

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

Case No.:

Filed: March 3, 2022

MAINE SERVICE EMPLOYEES)
ASSOCIATION, SEIU LOCAL 1989,)
)
Complainant,)
)
v.)
)
STATE OF MAINE)
)
Respondent.)

PROHIBITED PRACTICE COMPLAINT
CONCISE STATEMENT OF FACTS

By and through its undersigned attorney, the Maine Service Employees Association, SEIU Local 1989 (“MSEA” or “Union”), alleges as follows, on information and belief:

1. Complainant MSEA is a bargaining agent within the meaning of 26 M.R.S.A. § 1282(1) with its principal place of business at 5 Community Drive, Augusta ME 04330. MSEA is the certified bargaining agent for employees of the State of Maine working in positions in the Administrative Services, Professional and Technical Services, Operations, Maintenance and Support Services, and Supervisory Services Bargaining Units.

2. As provided in 26 M.R.S.A. §979-A (5), respondent State of Maine is a public employer of employees in the four bargaining units specified in paragraph 1, represented by the Governor and her designee, the Bureau of Human Resources, with offices at 79 State House Station, Augusta Maine 04333.

3. On June 22, 2022, Kelsie Lee, Bureau of Human Resources Compliance Director (“Director Lee”) emailed Tom Feeley, MSEA’s General Counsel (“GC Feeley”). Director Lee’s

emailed stated that she was sending dates and times to discuss a few things with GC Feeley, which included upcoming negotiations. GC Feeley responded with his availability.

4. Director Lee and GC Feeley met on July 6, 2022 with Bureau of Human Resources Director, Breena Bissell (“BHR Director Bissell”), and MSEA’s Director of Field and Organizing, Angela MacWhinnie (“Director MacWhinnie”). The agenda for the meeting included four topics, including a discussion around successor bargaining for the four collective bargaining agreements (“CBAs”) set to expire in 2023.

5. During the July 6, 2022 meeting, BHR Director Bissell started the discussion around upcoming negotiations by bringing up her concerns about the prior round of negotiations in 2021. Bissell suggested that the overall tone of negotiations had been concerning and that she found some of MSEA’s messaging to its members and posts on social media to be offensive. Bissell identified one specific social media post from 2021 as being particularly offensive.

6. Director MacWhinnie responded that MSEA’s communications with its members and the social media posts were a direct reaction to the State’s tone at the table, including an initial compensation proposal of zero, which MSEA’s bargaining team found to be offensive. MacWhinnie stated that if the State wanted to improve the tone of negotiations, they could start by making fair and reasonable proposals at the table, rather than continually playing games and deliberately dragging things out.

7. After further discussion of the 2021 negotiations, BHR Director Bissell suggested that the State was interested in exploring different formats for upcoming negotiations. Director MacWhinnie asked what the State had in mind, and Bissell suggested that rather than scheduling all day bargaining during work hours, as had been done in the past, the parties could hold evening sessions. Bissell also suggested that the parties could continue to bargain over Zoom, as

had been done in 2021. Bissell stated that the State would prefer holding remote bargaining sessions during the evenings because it would be less disruptive for the State's operations. Additionally, Bissell suggested that by doing bargaining this way, they would be able to have shorter sessions more frequently. Director MacWhinnie indicated an openness to BHR Director Bissell's proposal.

8. On December 14, 2022, Director MacWhinnie sent the demand to bargain the four CBAs to BHR Director Bissell via mail and email. With that correspondence, MacWhinnie sent a list of MSEA's elected bargaining team, which included twenty-five (25) names.

9. In that December 14, 2022 correspondence, Director MacWhinnie asked who the State's chief negotiator would be and proposed a first date to meet of January 18 or January 19, 2023. Consistent with BHR Director Bissell's suggestion on July 6, 2022, Director MacWhinnie stated that she anticipated all sessions would occur virtually and would take approximately two (2) hours.

10. BHR Director Bissell responded to Director MacWhinnie on December 15, 2022 with several follow up questions, including whether MSEA intended for all negotiations to take place in the evenings which would not necessitate day time release time, which three (3) members from each bargaining unit would be sitting at the virtual table, and what the roles of the additional thirteen (13) members would be.

11. Director MacWhinnie responded to BHR Director Bissell on December 19, 2022, stating that, consistent with Bissell's July 6, 2022 proposal, MSEA was agreeing that negotiations would generally take place in two (2) to three (3) hour sessions occurring in the evening. MacWhinnie further clarified that the twenty-five (25) members of the bargaining team

were the core negotiations team chosen to represent the work group and would all be attending virtual negotiations.

12. On January 4, 2023, Director MacWhinnie and BHR Director Bissell met via Microsoft Teams to discuss bargaining logistics. Bissell raised concerns about the size of the MSEA bargaining team and opined that, per the CBAs, MSEA's negotiations team was limited to twelve (12) members plus the President and Vice President. MacWhinnie stated that she disagreed with Bissell's application of the CBA language in question. MacWhinnie stated that the CBA language in question concerned only the number of persons who would receive administrative leave time to attend negotiations. MacWhinnie clarified that the CBAs limitation on the persons eligible for leave time did not restrict MSEA's right to select a bargaining team larger than those eligible for leave time under the CBA.

13. BHR Director Bissell also raised concerns about MSEA choosing to have non-team members observe negotiations and participate in MSEA caucuses, stating that she was not interested in having "all" State workers at negotiations.

14. After further discussions, Director MacWhinnie and BHR Director Bissell agreed to schedule bargaining sessions over Zoom every other Thursday for 2-hour sessions starting at 6:30 P.M., with the first two sessions would take place on January 19 and February 2, 2023. They also agreed to an agenda for the first session on January 19th, which included discussion of ground rules, opening statements, and then proposals.

15. On January 9, 2023, in anticipation of the January 19th bargaining session, Director MacWhinnie emailed BHR Director Bissell a proposed set of ground rules that she had drafted with her team.

16. On January 12, 2023, BHR Director Bissell emailed Director MacWhinnie a counterproposal to MacWhinnie's proposed ground rules ("BHR's Counterproposal"). BHR's Counterproposal stated that MSEA could not have more than three (3) members from each bargaining unit on the bargaining team unless they entered into a separate Memorandum of Agreement ("MOA") with the State. BHR's Counterproposal further limited the ability of non-bargaining team members to attend or participate, stating that only those who were there to provide insight on a particular matter of discussion at negotiations could attend with permission.

17. On January 17, 2023, Director MacWhinnie emailed BHR Director Bissell a counterproposal to the State's proposed ground rules. MacWhinnie stated in that email that she was open to a Memorandum of Understanding ("MOU") on the issue of the size of MSEA's bargaining team and asked if the State had proposed language for an MOU.

18. On January 18, 2023, the day before the first date agreed to for bargaining, BHR Director Bissell called Director MacWhinnie to cancel bargaining. Bissell stated that she didn't think the parties should meet without agreement on ground rules. MacWhinnie disagreed and told Bissell that there was agreement on many of the proposed ground rules and that the parties could discuss the remaining issues at the January 19th bargaining session. At the time, the primary remaining issues around the ground rules concerned the size of the bargaining team and the ability of other bargaining unit members who were not part of the elected bargaining team to attend and/or participate in caucus. MacWhinnie informed Bissell that MSEA had contract proposals that they were ready to bring forward at the January 19th session. Bissell ultimately refused to meet unless MSEA agreed to ground rules ahead of time and agreed not to bring State workers to bargaining other than the bargaining team.

19. On January 31, 2023, Director MacWhinnie emailed BHR Director Bissell a Zoom link for the bargaining session scheduled for February 2, 2023. MacWhinnie noted that the agenda items for the bargaining session would be the same that the parties initially discussed for the January 19th session that was cancelled. MacWhinnie also proposed February 16 and March 2, 2023 as subsequent bargaining dates.

20. BHR Director Bissell responded to Director MacWhinnie on the same day. Attempting to gauge whether State workers that are not on the MSEA bargaining team were going to be at negotiations, Bissell asked whether the Zoom link was the same Zoom link that had been provided to MSEA membership. She further reiterated that the State would not bargain unless MSEA limited the size of the bargaining team to those eligible for leave time for negotiations under the CBAs. Bissell also stated that any proposed increase in the make up of MSEA's negotiations team would have to be agreed upon through an MOU. However, she did not propose language for that MOU.

21. Director MacWhinnie responded on the same day. MacWhinnie clarified that the Zoom link was for the bargaining "table" as well as the caucus room for MSEA. MacWhinnie made it clear that MSEA did not accept the State's preconditions on bargaining and the continued assertion that ground rules must be agreed upon before meeting. MacWhinnie again stated that MSEA's team was prepared to proceed with negotiations and move forward with proposals beyond the ground rules. MacWhinnie maintained that MSEA was entitled to have State workers other than bargaining team members participate as observers at the bargaining session and work with the MSEA team in caucus.

22. Director MacWhinnie and BHR Director Bissell exchanged two more emails on that same day which clarified that the Zoom link was not sent to all MSEA members, but that members who RSVP's and wished to attend would be provided with a Zoom link to join.

23. Later in the day on January 31, 2023, BHR Director Bissell emailed Director MacWhinnie with the assurance that she wanted to get to the table for negotiations. Bissell then reiterated that the State would not go to the bargaining table unless MSEA reduced their bargaining team to three (3) members from each bargaining unit and agreed that no other State workers would join the parties at bargaining. Bissell stated that she believed that this was reasonable and consistent with the collective bargaining agreements. Additionally, Bissell informed MacWhinnie that once MSEA met the State's pre-conditions, the State would agree to bargain in one of two ways: either primarily evening bargaining sessions via an electronic format controlled by the State, or primarily in-person sessions during the work day. Bissell further clarified that agreement on ground rules was necessary before the State would respond to any proposals from MSEA's negotiating team.

24. On February 2, 2023, Director MacWhinnie emailed BHR Director Bissell to reiterate that MSEA does not agree with the State's interpretation of the CBA language around leave time for negotiations. Director MacWhinnie went on to explain to Bissell that MSEA has the right to select its bargaining committee and that the State is obligated to meet with MSEA's chosen committee, and cannot precondition bargaining on the size of the team or an agreement on the State's proposed ground rules. MacWhinnie provided Bissell historical examples of MSEA having both observers and more team members than those outlined in the release time for negotiations article and explained MSEA's reasoning for having a large bargaining committee. MacWhinnie reminded Bissell that on July 6, 2022, Bissell proposed holding bargaining sessions

outside of work hours and for shorter periods of time, and that Bissell had stated that the goal was to minimize the amount of worktime missed by bargaining team members. MSEA agreed to this proposed scheduling format. However, instead of meeting with MSEA within parameters, Bissell was now proposing that the parties meet in person and during the day in an attempt to interfere with MSEA's ability to select the size and composition of its bargaining team.

MacWhinnie maintained that MSEA's bargaining team was in agreement with thirteen (13) of eighteen (18) points from the State's most recent proposed ground rules, and that MSEA was waiting for the State to either counter or agree to meet to discuss and negotiate.

25. Forty (40) minutes prior to the February 2, 2023 scheduled bargaining time, BHR Director Bissell emailed Director MacWhinnie to let her know that, for the same reasons stated in her January 31, 2023 email, the State would not be attending the bargaining session. She stated that she and her team want to get to the bargaining table, but only if MSEA reduced their bargaining team size and agreed to the State's ground rules ahead of time.

26. On February 16, 2023, BHR Director Bissell emailed Director MacWhinnie to reiterate the State's continued desire to get to a bargaining table consistent with her previously expressed preconditions. Bissell stated that she secured a conference room for the afternoons of March 2 and March 16, 2023 and asked for MacWhinnie's confirmation that MSEA's team would be there and what two hour time period they'd like to meet between 1-5 P.M. Consistent with her proffered preconditions, Bissell requested that MSEA provide the Office of Employee Relations ("OER") with the names of the three (3) team members from each unit who would be attending bargaining and attached ground rules to govern the conduct of in person negotiations.

27. On February 21, 2023, Director MacWhinnie responded to BHR Director Bissell that the two proposed dates worked for MSEA, but requested that the sessions be later in the day,

as many team members would not be available until 6 or 6:30 P.M. due to low staffing levels. MacWhinnie requested information about the size of the meeting space proposed by Bissell, and she asked whether there would be a hybrid option for those that would be unable to attend in person. She stated that she would be meeting with the bargaining team on February 23rd and would like to have that information to present to the team to see who might need release time due to evening shifts. MacWhinnie assured Bissell that the team would be ready to discuss ground rules at the bargaining session on March 2, 2023. MacWhinnie again stated that the State was wrongly interpreting and applying the CBA language concerning leave time for negotiations. MacWhinnie again pointed out that the language only speaks to leave time, and it does not otherwise purport to limit the size of the bargaining team. MacWhinnie also noted that, contrary to Bissell's interpretation, the CBA expressly allows for leave for additional persons beyond those automatically granted leave for negotiations, provided those persons are necessary for participation on specific negotiations issues and states that such leave shall not be unreasonably denied.

28. On March 1, 2023, BHR Director Bissell met with Director MacWhinnie and MSEA President Dean Staffieri ("President Staffieri") to discuss how to proceed with bargaining. Bissell reiterated that she would not agree to MSEA having more than twelve (12) members on their bargaining team. In lieu of allowing MSEA to have a larger bargaining team, Bissell offered to set up "listening sessions" where State workers could share their concerns with someone from the State. Bissell stated that the State will not agree to open negotiations.

29. BHR Director Bissell then stated that the State would determine operational need for the members of MSEA's team and whether they could participate or not based on those

needs, implying that the State was prepared to deny the ability of bargaining team members to participate based on operational needs.

30. Director MacWhinnie stated that the membership had already selected their bargaining representatives, and that MSEA was not going to kick people off of the team because the State would not agree to the size of the team the members selected. Bissell then offered to delegate other management to choose the members of MSEA's bargaining team.

31. Director MacWhinnie asserted that MSEA had agreed to evening sessions via Zoom, as BHR Director Bissell had proposed to help the State save resources and time by meeting after work hours. Working within these parameters, MSEA's membership elected a bargaining team that provided diversity and representation across various worksites.

32. MacWhinnie assured BHR Director Bissell that MSEA was not looking for more release time at this point. MacWhinnie then suggested alternatives that would allow the whole of MSEA's team to participate, including having twelve (12) members designated as the negotiating team and the other twelve (12) members being called observers. However, Bissell continued to state that she objected to the size of MSEA's team and would not agree with open bargaining. Bissell again suggested an MOU to address the size of the team, but Bissell did not propose any specific or general terms for the suggested MOU.

33. Towards the end of the meeting, BHR Director Bissell offered a meeting room for bargaining. When asked, Bissell clarified that the room only had space for a smaller MSEA team and the State's team. Bissell further clarified that the room would not have technology to allow for hybrid participation. Accordingly, Bissell made clear that she had specifically chosen a meeting space that would arbitrarily limit the size of MSEA's bargaining team.

34. Finally, BHR Director Bissell indicated that while she could agree to conduct bargaining via Zoom meeting, she would only do so if MSEA's bargaining team was limited to the number of people eligible for leave time for negotiations under the CBAs.

COUNT I

By the totality of the above, including but not limited to:

- Preconditioning bargaining on MSEA's agreement to limit the size of its bargaining team;
- Preconditioning bargaining on an agreement to arbitrarily restrict the ability of non-bargaining team members to observe negotiations;
- Preconditioning bargaining on an agreement to arbitrarily restrict the ability of non-bargaining team members to caucus with MSEA;
- Refusing to abide by its own proposal to conduct bargaining off-hours and over zoom, in order to interfere with the ability to members of MSEA's bargaining team to participate in bargaining;
- Interfering with MSEA's ability to democratically elect the bargaining team of its choosing;
- Threatening to use the pretext of operational need to interfere with bargaining team members' ability to participate in negotiations;
- Intentionally and explicitly proposed a manner and means of bargaining that would arbitrarily limit the number of MSEA bargaining team members that could attend negotiations;

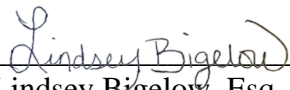
the State has refused to bargain collectively as required by 26 MRSA §979-D and has interfered with, restrained and/or coerced employees in the exercise of rights guaranteed by 26 MRSA §979-B in violation of 26 MRSA §979-C(1)(A) and C(1)(E).

PRAYER FOR RELIEF

As remedy, MSEA demands that the State of Maine be ordered to cease and desist from bargaining in bad faith; cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed by 26 M.R.S.A. §979-B; that the State of Maine be directed to bargain collectively with the Maine Service Employees Association; that the State of Maine be ordered to pay MSEA negotiation costs accrued to date; that the State of Maine be ordered to post notice to all bargaining unit employees of its violations of the statute; and any other relief necessary to remedy the violations.

The undersigned hereby declares, under penalty of perjury, that the above is true and correct to the best of my information and belief.

Respectfully submitted,



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