

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

Case No.:

Filed: February 28, 2024

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. §979-A (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 Executive Branch of the State of Maine (“State”) 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.

**Introduction**

3. Since 2019, the State of Maine, by and through the Bureau of Human Resources and Kirsten Figueroa, the Commissioner of the Department of Administration and Finance, have

made multiple commitments to conduct a comprehensive review of the classification and compensation systems covering State workers (hereinafter, the “Review”), to bargain over the implementation of the findings of the completed Review, and to fund the implementation of those recommendations.

4. On June 25, 2019, the State and MSEA agreed to the parameters of the Review by Agreement. Under this agreement, the State agreed to contract with an outside consultant to conduct the Review. The State invited MSEA to join a joint Labor-Management Steering Committee (“Steering Committee”) overseeing the process, including the initial Request for Proposals (“RFP”) process.

5. Through the RFP process, the State contracted with outside consultant Segal Consulting (“Segal”) to conduct the Review. Segal divided the initial phase Review into two main components: a compensation analysis and a review of the State classification system. Finally, the Review would combine the two pieces into a single unified structure with new salary schedules and salary grade allocations.

6. Segal completed a Market Pay Report in November 2020 which showed that, on average and at the “midpoint” of the pay scale, State worker wages were 85% that of Maine’s competitor public and private sector employers.

7. In November 2020, Segal also submitted a draft of its report on the State classification system which suggested pay grade allocations, position mergers, and renaming position titles.

8. However, Segal’s contract with the State expired in approximately February 2021, and the State has not had any discernable contact with Segal since that time.

9. At the time Segal’s work on the Review ended, major components of the Review were still left unfinished, including the finalization of the classification analysis, revisions to the salary structure, and pay grade assignments for positions.

10. On August 17, 2021, the State and MSEA entered into a Memorandum of Agreement which obligated the State to make a “good faith effort” to complete the Review by March 31, 2022. This deadline was not met.

11. The August 17, 2021 Memorandum of Agreement also mandates that the parties would “jointly release” the report on the findings of the Review, together with any recommendations, to the relevant committee of the Legislature.

12. On March 31, 2022, Commissioner Figueroa provided a status update to the Legislature and reiterated the State’s commitment to finish the Review.

13. The State spent much of 2021 through 2023 reviewing aspects of the reports with representatives of various departments across State government and then reporting its conversations back to the Steering Committee.

14. In the Spring of 2023, the State began unilaterally cancelling Steering Committee meetings, and the State did not speak to MSEA’s representatives to the Steering Committee about the progress of the Review.

15. In early 2023, the Legislature considered L.D. 1854, “An Act to Complete and Implement the Comprehensive Review of the Classification and Compensation System for Executive Branch Employees,” which required the State to complete the Review by January 31, 2024. At the public hearing on L.D. 1854, Commissioner Figueroa testified that while the State could complete the Review by January 31, 2024, she objected to the requirement that the completed Review include “a recalculation of the market salary report using current salary data.”

16. Additionally, L.D. 1854 proposed conducting a new market pay study every two years, and a comprehensive review of the classification system every ten years.

17. The Legislature ultimately passed Public Law 2023, Chapter 412, subsections UUU-2 and UUU-4, which required the State to complete the Review and, by January 31, 2024, begin bargaining in good faith with the respective bargaining agents regarding the closing of the “pay gap.” Despite Commissioner Figueroa’s objection to the requirement that the completed Review include a new market salary report, PL2023 included the exact same language that she had objected to in L.D. 1854. PL2023 also required that the State run a market pay study every four years, beginning on or before September 30, 2024. Governor Janet Mills signed PL2023 on July 11, 2023.

18. On December 13, 2023, the final day of successor bargaining between the State and MSEA, the State executed a Memorandum of Agreement under which it agreed that the Review “will be completed and implemented as required under PL2023, C412, Part UUU.” The State further committed “to the use of funding available through the salary plan for implementing recommendations from the Classification and Compensation study in 2024.” This Memorandum of Agreement was part of the overall Tentative Agreement that the parties executed on that day and which was subsequently sent to and ratified by MSEA members.

19. However, it is now apparent that when the State entered into this Memorandum of Agreement, it was aware that it would not be completing and implementing the Review as required by law, and further that it had no intention to fund or implement any recommendations in 2024.

20. Effectively, the State’s commitment to complete, implement, and fund the Review was a bait and switch.

21. To date, the State has not completed the Review.

22. Despite the plain language of the law requiring the completed Review to include a recalculation of the market salary report using current data—language that the Legislature included despite Commissioner Figueroa’s objection—the State denies that they had any obligation to re-run the market salary report as part of the completed Review.

23. Additionally, major components of the Review that Commissioner Figueroa had previously identified as being outstanding remain unfinished.

24. Through Commissioner Figueroa, on January 31, 2024, the State provided a written report to the Legislature which falsely asserts that the State has successfully closed the margin of pay between State workers and those employed by Maine’s competitors in the relevant labor market.

25. Commissioner Figueroa’s report also requests that the Legislature remove the State’s obligation to bargain in good faith over the implementation the completed Review.

26. Further, and, in direct contradiction to the State’s contractual commitment to use the salary plan to fund the implementation of the Review in 2024, the report makes no request for funding based on the Review.

27. MSEA has requested certain types of information cited in Commissioner Figueroa’s report, including details about reclassifications, range changes, and reorganizations over the last five years. To date, the State has neither provided such information nor otherwise responded to MSEA’s request.

28. Through the totality of the State’s conduct, including but not limited to failing to complete the Review and bargain in good faith regarding the implementation thereof, agreeing to contractual provisions that it knew it would not meet, repudiating the clear language the contract,

and failing to furnish information, the State has repeatedly violated the obligation to bargain in good faith as required by 26 MRSA §979-C(1)(E).

**History: The Hay Study and the State's classification and compensation system**

29. In August 1975, the State engaged an outside consultant, Hay Associates (“Hay”), to review and complete a report of the classification and compensation for State workers. On December 30, 1975, Hay produced a report entitled “Study of and Recommendations for the Classification and Compensation of State Employees.” The Hay Study recommended, *inter alia*, that: positions be reallocated to classes based on measured job content; that the State implement a unified salary schedule and set salary levels in relation to average actual base salaries paid in appropriate markets; that the State annually review and adjust salary schedules in relation to appropriate market comparisons; and that all new or revised class be evaluated and allocated to the appropriate pay grade in accordance with the Hay Guide Chart.

30. In 1976, the 107<sup>th</sup> Legislature passed L.D. 2361, “An Act to Revise and Reallocate Appropriations from the General Fund for the Expenditures of State Government for the Fiscal Years Ending June 30, 1976 and June 30, 1977 and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government.” This emergency legislation was based largely on the recommendations of the Hay Study and included a declaration that it is the policy of the state to provide equal pay for equal work and that the creation of salary schedules and placement of employees at the appropriate step of the relevant schedule would help accomplish that.

31. By design, this new Classification system required regular maintenance and review to ensure that the State continues to meet the declared policy of equal pay for equal work.

32. The primary vehicle for change within the Classification system is either a reclassification or a range change (also referred to as a “reallocation”). A reclassification changes the designated classification of a worker or group of workers to a new or different classification. A range change changes the classification from one pay grade to another, or, more infrequently, from one salary schedule to another. Reclassifications or range changes may be initiated by either workers or management, and such requests are approved or denied by workers at the Bureau of Human Resources (“BHR”). Workers have the right to appeal BHR’s decision to binding arbitration.

33. Over the decades since the Hay System was implemented, State positions and classifications have changed in myriad ways, but there has been no successful effort to manage the overall architecture of the Hay System. As Commissioner Figueroa testified in 2019 in support of legislation that would have required the State to conduct a classification review,

The current compensation system is 40 years old and has never been systematically reviewed. During that time, inadequacies and inequities of the current compensation system that loudly demanded our attention in the form of arbitration, legislation, settlements and collective bargaining were addressed through a hodgepodge of reclassifications, range changes, stipends and adjustments. Meanwhile, a host of issues remain unaddressed, some solutions have given unintentional rise to new issues, and the work of state employees has evolved considerably since the current compensation system was first instituted.

As Commissioner Figueroa correctly described, decades of neglect and mismanagement had resulted in a compensation and classification system that is no longer adequate or equitable.

34. As an example of one large scale “solution” that gave rise to major inequities within the compensation system, in the mid-2000s the State and MSEA agreed to conduct comprehensive pay studies for each of the four MSEA bargaining units, beginning with the Administrative Services Bargaining Unit. This initial pay study was completed and implemented in 2006 and resulted in a modified Hay scale for determining compensation levels for all positions within the

Administrative Services Bargaining Unit, the restructuring of some classifications into “job families,” “cross-walking” certain positions into new titles, and adjusting the salary schedule in order to close the gap between public sector and private sector employment. However, following the implementation of the initial pay study, the process broke down. The pay study for the Operations, Maintenance and Support Services Bargaining Unit was completed in or around July 2010, but the State did not act upon it. The pay studies for the Professional and Technical Services and Supervisory Services Bargaining Units were never completed. Accordingly, since 2006, the Administrative Services pay scale had been misaligned from the other bargaining units. As a result, a worker in Administrative Services can be reclassified “upwards” to a classification in a different bargaining unit and at a higher pay range, yet the worker will not realize a pay increase.

**L.D. 1214 and the initial agreement between MSEA and the State**

35. In 2019, and at MSEA’s urging, Senate President Troy Jackson introduced L.D. 1214, “a Resolve to Conduct a Comprehensive Study of the Compensation System for State Employees.”

36. On the day of the public hearing for L.D. 1214, Commissioner Figueroa testified on behalf of the Administration and in support of the resolve. In her testimony, Figueroa described how non-competitive compensation hampers the State’s ability to recruit and retain workers and stated that a study would provide specific knowledge of the inadequacies and inequities in the current compensation system.

37. In light of the State’s willingness to conduct a study, MSEA and the State entered into a Memorandum of Agreement dated June 25, 2019 and set forth the parameters for the Review (“Initial Agreement”). This Initial Agreement was reached through successor bargaining between MSEA and the State, was part of the Tentative Agreement ratified by the parties and voted on by



the MSEA membership, and became a term and condition of MSEA's four collective bargaining agreements.

38. The Initial Agreement largely mirrored the language of L.D. 1214, which was allowed to die upon adjournment of the legislative session. It obligated the State to engage a consultant to perform a comprehensive review of the classification and compensation system for State employees at a cost of up to \$600,000. The Review would include the following: an analysis of all adjustments to the classification and compensation system over the prior 40 years; any additional pay adjustments and stipends; prior pay studies and prior market surveys; a comparison of Maine's compensation and classification systems with those of its private and public sector competitors; the impact of wages and compensation on the State's ability to recruit and retain workers; and recommendations as to improvements to the existing systems or a transition to potential alternative classifications. Under the Initial Agreement, the State agreed to allow MSEA to provide feedback on the potential consultants, as well as disapprove any finalist from final selection. The State committed to making a "good faith effort" to have the study completed by August 1, 2020.

**The selection of Segal Consulting to conduct the review**

39. Following the execution of the Initial Agreement, the State invited MSEA to participate directly in the RFP process which began in the Fall of 2019. Through this process, in December 2019, Segal was selected to perform the Review.

40. Segal's initial proposal was broken into five steps:

- (1) A review of the current system, including stakeholder interviews and reviewing compensation and classification systems, policies, and practices (proposed cost for this step was \$25,000);
- (2) The classification analysis, including developing a Job Description Questionnaire to be completed by as many employees as possible, analyzing 1,167 job titles covering 11,102 employees, developing a recommended classification structure "one draft, one final),"

- recommending assignments of individual positions to job titles, and drafting job descriptions for all recommended job titles (\$425,000);
- (3) Performing a market assessment of the State’s salary and fringe benefits as compared to its public and private sector competitors (\$75,000);
- (4) Developing recommendations, including new pay schedules and grade assignments for all jobs covered by the study, estimating the cost of implementing the recommended pay schedule, and assisting with implementation and training (\$25,000);
- (5) Presenting the final results to the State, including participation in legislative hearings or work sessions (\$15,000).

41. MSEA was not party to the State’s negotiations with Segal, which occurred in early 2020, and MSEA did not receive a copy of the final contract between Segal and the State.

42. Despite Segal’s proposal to include both wages and fringe benefits as part of its market assessment, the final agreement between the State and Segal limited the review to wages only.

**The Joint Labor-Management Steering Committee and the launch of the project**

43. The State invited MSEA to join the Joint Labor-Management Steering Committee (“Steering Committee”) overseeing the Review. As of early 2020, the Steering Committee consisted of the following members: Heather L’Hommideau Perreault, Deputy Commissioner of Finance at DAFS; Mary Anne Turowski, Senior Policy Advisor, Governor’s Office; Breena Bissell, Director, BHR; Deidre Salsich, Senior Human Resources Compliance Analyst, BHR; J. Thaddeus Cotnoir, Classification & Compensation, BHR; Sue Garcia, a Procurement Analyst II at DAFS and an MSEA member; MSEA Deputy General Counsel Anne Macri; and MSEA General Counsel Tom Feeley. Salsich left State employment in the Spring of 2021 and was not replaced on the Steering Committee. Macri left MSEA at the end of 2021 and was replaced by MSEA Staff Attorney Joseph Gribbin.

44. The official “kick-off” meeting between Segal and the Steering Committee was initially scheduled for March 19, 2020, but due to the global COVID-19 pandemic, that was

delayed until April 24, 2020. During this meeting, the parties discussed the project timeline and set a goal of having the Classification Analysis and updated job descriptions fully completed by January 5, 2021; an FLSA Review completed by September 25, 2020; the Market Assessment completed October 20, 2020; and the final Pay Structure Development, Costing, and Recommendation Development completed by January 5, 2021.

**Segal's Market Analysis Report**

45. Segal's Market Analysis compared compensation levels for approximately 82 benchmark positions selected by the Steering Committee with those in comparable titles at four New England states, four Maine cities, one Maine county, the Federal government, and in two private sector databases covering New England states.

46. On June 12, 2020, Segal and the Steering Committee selected the benchmark positions for the Market Analysis.

47. On June 19, 2020, Segal sent a market survey to the State's peer-competitors. Over the next couple of months, the State, Segal, and the peer-identify positions comparable to the benchmark positions.

48. Segal finalized the Market Analysis on November 20, 2020. The total time necessary to identify the comparable positions, obtain the data, and run the analysis was just over five months.

49. Segal's Market Analysis found that average wages for the benchmark positions as of January 1, 2020 were, at the top of the payscale, approximately 83% percent of those of its competitors, 85% at the midpoint, and 87% at the entry point.

50. The Market Analysis also showed that the disparity between the State's wages and its competitors was not evenly distributed. Of the 82 benchmark positions, 19 were paid above the

market average. However, more than half, or approximately 42, were at or below 80% of the market average.

51. Accordingly, an across-the-board cost of living adjustment would be insufficient to address the imbalance and inequity in the compensation and classification systems.

**Segal's Classification Analysis**

52. Segal analyzed data for its Classification Analysis, including thousands of Job Duty Questionnaires completed by employees, before presenting a draft Classification Analysis on November 8, 2020. This draft report assessed 1,172 titles based on the following categories: changes to and/or combinations of position titles; proposed occupational groupings; proposed job summaries; and proposed salary grades based on Segal's proprietary Job Evaluator, which was based on scoring factors including required certifications, education and experience, supervision, human collaboration, freedom to act, knowledge and skills, fiscal responsibility and working conditions.

53. Segal asked the Steering Committee to take a few weeks to review the proposed changes to and mergers of classification titles and to provide feedback prior to the December 7, 2020, meeting between Segal and the Steering Committee. However, upon reviewing the document, the Steering Committee felt it needed more time to complete its review of the titles. Additionally, both the MSEA and management representatives of the Steering Committee had questions about the draft Classification Analysis, such as Segal's weighting of the various scoring factors and the placement of certain classifications relative to each other.

54. The Steering Committee continued discussing the draft Classification Analysis, both with Segal and among themselves, over the next several months.

55. In mid-January, the State submitted feedback and comments to Segal based on a review by BHR's Personnel Analysts. On February 3, 2021, Segal provided responses to the various questions from BHR which made clear that the State had the ability to customize Segal's Job Evaluator to suit its needs. Specifically, Segal indicated that it needed feedback from the Steering Committee based on its knowledge of the various positions, suggesting that the Steering Committee could adjust the weighting of factors, the assignment of occupational groups, and the like, in order to suit its needs.

56. On or about February 4, 2021, Segal informed the Steering Committee that their contract with the State was expiring the following week. Prior to this date, MSEA had never been informed that Segal's contract was through a date certain rather than through the completion of the Review. Segal informed the Steering Committee that they were willing to continue helping with the Review. Segal also discussed the next step of Salary Structure Development, which was the major outstanding portion of the Review once the Classification Analysis was finalized.

57. On February 11, 2021, Segal again attended the Steering Committee meeting and suggested that the State should meet with various departments and review their respective titles before bringing back their feedback.

58. The Steering Committee met again on February 25, 2021. On February 24<sup>th</sup>, BHR Director Bissell suggested that Segal should not attend this meeting.

59. The Steering Committee met again on March 25, 2021. On March 24<sup>th</sup>, Senior Human Resources Compliance Analyst Salsich emailed Segal to inform them that they should not attend.

60. Segal has not attended a Steering Committee meeting since February 11, 2021. It is not clear whether the State has had any further communications with Segal since March 24, 2021.

61. At the time Segal's participation in the Review ended, significant aspects of the project remained unfinished, including the finalization of the proposed Classification Structure, and the development of the pay structure, which would include the salary schedule and pay grade assignments for benchmark jobs, slotting non-benchmark jobs into grades, and calculating a preliminary cost impact from the recommendations.

***The continued work on the Review post-Segal***

62. On February 10, 2021, Commissioner Figueroa provided a status update on the Review to the Joint Standing Committee on State and Local Government ("SLG Committee"), entitled "Part one of two: An update on DAFS' compensation and classification effort." Figueroa stated that "[as] the project is ongoing, with the second part of the study far from complete, no recommendation is being provided at this time." The two parts of the Review, as described by Figueroa, were the initial Market Analysis and the incomplete Classification Analysis.

63. Regarding the incomplete portion of the Review, Commissioner Figueroa wrote:

The second part of the State's engagement with The Segal Group includes a long-overdue review of the State's job classification system, expected to take a considerable period of time.

64. As Commissioner Figueroa testified, the review of the Classification System would then be cross-referenced with the Market Analysis, allowing the State to

consider much-needed adjustments to our 40-year-old job classification system, and may remedy idiosyncrasies within the report's line-item findings by benchmark job title.

65. Despite the work left remaining, Commissioner Figueora assured the Legislature that she and her team would “continue this effort in good faith through to completion.”

66. The Steering Committee continued to meet off and on throughout 2021, 2022, and part of 2023. The State tasked certain BHR staff with meeting with stakeholder groups in different departments and agencies and reviewing the proposed title changes and/or mergers, as applicable. The BHR staff would then report back to the Steering Committee and share the feedback from their departmental and agency meetings.

67. BHR staff’s discussions with the departmental stakeholder groups did not include a discussion of the proposed salary grades.

68. On August 17, 2021, MSEA and the State executed a second Memorandum of Agreement concerning the Review (“Second Agreement”). As with the Initial Agreement, this Second Agreement was reached through successor bargaining between MSEA and the State, was part of the Tentative Agreement ratified by the parties and voted on by the MSEA membership, and became a term and condition of MSEA’s four collective bargaining agreements.

69. In this Second Agreement, the State agreed to make a “good faith effort ... to have the Classification and Compensation study completed by March 31, 2022.” The State further agreed that should it fail to complete the study by that date, the Commissioner would give a status update to the SLG Committee, including an estimated completion date.

70. The Second Agreement also stated that, once complete, the Commissioner would report the findings of the Review, together with any recommendations, to MSEA, and that the parties would jointly release the report and any recommendations to the SLG Committee. Further, the State agreed that within one hundred twenty days after completion, the Commissioner would present a plan to address any and all recommendations arising from the Review.

71. On or about November 11, 2021, members of the Steering Committee met to discuss the path forward on the Review. MSEA reminded the State of the complexity and scope of the as-yet uncompleted work, including the creation of the new salary schedules, and expressed concern that the Steering Committee had neither the time nor expertise necessary to complete the Review. MSEA also asked whether the State had any plans to bring back Segal or any other outside consultant to help finish the work. The State responded that they were having these discussions internally and would report back.

72. On December 9, 2021, the Steering Committee met to discuss BHR staff's meetings with the State Library and the Department of Agriculture, Conservation, and Forestry. Typically, BHR staff would lead their review by sharing their computer screen and showing their notes regarding the department's feedback. MSEA requested a copy of BHR's notes regarding departmental feedback to date, expressing concern that it was difficult to keep track of the discussions from meeting to meeting, particularly when considering classifications that overlapped or otherwise were related across departments. BHR Director Bissell denied this request, indicating that they did not want MSEA to use the notes against them in the future.

73. The State did not meet the March 31, 2022 completion deadline specified in the Second Agreement. On that date, Commissioner Figueroa provided both written and verbal updates to the SLG Committee. She again testified that the Market Analysis that was completed in November 2020, and noted that the State had negotiated COLAs totaling 10.32% since the date Segal calculated the disparity.

74. Under the heading "Next Steps," Commissioner Figueroa then detailed the work remaining. First, regarding the Classification Analysis, Figueroa listed the departments that had



already met with BHR staff and those that had yet to. Once those conversations had been completed, she wrote,

priorities will remain requiring communication and cooperation across units. The Segal Group proposed combining classifications that cross units, for instance, and we will undertake a more thorough and dedicated review of those classifications, including ample conversations with various stakeholder groups, in considering such a complex topic. Examples of such instances are within the following classification series: contracts and procurement, administrative series, mechanics, and management analysts.

To date, neither the “proposed combining classifications that cross units” nor the “more thorough and dedicated review of those classifications, including ample conversations with various stakeholder groups,” have occurred.

75. Regarding the compensation portion of the Review, Commissioner Figueroa testified that there was still a significant amount of work left to be done:

Based on what we have learned by working on the classification portion, we anticipate that the compensation portion will be equally complicated and time-consuming. We will continue to work at it – and remain committed to sharing our progress along the way.

To date, the State has not done any more work on the Compensation piece of the Review, such as adjusting pay ranges consistent with the Market Analysis or reallocating positions to new ranges.

76. Commissioner Figueroa also acknowledged that completing the Review could be beyond the capacity of the existing team.

There may come a time when additional capacity will be required in order to continue progress, for instance a consultant to relieve the workload on our Human Resources teams who also have other responsibilities. We are open to that possibility and, should that be the case, a recommendation would be made to the Steering Committee.

77. On at least two additional occasions after Commissioner Figueroa’s March 31, 2022 written report to the SLG Committee, MSEA’s representatives to the Steering Committee asked the State’s representatives about their plans for finishing the Review, including whether

they were considering hiring a consultant to run a new market survey and/or complete the classification review. On each occasion, the State's representatives were non-committal or otherwise vague about their plans.

78. The Steering Committee continued meeting intermittently until June 8, 2023. At this meeting, BHR staff reported that they had met with each of the Departments and/or agencies to discuss the proposed changes to or combinations of titles recommended by Segal. BHR Director Bissell suggested that the next step would be to figure out what to do with cross-department positions, such as titles in the administrative series. The Steering Committee scheduled a subsequent meeting for June 22, 2023.

79. Since June 8, 2023, the State has unilaterally cancelled every meeting of the Steering Committee.

**L.D. 1854 and Public Law 2023**

80. In the Spring of 2023, the Legislature considered L.D. 1854, "An Act to Complete and Implement the Comprehensive Review of the Classification and Compensation System for Executive Branch Employees." MSEA assisted with the development and drafting of L.D. 1854.

81. L.D. 1854 initially had two main components. First, it would change the language of 5 M.R.S.A. § 7061 to require the State to perform a market pay study every two years and comprehensive review of the classification system every ten years.

82. Second, L.D. 1854 would require the State to utilize a consultant to complete the Review by January 31, 2024, and to then implement the recommendations of the Review by July 1, 2024, or else implement a 5% across-the-board COLA for all Executive Branch employees.

83. Consistent with MSEA’s proposal at the bargaining table, L.D. 1854 would require that the Review completed by January 31, 2024 must include “a recalculation of the market salary report using current salary data.”

84. A public hearing on L.D. 1854 was held on May 12, 2023. Dozens of MSEA-represented employees provided written and verbal testimony about the impact of low wages and short-staffing on their work and urged for the passage of legislation requiring the Administration to complete the Review and provide sufficient funds to close the gap in pay between Maine State employees and those of Maine’s competitors.

85. In response to the language of L.D. 1854 specifying that the completed Review include a recalculation of the market salary report, Commissioner Figueroa testified that while the State was on target to complete the Review by January 31, 2024, she did not think they could do so “if we are required to complete a new market study. We will not be able to do both.”

86. Commissioner Figueroa also testified that in just over three years, the Administration had increased base pay for more than 1,750 State employees through reclassifications, re-organizations, and/or range changes.

87. Finally, Commissioner Figueroa testified that the State would need funding to hire a consultant to help with the effort to conduct more regular market studies going forward. She also testified that the State would need additional resources of up to \$1 million “to help us connect the market study and the information we’ve gathered from the classification effort to help us finalize our recommendations.”

88. On June 22, 2023, the State rejected MSEA’s April 5, 2023 proposal requiring the State to complete the Review because, the State noted, the issue “might be prescribed by law.”

79. Ultimately, the language of L.D. 1854 was incorporated into the budget, in amended form, and signed by the Governor, as Public Law 2023 (“PL2023”), Chapter 412, Section UUU (“Section UUU”), on July 11, 2023. The chaptered law required the State to complete the Review and report back on the recommendations no later than January 31, 2024. It also included the following changes from the initial version of L.D. 1854. First, consistent with Commissioner Figueroa’s testimony, the frequency of the ongoing market pay study required under 5 M.R.S.A. § 7061 was changed from every two years to every four years. Second, while the initial bill required the State to implement the recommendations based on the Review else implement a 5% across-the-board COLA for all Executive Branch employees, the chaptered law required the State to bargain in good faith over the implementation of the Review with the appropriate bargaining agents. And finally, consistent with Commissioner Figueroa’s testimony that the State would need additional resources to connect the market study with the information gathered from the classification effort in order to finalize the recommendations, the chaptered law allocated up to \$1.2 million in additional resources for the State to both finalize the Review and conduct a subsequent market salary report before September 30, 2024. P.L. 2023, ch. 412, § UUU-5.

80. However, despite Commissioner Figueroa’s May 12, 2023 testimony requesting that the State not be required to recalculate the Market Analysis as part of the completed Review due January 31, 2024, Section UUU-2 included the following language:

The Commissioner of Administrative and Financial Services shall complete the comprehensive review of the classification and compensation system for employees of the executive branch of the State that was undertaken pursuant to a memorandum of agreement executed with the Maine Service Employees Association, SEIU Local 1989 on June 25, 2019, **including a recalculation of the market salary report using current salary data.**

(Emphasis added.) This paragraph, including the emphasized language which required the State to re-run the market salary report using current data, is identical to the verbiage from L.D. 1854 that Commissioner Figueroa testified against on May 12, 2024.

**Successor bargaining and the State's Third Memorandum of Agreement to Complete the Review**

89. On December 14, 2022, MSEA submitted a demand to begin successor bargaining with the State for the four collective bargaining agreements expiring June 30, 2023. However, the State objected to the size of MSEA's duly-elected bargaining team and refused to meet with MSEA. MSEA filed a prohibited practice charge, Case No. 23-PPC-15, and continued to propose dates for bargaining. However, the State refused to meet.

90. The prohibited practice charge was settled by agreement on May 22, 2023, and allowed MSEA to bring the entire duly-elected bargaining team to negotiations. MSEA and the State held their first bargaining session on June 6, 2023.

91. On April 5, 2023, while the prohibited practice charge was pending, MSEA's Director of Organizing and Field Angela MacWhinnie, who was also serving as MSEA's chief negotiator, sent nine separate proposals to BHR Director Bissell, who was serving as the State's chief negotiator.

92. Among the proposals was a proposal to complete the Review. Similar to the requirement of L.D. 1854, MSEA's proposal would require the State, as part of the completed Review, to commission a new Market Analysis utilizing the same benchmark positions as those utilized in the Market Analysis completed by Segal in November 2020.

93. On June 22, 2023, the State rejected MSEA's April 5, 2023 proposal requiring the State to complete the Review because, the State noted, there was pending legislation on the issue, in reference to L.D. 1854 and/or PL2023.

94. Following the passage of PL2023, on August 31, 2023, MSEA’s negotiator again asked the State for a response to the April 5, 2023 proposal to complete the Review. The State responded that it did not want to put anything into the contract “because it’s already in law.” MSEA pointed out that its bargaining proposal addressed aspects that were not included in the law, such as a mechanism for resolving disputes and an accountability piece. The State responded, in so many words, that “we are committed to the work we have to do and the subsequent negotiations that will have to take place” after the Review is completed.

95. On September 15, 2023, MSEA General Counsel Feeley emailed BHR Director Bissell, with “cc” to Deputy Commissioner Perreault, Policy Advisor Turowski, and MSEA Staff Attorney Gribbin. Feeley reminded Bissell about the legislative mandate to complete the Review by January 31, 2024, as well as the legislative mandate to bargain in good faith over the implementation of the Review’s findings, and stated that a failure to complete the Review would constitute a *per se* violation of the obligation to bargain in good faith. Feeley then expressed concern about the volume of work needed to be completed on the Review, the fact that the State had unilaterally cancelled all Steering Committee meetings for several months, and the State’s failure to utilize the \$1.2 million that the Legislature had allocated to complete the review, at the request of Commissioner Figueroa. Finally, Feeley asked what actions BHR was taking to complete the Review in a timely fashion. Bissell never responded to this email.

96. On December 13, 2023, BHR Director Bissell and MSEA Director MacWhinnie executed a third Memorandum of Agreement (“Third Agreement”) requiring the State to complete the Review. As with the Initial Agreement from 2019 and the Second Agreement from 2021, this Third Agreement was reached through successor bargaining between MSEA and the State, was

part of the Tentative Agreement ratified by the parties and voted on by the MSEA membership, and became a term and condition of MSEA's four collective bargaining agreements.

97. The Third Agreement first obligates the State to complete and implement the Review "as required under PL2023, C412, Part UUU."

98. The Third Agreement also includes the State's further commitment "to the use of funding available through the salary plan for implementing recommendations from the Classification and Compensation study in 2024."

99. On January 19, 2024, BHR Director Bissell and MSEA General Counsel Feeley spoke in anticipation of bargaining the implementation of the recommendations of the completed Review, as required by Section UUU-4. During this phone call, Feeley reminded Bissell of the obligation to recalculate the Market Analysis under Section UUU-2. Bissell stated that she did not believe that was required by the law, and Feeley read her the language of Section UUU-2. Feeley also stated that it was anticipated that the completed Review and recommendations would include possible changes to and mergers of classifications, as well as recommendations for adjustments to the salary schedule, as had been anticipated by both the initial scope of the Review, Segal's proposed timeline regarding the review, and Commissioner Figueroa's testimony before the Legislature over the years. Bissell did not comment on whether the completed Review would include this information.

100. MSEA General Counsel Feeley asked BHR Director Bissell what exactly the State had done to complete the review since the last meeting of the Steering Committee. Bissell stated that she had been "busy," in apparent reference to her involvement with successor bargaining. Feeley reminded her that, by law, the State had been required to both bargain the successor contract and complete the Review.

101. BHR Director Bissell asked about the anticipated size of MSEA's bargaining team. Feeley suggested that he anticipated that MSEA's team would be less than 10 people and would represent some cross-section of bargaining units and/or departments. Feeley also told Bissell that while he anticipated bringing the State's recommendations back to a larger work group made up of MSEA-represented workers for their review, and while he may need specific subject matter experts from different areas in addition to bargaining team members, he did not plan to bring the entire work group to bargaining.

102. BHR Director Bissell and MSEA General Counsel Feeley agreed to an initial meeting of the bargaining teams, and Bissell asked Feeley to speak with attorney Linda McGill, who would be serving as the State's chief negotiator.

103. MSEA and the State held the initial meeting of the bargaining teams on January 30, 2024. The State proposed a set of ground rules for negotiations which mirrored standard ground rules used for successor bargaining, including provisions for making proposals and counter proposals. MSEA responded that it was difficult to agree to ground rules since it did not appear that the State had completed the Review, as required by law.

104. MSEA asked what would be in Commissioner Figueroa's report to the SLG Committee due the following day, including whether the State had recalculated the Market Analysis as required by law. Attorney McGill responded that she did not know what would be in the Commissioner's report because it was not yet finalized.

**Commissioner Figueroa's Report to the Legislature**

105. On February 1, 2024, BHR Director Bissell forwarded MSEA a copy of the "Report and Recommendations of the Maine State Government Classification and Compensation Plans Study" ("Report").



106. Remarkably, despite the clear language of UUU-2 stating that the completed Review must include “a recalculation of the market salary report using current salary data”—language that the Legislature included over Commissioner Figueroa’s protest that it would be difficult to for the State to both recalculate the Market Analysis and finish the Review by January 31, 2024—the State failed to recalculate the Market Analysis.

107. Further, while Commissioner Figueroa had repeatedly testified over the years about the work left to be done on the Review—including but not limited to a “thorough and dedicated review” of cross-unit combination of classifications, a “compensation portion” which would be “equally complicated and time-consuming,” and a “rigorous” and “thorough” analysis that would allow the State to make “much-needed adjustments to our 40-year-old job classification system” and “remedy idiosyncrasies within the report's line-item findings by benchmark job title”—the Report does not reflect that it has even begun *any* of this work in the three years since Segal stopped working on the project.

108. Rather, the sole work completed by the State was the surface level review of proposed titles by department.

109. The bulk of the Report focused on wage adjustments that the various labor unions had secured through bargaining, including the \$15-per-hour minimum wage, as well as recruitment and retention stipends that MSEA had demanded and won for Ferry Service workers through the process outlined in 5 MRSA Section 7065(2-D).

110. The Report also states that BHR has conducted more than 3,000 reclassifications, reorganizations, and/or range changes impacting more than 5,500 positions—almost 3,000 more than she testified had been impacted in her May 12, 2023 testimony.

111. Despite failing to recalculate the market pay analysis as required by Section UUU-2, the Report also avers three different times, without the benefit of the current salary data as legislatively mandated by Section UUU-2, that “[it] is time to set aside the phrase ‘pay gap.’”

112. The Report notes that, between January 1, 2020 and January 31, 2024, there were four salary schedule adjustments:

- A 4% average negotiated increase on December 31, 2020;
- A 2% average negotiated increase on December 1, 2021;
- A 4% average negotiated increase on July 1, 2022;
- And a 6% average negotiated increase on either November 1, 2023 or January 1, 2024, depending on the bargaining unit.

Cumulatively and compounded, this equates to a 16.9% raise over four years. This is less than would have been needed to close the average pay gap identified in 2020—based on Segal’s finding that in 2020 State workers were paid on average 85% of the market rate of Maine’s competitors.<sup>1</sup>

113. Moreover, the salary schedule adjustments identified in the Report were uniform and across the board, meaning that they did nothing to address the inequity between State government positions, as evidenced by the more than half of benchmark positions Segal had identified as being at or below 80% of the market rate.

114. The Report contains a number of generalized recommendations regarding how to manage the compensation and classification system going forward. For example, the Report recommends: sticking with the Hay System, rather than moving to another system; abiding by the requirement of Section UUU-5 that the State conduct a new market pay analysis every four years; including fringe benefits in future market pay studies; reviewing recruitment and retention stipends

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<sup>1</sup> 85% \* 1.169 = 99.365%, meaning that as of January 1, 2024, the average State of Maine salary was *still* below the market rate as it existed on January 1, 2020—never mind the market rate in 2024, after multiple years of record inflation.

every four years, rather than every two years as currently required under statute; and investing in educating BHR analysts in the areas of compensation and classifications.

115. The Report also recommends that, at some unknown point in the future, BHR should review and make recommendations to address salary schedule inequities. This, of course, was supposed to be the goal of the Review commenced in 2019.

116. Finally, the Report also recommends that the Legislature remove the portion of Section UUU which required the State to bargain in good faith regarding the implementation of the recommendations of the Review. The Report bases this recommendation on the false assertion that Section UUU required bargaining to close the pay gaps identified in the 2020 Market Analysis. However, as discussed above, Section UUU-2 required that the completed Review include a recalculation of the Market Analysis based on current market data.

**Bargaining to implement the findings of the Review**

117. On February 9, 2024, MSEA requested information substantiating Commissioner Figueroa's testimony that it had raised the pay of more than 5,000 employees through reclassifications, reorganizations, and range changes. MSEA requested the relevant position titles and pay grades before and after the referenced actions, the number of employees affected by each action, and the effective date of each action.

118. To date, BHR has not acknowledged MSEA's request for information.

119. On February 16, 2024, MSEA and the State again met for the purpose of bargaining the implementation of the recommendations based on the completed Review, as required by Section UUU-4.

120. MSEA stated that because Section UUU-2 mandates that completed Review include a recalculation of the Market Analysis using current market data, and since the State had

failed to recalculate the market Analysis or engage in any serious attempt to otherwise complete the Review as agreed upon by the parties and mandated by law, it was unclear what the State was prepared to bargain.

121. MSEA also stated that it is apparent the State misled MSEA during successor bargaining on December 13, 2023, when it entered into the Third Agreement stating that it would complete and implement the Review as required by Section UUU and further committing to use the funding available through the salary plan for implementing the recommendations of the Review, since the State knew at that time that it was not going to be completing the Review.

122. MSEA pointed out that as Commissioner Figueroa had requested the Legislature to remove the statutory requirement that the State bargain in good faith over implementing the findings of the Review, it was unclear what authority, if any, the State's bargaining team had to negotiate anything of substance.

123. After some back and forth, the State averred that it was prepared to negotiate the benchmark positions to be included in the market pay report due on September 30, 2024. The State further indicated that it believed that this future market pay report would be used to inform the next round of successor bargaining for the collective bargaining agreements beginning on July 1, 2025.

124. MSEA stated that it expected the State to fulfill its contractual commitment "to use funding available through the salary plan of implementing the recommendations of the Classification and Compensation study in 2024," as required by the Third Agreement. The State responded that it interpreted this language differently than as it is written.

### COUNT I

By and through the above, including failing to complete the report on the comprehensive review of the classification and compensation system and begin bargaining in good faith on the implementation of the results of that review as required by P.L. 2023, ch. 412, §§ UUU-2, UUU-4, and UUU-5 and 26 M.R.S.A. §979-D, the State has engaged in bad faith bargaining in violation of 26 MRSA § 979-C(1)(E).

### COUNT II

By and through the above, including agreeing during successor bargaining that it would complete and implement the classification and compensation review as required under P.L. 2023, ch. 412, part UUU and further committing to use salary plan funds to implement the recommendations of that study in 2024, with full knowledge that it would not be taking any further action to complete, implement, or fund that review, the State has engaged in bad faith bargaining in violation of 26 M.R.S.A. § 979-C(1)(E).

### COUNT III

By and through the above, including repudiating its agreement to complete and implement the classification and compensation review as required under P.L. 2023, ch. 412, part UUU and committing to use salary plan funds to implement the recommendations of that study in 2024 during contract negotiations, the State has engaged in bad faith bargaining in violation of 26 M.R.S.A. § 979-C(1)(E).

### COUNT IV

By and through the above, including refusing to provide relevant and necessary information requested by the Union, the State has violated its obligation to bargain in good faith under 26 M.R.S.A. § 979-D, in violation of 26 M.R.S.A. § 979-C(1)(E).

PRAYER FOR RELIEF

As remedy, MSEA demands that the State of Maine be ordered:

(1) to complete the Compensation and Classification Review as required by P.L. 2023, ch. 412, § UUU-2 and the collective bargaining agreement, including the recalculation of the Market Analysis using current salary data;

(2) to bargain in good faith regarding the implementation of the Compensation and Classification Review;

(3) to furnish information lawfully requested by MSEA;

(4) to make any and all MSEA-represented employees whole;

(5) to post notice to all bargaining unit employees of its violations of the statute; and

(6) any other relief necessary to remedy the violation.

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,

*/s/ Tom Feeley*

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Thomas M. Feeley, Esq.  
Attorney for Complainant  
Maine Service Employees Association,  
SEIU Local 1989  
5 Community Drive  
Augusta, ME 04330  
(207) 622-3151  
tom.feeley@mseaseiu.org

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