



EXECUTIVE ORDER NO. 42

E X E C U T I V E O R D E R

Relating to Procedures for Submission
and Settlement of Certain Grievances
of State Employees

With the advent of collective negotiations between the State and employee organizations pursuant to the Public Employees' Fair Employment Act of 1967, collectively negotiated agreements ("collective agreements") have been entered into which provide for grievance procedures which are intended to supersede in whole or in part the grievance procedures provided for by the Executive Order heretofore issued on August 28, 1963. Such negotiated grievance procedures are a milestone in the development of collective negotiations in the public sector. Nevertheless, there is still an important reason for the continuation of procedures for the settlement of grievances of employees who are not covered by collective agreements or for the settlement of non-contract grievances which are outside of the scope of the grievance procedure set forth in any such collective agreement.

1. Every employee to whom this order applies shall have the right to present his grievance in accordance with this order, free from interference, coercion, restraint, discrimination or reprisal. He shall have the right to present his grievance individually or with a representative of his own choosing at all steps of the grievance procedure hereunder, except that where there is in effect a collective agreement covering a negotiation unit which includes such employee which was entered into between the State and an employee organization, then such employee may not choose as his representative any employee organization other than the employee organization with which such agreement was negotiated nor may any employee organization other than the one with which such agreement was negotiated initiate or process a grievance except to the extent permitted by such agreement.

2. Grievance Appeals Board. The Grievance Appeals Board established by the executive order heretofore issued on August 28, 1963 shall be transferred to the Office of Employee Relations. It shall consist of three members appointed by and who shall serve at the pleasure of the Director of Employee Relations. No person regularly employed in a full time position in the State service shall be eligible for appointment to the Board. One member shall be designated by the Director to serve as chairman of the Board. The compensation of the members of the Board shall be fixed by the Director with the approval of the Director of the Budget.

3. Departmental Procedures. The head of each State department or agency shall, subject to the approval of the Grievance Appeals Board established pursuant to this order, establish formal procedures for the submission of grievances by employees and for the prompt and orderly consideration and determination of such grievances by supervisors and the department or agency head.

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4. Powers and Duties of the Grievance Appeals Board. The Grievance Appeals Board is hereby charged with the responsibility for and empowered to:

(a) establish and maintain a program for resolving employee grievances relating to conditions of employment in the State service not inconsistent with the State's obligations as an employer under the Public Employees' Fair Employment Act of 1967 or collective agreements entered into thereunder.

(b) promulgate and amend from time to time, with the approval of the Director of Employee Relations, such regulations as may be necessary to carry out the provisions of this order and to review and approve grievance procedures established by departments and agencies pursuant to this order and such regulations, including provisions for reasonable time off without charge to leave credits for grievants, representatives and witnesses.

(c) hold hearings, to conduct investigations, to require the attendance of officers and employees of the State as witnesses and to require the production or examination of records, books and papers of State departments or agencies relating to administration of the grievance procedure.

(d) render advice and assistance to officers and employees of State departments and agencies in any matter relating to the establishment or use of the procedures provided for or adopted pursuant to this order or the regulations issued thereunder.

(e) report to the Director of Employee Relations for appropriate action the failure of any department or agency to establish properly or maintain satisfactorily the standards, principles, determinations and procedures embodied in or authorized by this order.

5. Appeals. An employee within a time limit and upon compliance with the regulations of the Board, may appeal to the Board from a determination made pursuant to this order by the head of his department or agency, or his designated representative, as the case may be. The Board shall conduct such review of the appeal as it deems appropriate and may require the appearance before it of the appellant and other parties to the grievance; provided, however, that the appellant shall be entitled upon his request to a hearing before the Board or its designee. If the appeal involves the enforcement of a law, a civil service rule or regulation or a written rule, regulation or order of a department or agency, the findings of fact and the recommendation of the Board shall be transmitted to the departments or agencies involved for appropriate action in accordance with the facts found by the Board. In all other cases, the determination of the Board shall contain a statement of the facts and an advisory recommendation to the departments or agencies involved. Copies of the determination of the Board shall be sent to the employee involved, to his representative and to the Director of Employee Relations.

6. Application. (a) The provisions of this order shall apply to employees in the executive branch of the State government (1) who are not covered by a collective agreement between the State and a certified or recognized employee organization or (2) who are covered by a collective agreement which accords such employees the right to continue to process grievances under this order.

(b) The provisions of this order and the procedures established hereunder shall be applicable to grievances in any department or agency claiming an act or omission resulting in an injustice to an employee and arising out of conditions which are in whole or in part subject to the control of the head of such department or agency and which involve alleged safety or health hazards, unsatisfactory physical facilities, surroundings, materials or equipment, unfair or discriminatory supervisory and disciplinary practice, unjust treatment by fellow workers, unreasonable assignment of working hours or personal time allowances, unfair or unreasonable work quotas, and all other grievances relating to conditions of employment; provided, however, that this order shall not apply to matters which are reviewable under administrative procedures established by law or under the rules of the State Civil Service Commission, or the

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rules of other departments or agencies having the force and effect of law or rules governing grievances of employees in the professional service of the State University of New York as defined in Section 355-a of the Education Law, or grievances concerning the interpretation, application or claimed violation of a specific term or provision of a collective agreement between the State and an employee organization.

7. Repeal of Previous Order. The Executive Order heretofore issued on August 28, 1963 is hereby revoked and superseded by this executive order. Grievances initiated but not finally resolved prior to the effective date of this order may be continued under the terms of the executive order issued on August 28, 1963.



G I V E N under my hand and the
Privy Seal of the State at the
Capitol in the City of Albany
this fourteenth day of
October in the year of our
Lord one thousand nine hundred
and seventy.

BY THE GOVERNOR:

Atty. Gen. Marshall
Secretary to the Governor.

Wm. W. Wadsworth



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Secretary of State