

BANGOR DAILY NEWS

Unemployment hearing officers hold scales of justice, not governor

By Jeff Young, Special to the BDN

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As Americans we often talk — and argue — about our rights. Our First Amendment right to free speech and right to privacy. Our Second Amendment right to bear arms. Our Fourth Amendment right to be free from unlawful searches and seizures. Many of us don't even realize that these rights, contained in the Bill of Rights, were added to and not part of our Constitution as originally proposed.

One right we don't spend much time debating is the right to an impartial judge and jury. We are all familiar with blindfolded Lady Justice holding the scales of justice and with the phrase that "justice is blind." What we don't expect is for someone to put their thumb on the scale of justice.

Which is why, despite all of his controversial statements and actions over the past two years, the recent allegations are so disturbing that Gov. Paul LePage met with, and according to some, tried to intimidate Maine's unemployment hearing officers. It is simply unacceptable to try to tell any judge how he or she should decide a case or that his or her decisions are too favorable to one group or another.

Imagine if the governor had met not with some unemployment hearing officers but had tried to meet with some state or federal judges to attempt to influence their decisions. We would be outraged. We would not allow the governor (or, for that matter, anyone) to tell our judges they had ruled too many times for plaintiffs (or defendants) in cases. However, that is what some said LePage appeared to do this week with the hearing officers.

The hearing officers the governor met with act as judges adjudicating unemployment disputes. They apply the law to the facts of the case and make a decision. They share the same responsibilities, impartiality and knowledge of their field of law as our justices. What they don't share is a lifetime position that can't be infringed upon by outside interests and intimidation. The unemployment hearing officers are civil servants funded by the federal government, but hired (and fired) by the state.

At this early stage, we don't know whether the allegations are true. But, there is something very wrong if our governor truly mandated that these hearing officers attend a meeting so he could express his opinion that they are ruling too often for the wrong side. There is something very wrong if our governor actually told hearing officers — whose job is to apply the law — to sidestep that very law by ignoring deadlines if businesses can't meet them. And there is something very wrong if our governor used his position to threaten the livelihoods of these hearing officers if they failed to comply not with the law but with his own wishes.

In fact, if all that was reported is true, it could even be illegal. According to Maine's criminal laws, "A person is guilty of obstructing government administration if the person intentionally interferes by force, violence or intimidation or by any physical act with a public servant performing or purporting to perform an official function." LePage mandated the unemployment hearing officers to attend a meeting where he told them they were ruling too often for one side over the other, and, if the reports are true, implied that they could lose their jobs over it. While the governor may have had no intention of breaking the law, his actions here, if reported accurately, are very close to the edge.

Put yourself in the position of a claimant now. You've been laid off from your work and have tried to get your unemployment benefits when all of a sudden you learn that the person judging your case has just been told by the person who has power to fire him or her that he or she is ruling too often in favor of people like you. Would you be worried about getting a fair hearing?

These allegations need to be looked into more closely. There are a number of agencies with oversight who need to get involved. These include the nonpartisan Office of Program Evaluation and Government Accountability and the Maine attorney general's office. Perhaps even an independent counsel should be appointed to review.

For the employees who are fearful they will be retaliated against if they come forward, I advise them to speak out. Although it is contrary to common perception, the best protection an employee has against unlawful retaliation is to get his or her name out in public record — lest the employee find that he or she has been fired for a questionable performance review. The Whistleblower Protection Act should protect that employee.

While our governor has certainly said and done many controversial things throughout his term, these allegations, if true, sound like tampering with our justice system. If we can't ensure Mainers fair hearings when they need one, we have lost the most basic American right: Justice for all.

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