee is dissatisfied with the written decision following the meeting with the department head, he may appeal in writing to the Director of Human Resources within 7 working days of meeting with the department head. The director shall within 10 working days reply in writing to the aggrieved employee, his representative and the department head involved stating his decision, based on the Civil Service Law and rules; [1985, c. 785, Pt. B, §38 (new).]

5. Submission to board. In the event the grievance shall not have been satisfactorily adjusted under subsections 1 to 4, within the time limits in those sections, the dispute may be submitted to the appeals board within 10 working days following receipt of the director's written decision.

The appeals board shall investigate the matters in controversy, shall hear all interested persons who come before it and make a written decision, which shall be binding on the parties involved. The appeals board's written decision shall be issued within 30 working days after the hearing on the dispute is concluded, unless both parties agree that an extension of the time limit should be allowed; and [1985, c. 785, Pt. B, §38 (new).]

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6. Procedure. Any member of the appeals board may administer oaths and subpoena and require the attendance of witnesses and the production of books, papers, public records and other relevant documentary evidence or certified copies of the evidence by the department head pertinent to the dispute and shall do so if requested in writing by any party to the dispute or his representative. A witness summonsed by subpoena shall be entitled to witness fees and travel allowance in the amount allowed for appearance in District Court, the costs of which shall be advanced by the party requesting the subpoena prior to issuance of the subpoena. A state employee subpoenaed under this subsection shall not lose pay to which he would otherwise be entitled. [1985, c. 785, Pt. B, §38 (new).]

5 §7084. Extension of time limit

1. Application for extension. The chairman of the appeals board may extend any time limit specified in section 7083, subsections 1 to 4, upon written application of either party on condition the application is submitted within time provided for in the applicable step. Failure of an employee to pursue a grievance within prescribed time limits shall constitute an acceptance of the last response by the department. Failure of the department to respond within stipulated time limits provided for in the applicable step shall constitute an automatic waiver of that step and the employee may proceed to the next step as outlined in this section.

A. At least one day prior to the presentation of the employee's grievance to his supervisor, the employee's representative, if any, shall have access to the work location of the employee involved during the working hours for the purpose of investigating the grievance. [1985, c. 785, Pt. B, § 38 (new).]

B. The department head may designate a representative, with authority to take appropriate action, who shall be at the deputy or assistant department head or labor specialist level to represent him in section 7083, subsections 2 and 3. [1985, c. 785, Pt. B, § 38 (new).]

[1985, c. 785, Pt. B, § 38 (new).]

5 §7085. Applications of sections 7081 to 7084

This subchapter applies to those employees who are excluded from bargaining pursuant to Title 26, sections 979 and 1021 to 1034. [1985, c. 785, Pt. B, § 38 (new).]

B. PROGRAM DESCRIPTION

The Civil Service Appeals Board is established to mediate grievances and disputes and to hear and resolve classification appeals which are filed by employees of the State who are excluded from the collective bargaining process pursuant to Title 26, Section 979, and 1021-1034.

The primary responsibilities of the Board are:

- to conduct hearings to mediate grievances,
- to conduct hearings to resolve classification appeals, and
- to make rules and regulations and prescribe forms to secure speedy, efficient and inexpensive disposition of all hearings.

The Civil Service Appeals Board receives approximately three (3) to six (6) new cases per year. As of the date of this report, three unresolved cases remain pending.

The Civil Service Appeals Board plays an important role in resolving disputes, which may arise from employees of the State who are excluded from the collective bargaining process.

C. ORGANIZATIONAL STRUCTURE

The Civil Service Appeals Board consists of 5 members with experience in personnel management or labor relations. No more than 3 members of the board may be of the same political party and no member may be a state employee. Each member is appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over state government and confirmation by the Legislature. The Governor designates one member of the Appeals Board as chair. Any vacancy is filled for the unexpired portion of the term in the same manner as described above.

MAINE STATE CIVIL SERVICE APPEALS BOARD

Tracy B. Bigney
Chairperson

Pamela Strong
Board Clerk

Rebecca Grant
Member

Abigail Yacoben
Member

Robert W. Bower, Jr.
Member

Daniel Casavant
Member

6/6/13

D. COMPLIANCE WITH FEDERAL AND STATE HEALTH AND SAFETY LAWS

The Civil Service Appeals Board strives to comply with all applicable federal and state health and safety laws and complies with the Department of Administrative and Financial Services policies in the following areas:

Equal Employment Opportunity/Affirmative Action Plan

The Department of Administrative and Financial Services is firmly committed to the principles of equal employment opportunity and affirmative action and adopted an EEO/AA Plan on January 1, 2000. The Department requires a good faith effort to identify and remove artificial employment barriers and takes appropriate remedial action to ensure equal employment opportunity.

Harassment

The Department does not tolerate harassment of any employee and has informed its non-supervisory employees of their rights under the State's harassment laws, including a new Department policy that took effect in 2000.

Americans with Disabilities Act

The Department does not discriminate on the basis of disability in employment or the provision of programs and services. Further, the Department is committed to providing reasonable accommodations to qualified applicants and employees with disabilities in accordance with state and federal laws.

Occupational Safety and Health Administration

The Department is committed to providing a safe and hazard-free work environment and adheres to the Bureau of Labor Standards requirement that each employer furnish employees with a place of employment which is free from hazards that are likely to cause injuries, illnesses or accidents.

Workers' Compensation

The Department provides benefits for occupational injuries or diseases suffered by an employee, regardless of fault, in compliance with State law. Every effort is made to handle workers' compensation claims in a manner that treats the injured employees with dignity and respect. The Department strives to provide the highest standard of care to injured employees in order to guarantee rapid recovery with the least possible disability. All actions, including benefit payments, medical care and any services necessary to return the employee to work, are provided in a prompt, fair and equitable manner.

E. FINANCIAL SUMMARY

The Civil Service Appeals Board is funded through the Bureau of Human Resources (account 01018H003801).

Below is a summary of the Civil Service Appeals Board meetings and expenditures for the past six (6) years:

Calendar Year	Meetings Held	Expenditures
2008	3	\$636.40
2009	1	150.00
2010	2	362.92
2011	4	405.28
2012	1	347.12
2013	3	1,121.92

F. RULEMAKING AND REGULATORY AGENDA

The Civil Service Appeals Board has not conducted any rulemaking, as the process for appeals is specifically set forth in Title 5, Section 7083.

G. AGENCY COORDINATION

The functions of the Board require varied coordination with other State agencies, only inasmuch as is necessary, i.e. hearings may require the attendance of a range of State employees who offer evidence and testimony; the Board receives administrative support from the Department of Administrative and Financial Services and legal counsel through the Department of the Attorney General. Annual Reports are required to be submitted to the Department of the Secretary of State, per Title 5, Chap. 39: 5 MRSA §12004-B, sub-§ 4.

H. CONSTITUENCIES SERVED

The primary constituencies served by the Civil Service Appeals Board are the employees of the State who are excluded from the collective bargaining process pursuant to 26 M.R.S.A., Sections 979, 1021 and 1034.

I. ALTERNATIVE DELIVERY SYSTEMS

The Civil Service Appeals Board serves as a dispute resolution process for state employees who are not covered by the bargaining contracts. Given the specific nature of the Board's work, the constituency to be served and the expertise of the members, an alternative delivery system would not improve the current process.

J. EMERGING ISSUES

Lack of clarity in the statute has led to some confusion among appellants. The Board has received several appeals in the last few years from employees who are represented by collective bargaining agents.

