

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

Case No.:

Filed: November 24, 2025

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:

I. Introduction

Complainant Maine Service Employees Association, SEIU Local 1989 (“MSEA” or “Complainant”) brings this complaint against the Executive Branch of the State of Maine (“the State” or “Respondent”) for failing to bargain in good faith as required by 26 M.R.S.A. §979-D and interfering with, restraining and/or coercing employees in the exercise of rights guaranteed by 26 M.R.S.A. § 979-B, in clear violation of M.R.S.A. §§ 979-C (1)(A) and (E).

Specifically, as alleged below, Respondent has prematurely declared impasse during successor bargaining for the parties’ four (4) collective bargaining agreements, proposed regressive and material modifications to a proposal after the deadline for new proposals had passed, insisted on Complainant’s acceptance of its unlawful and regressive proposal to the point of prematurely declaring impasse, cancelled bargaining sessions following its premature declaration of impasse, and otherwise engaged in behavior designed to frustrate the collective bargaining process.

As a remedy, the MSEA asks this Board to order the State to cease and desist from

engaging in these prohibited practices, withdraw its premature declaration of impasse, recommence bargaining in good faith, pay MSEA for the costs of negotiations and attorneys' fees, post notice of its unlawful activities, and any and all other remedies available by law.

## II. Parties

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 (collectively, "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 ("BHR"), with offices at 79 State House Station, Augusta Maine 04333.

## III. Facts

3. The Bargaining Units were subject to 2023-2025 collective bargaining agreements which expired on June 30, 2025.
4. On or around December 19, 2024, MSEA's Director of Organizing and Field Operations Angela MacWhinnie issued a demand to bargain successor agreements for the Bargaining Units.
5. Subsequently, MacWhinnie began discussions with Jessica Ford, the State's Chief Negotiator, concerning logistics and ground rules.
6. On April 10, 2025, before the parties met at the table, but in effort to move the process along, MacWhinnie sent Ford fifteen (15) bargaining proposals. (Hereinafter, all relevant dates occurred in 2025 unless otherwise noted.)
7. The parties held bargaining sessions on the following dates: June 4, June 18, June 25, July

9, July 16, July 23, August 13, August 20, August 27, September 10, and September 24.

8. The parties' agreed upon Ground Rules include the following language regarding the deadline for exchanging proposals:

The Parties agreed that the deadline for proposals to be submitted is the close of the third bargaining session, unless otherwise agreed upon in writing. Nothing in this paragraph limits a party's right to make or modify proposals or counter proposals at any time on subject matter that is covered or addressed in a proposal that has been submitted by either party.

Accordingly, the deadline for new proposals was June 25<sup>th</sup>.

9. On June 18<sup>th</sup>, Respondent introduced State Proposal 3 ("S-3"), which would significantly change the terms of the Reclassifications Article of the parties' collective bargaining agreements ("Reclassifications Article") and fundamentally destroy MSEA's ability to ensure that workers are placed at the proper classification and pay grade.

10. The Reclassifications Article covers various types of requests, including, but not limited to, reclassifications, reallocations (pay grade placement), and the creation and allocation of new classifications. (Hereinafter, these various requests are collectively referred to as "reclassifications" unless otherwise indicated.) Reclassification requests may be initiated either by management, an employee, or groups of employees. The Reclassifications Article contains its own appeals process, separate from the parties' grievance procedure.

11. For more than forty years, the reclassification appeals process has culminated in an arbitration hearing before a mutually agreed-upon third-party neutral who conducts a *de novo* review of the merits of the initial reclassification request. The arbitrator evaluates the evidence regarding the appellants' duties and responsibilities at the time of the initial request—or in the case of a reorganization, the proposed changes to the appellants' duties or responsibilities—and determines whether the request to move to a higher classification or pay grade is warranted.

12. Through this well-established process, Complainant has successfully arbitrated hundreds of

reclassification appeals over the decades, winning new classifications and titles, higher pay grade allocations, and—frequently—significant backpay awards for workers in thousands of positions.

13. Respondent’s S-3 would eliminate the arbitrator’s authority to conduct this *de novo* review entirely. As initially proposed, S-3 would limit the arbitrator’s authority to determine not whether a particular worker’s duties and responsibilities warrant moving to a higher pay grade or classification, but whether the “process and procedure” utilized by BHR was objective, fair, and equitable. This process review would mean that, so long as BHR followed its own process and procedures for evaluating the reclassification request, the arbitrator would have no ability to determine whether BHR’s decision was predicated on mistakes in fact or law, as has frequently been the case.

14. At the eighth bargaining session, on August 20—almost two (2) months after the deadline for new proposals had passed—Respondent introduced a new iteration of S-3 that included a material change that would impact the calculation of backpay following a successful reclassification appeal. Historically, both employee-initiated and management-initiated reclassifications have been effective on the date of the initial request for reclassification. This means that, following a successful appeal, backpay would run from the initiation of the reclassification request—which frequently results in years of backpay for successful appellants. The sole exception to this rule, established by the collective bargaining agreement and years of arbitral precedent, is where management’s reclassification request is based on prospective changes in worker responsibilities tied to a future reorganization of a department, agency, division, or the like, in which case the effective date of the reclassification would be the proposed date of the reorganization.

15. Respondent’s new version of S-3 proposed language that would make the effective date of any management-initiated reclassification within management’s sole discretion, thereby eliminating or significantly reducing backpay when MSEA successfully appeals a management-initiated reclassification.

16. This change to S-3 is a material and regressive modification of Respondent's initial S-3, offered on June 18.

17. On August 27, Complainant proposed a counter to S-3 and rejected Respondent's proposed limitations on either the arbitrator's authority or backpay.

18. On or about September 17, impasse was declared in Respondent's successor bargaining with the Maine State Troopers Association ("MSTA"), one of the four other certified bargaining agents representing State employees.

19. During the September 24, bargaining session, Respondent introduced yet another modification of S-3, which constituted a wholesale rewrite of the Reclassifications Article. According to the tracked changes visible on the draft, the proposal had been redrafted by BHR's Chief Counsel and Acting State Human Resources Officer Michael Dunn, who is not a member of Respondent's bargaining team. This newly modified version included the limitation of the arbitrator's authority from Respondent's initial S-3, submitted on June 18<sup>th</sup>, as well as the regressive limitation on remedies that had been proposed on August 20<sup>th</sup> proposal, after the deadline for new proposals had passed.

20. Toward the end of the September 24<sup>th</sup> bargaining session, the parties discussed a number of open issues to be addressed in future sessions, including counterproposals and informational responses due from Respondent. A member of Respondent's bargaining team, BHR Chief Compliance Officer Kelsie Lee, concluded the bargaining session with an acknowledgement that "there is a lot on the table."

21. As of the end of the September 24 bargaining session, the parties had signed twelve (12) tentative agreements. The parties had also reached agreement in principle on two (2) proposals that are typically executed at the conclusion of bargaining.

22. Of the remaining proposals, the Complainant owed responses on approximately eight (8)

proposals made by the Respondent, and the Respondent owed the Complainant responses on approximately twenty (20) proposals.

23. On September 29, MacWhinnie emailed Ford with a Zoom link for the bargaining session scheduled for October 1<sup>st</sup>. MacWhinnie's email also detailed a number of open issues which Complainant expected Respondent to address at the session, including open questions that had been asked by Complainant at prior sessions and topics on which Respondent owed counterproposals.

24. On September 30, Ford emailed MacWhinnie and stated, among other things, that Respondent "has been clear and transparent that our top priority is within the language outlined in [S-3]."

25. Contrary to Ford's representations about Respondent's clarity or transparency, prior to this email, Respondent had never informed Complainant that S-3 was Respondent's "top priority."

26. Ford also complained that MSEA had yet to narrow its top priorities and expressed frustration that MSEA was unwilling to resolve various bargainable issues by sending them to Labor-Management Committee after the conclusion of negotiations.

27. Ford then stated that Respondent "believes we have reached impasse. As a result, the State will be canceling our bargaining session scheduled for October 1 and filing for mediation."

28. On October 3, 2025, MacWhinnie responded to Ford's September 30<sup>th</sup> email. MacWhinnie stated that while MSEA's bargaining team agreed that a mediator might be helpful to the bargaining process, MSEA disagreed with Respondent's assertion of impasse. Specifically, MacWhinnie indicated that:

Workers see many places that movement, discussion and progress could be made to reach agreements and a full contract. Further, as will be discussed below, there are many areas where you have previously promised either further information or counters, and we are still waiting for you. As such, we believe that your declaration of impasse is premature.

Later in the email, as evidence that the parties had not in fact reached a bona fide impasse, MacWhinnie identified numerous places where Respondent owed Complainant either

counterproposals or answers to questions.

29. Upon information and belief, around late September and/or early October—within the same approximate window that Respondent declared impasse against Complainant—Respondent unilaterally declared impasse in successor bargaining with at least two of the other certified bargaining agents representing State employees, including, but not limited to, the Association of Federal, State, County, and Municipal Employees (“AFSCME”) and the Fraternal Order of Police (“FOP”).

30. On October 20, Ford responded to MacWhinnie’s October 7 email. Ford acknowledged that Respondent owed responses on various “open action items” and provided two counterproposals and answers to several questions.

31. Ford’s actions in this email, including the provision of informational responses and counterproposals, are consistent with MacWhinnie’s October 3 assertion that Respondent’s declaration of impasse was premature as there was still movement to be made across the table.

### COUNT I

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

- Respondent has prematurely declared impasse in effort to frustrate the bargaining process;
- Respondent has submitted regressive and material modifications to its proposal regarding the Reclassification Article after the deadline for new proposals had passed;
- Respondent has insisted on Complainant’s acceptance on its regressive and unlawful modifications of the Reclassifications Article to the point of prematurely declaring impasse;
- Respondent cancelled bargaining after prematurely declaring impasse; and
- Respondent has otherwise engaged in behavior calculated to frustrate the bargaining process;

Respondent has refused to bargain in good faith, as required by 26 M.R.S.A. § 979-D, and has

interfered with, restrained and/or coerced employees in the exercise of rights guaranteed by 26 M.R.S.A. § 979-B, in violation of 26 M.R.S.A. § 979-C(1)(A) and C(1)(E).

PRAYER FOR RELIEF

As remedy, MSEA requests an order directing:

- that the State of Maine cease and desist from bargaining in bad faith;
- that the State of Maine 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 rescind its premature declaration of impasse and recommence bargaining collectively with the Maine Service Employees Association;
- that the State of Maine cease and desist regressively bargaining;
- that the State of Maine be ordered to pay MSEA negotiation costs accrued to date;
- that the State of Maine pay attorney fees associated with the bringing of this Complaint;
- 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 State of Maine's violations of law.

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

Dated: November 24, 2025

Respectfully submitted,

*Tom Feeley*

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Thomas Feeley, Esq.

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