

TESTIMONY OF TOM FEELEY, GENERAL COUNSEL

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BEFORE THE JOINT STANDING COMMITTEE ON STATE AND LOCAL GOVERNMENT

TESTIMONY IN SUPPORT OF LD 1854

AN ACT TO COMPLETE AND IMPLEMENT
THE COMPREHENSIVE REVIEW OF THE CLASSIFICATION AND
COMPENSATION SYSTEM FOR EXECUTIVE BRANCH EMPLOYEES

May 12, 2023

Senator Nangle, Representative Stover, and members of the Committee on State and Local Government, I am Tom Feeley, the General Counsel of the Maine Service Employees Association, SEIU Local 1989, a labor union representing over 13,000 workers statewide.

I am here today to testify in support of LD 1854, An Act to Complete and Implement the Comprehensive Review of the Classification and Compensation System for Executive Branch Employees, sponsored by Representative Drew Gattine.

I have been a member of a joint labor-management Steering Committee that for the last three years has been overseeing the Executive Branch's comprehensive review of its compensation plan and classification system.

The review arose out of the 129th Legislature, when Senator Jackson introduced [a resolve to conduct a comprehensive study of the compensation system for Executive Branch workers](#). Shortly after Senator Jackson introduced the resolve, MSEA and the Executive Branch entered into a Memorandum of Agreement which obligated the State to commission an outside consultant to perform a comprehensive review of the classification and compensation system, and the bill was pulled before being presented to the full Legislature.

The compensation and classification system arose out of [a study conducted by Hay Associates in 1975](#) and was [implemented and funded through Legislation shortly thereafter](#). By design, the system requires active management, which included regular updates and reviews. By statute, proper oversight of the classification system "shall provide for periodic updating of job descriptions at least every 5 years to accurately reflect current duties and responsibilities of each job classification." [5 MRSA § 7061](#)(4)(A). In addition, the Bureau of Human Resources is required, by statute, to provide annual reports that include data such as turnover rates by job classification, the total number and disposition of reclassification requests, and the number of vacancies and the reason for those vacancies, as well as the length of time required to fill each vacancy. [5 MRSA § 7036](#) (13). Similarly, civil service rules require the Director of Human

Resources to “make or cause to be made such comparative studies as deemed appropriate of factors affecting the levels of salaries in the classified service.” [Chapter 18, Section 389](#), chapter 5(2)(B).

However, over the last forty-plus years, the system has not been actively managed. As Maine Department of Administrative and Financial Services Commissioner Kirsten Figueroa eloquently stated in [her 2019 testimony in support of LD 1214](#):

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.

Clearly, the classification system is long overdue for a comprehensive review and update.

Similarly, compensation for State workers has lagged far behind those of Maine’s competitors and presents a significant barrier to recruiting and retaining employees. As Commissioner Figueroa noted in her 2019 testimony:

This study will no doubt confirm what we already know: Maine state employees’ compensation has not remained competitive with Maine’s private sector, and perhaps even lacks parity with public sector compensation at the local level and in comparable states.

Over the years, there have been numerous attempts to fix the system, including the multi-year Pay Study conducted under Governor Baldacci that Governor LePage shelved his first year in office. These past failures have had a devastating effect on State employee morale, as well as on the State’s ability to recruit and retain quality employees. I would again direct your attention to Commissioner Figueroa’s testimony from 2019. She wrote:

As a 22-year Maine state employee, I want to acknowledge the disappointment and resentment felt by state employees in the past when similar studies were commissioned, only for the findings to be forgotten about when there wasn’t funding to fully implement the recommendations. This is the unfortunately common fate of studies commissioned by State government. In my position, I am keenly aware that funding will be no less of a challenge when this study is complete and recognize our responsibility to be good stewards of these findings. Our failure to do so would only compound the problems that necessitated this legislation. I hope that once informed with specific knowledge of where inadequacies and inequities exist within the current compensation system, future

collective bargaining and legislation will continually refer to the study and over time we will make steady meaningful progress towards its recommendations.

This was the state of affairs in 2019, when the State and MSEA entered into the aforementioned Memorandum of Agreement. The Agreement called for the consultant to (1) “provide recommendations as to improvements to the existing classification and compensation systems,” (2) “transition to potential alternative classification and compensation systems,” and (3) to provide “conclusions as to best practices for classification and compensation systems for comparable employers.” The Agreement specified that the cost of the study should not exceed \$600,000, and it obligated the State to make a good faith effort to complete the study by August 1, 2020.

In the Fall of 2019, the Steering Committee conducted the Request for Proposal process, which resulted in the selection of the Segal Group as the outside consultant. The State began negotiating with Segal in early 2020, and by mid-February, the details were finalized. The Steering Committee held its first meeting with Segal on March 3, 2020.

Coincidentally, the day before that meeting – March 2, 2020 – was the first time that I spoke with the Bureau of Human Resources about COVID-19 and raised MSEA’s concerns about school closures, quarantines, telecommuting, leave time, and the like. And sure enough, within a matter of weeks, everything had changed.

To its credit, the State was committed to moving forward with this project despite the major disruptions posed by COVID-19. After some initial delays, the project began taking shape. Segal’s review had to separate two components running simultaneously. The first component was the market analysis of State worker compensation. Segal, in consultation with the Steering Committee, selected 100 benchmark titles and compared them with their counterparts in ten public sector employers in the Northeast, including four other New England states, four cities in Maine, the biggest county in Maine, and the Federal government, as well as private sector market data for New England. The [2020 State of Maine Market Study Report](#) was finalized on November 20, 2020.

As Commissioner Figueroa had predicted, the Markey Study Report did in fact demonstrate that State employee compensation lags far behind that of the State’s competitors. On the whole, wages lag 15 to 20% behind those of our private and public sector competitors. MSEA-represented positions in both the Administrative Services Bargaining Unit and the Operations, Maintenance and Support Services Bargaining Unit earn 82% compared to their counterparts; workers in the Professional-Technical Services Bargaining Unit earn 86% compared to their counterparts; and workers in the Supervisory Services Bargaining Unit earn 84% compared to their counterparts.

Digging deeper into the Market Study Report, you will see that while certain benchmark classifications are at or near the market rate, other categories of employees lag woefully behind.

For example, even at the top step of the pay scale, accountants for the State of Maine make 20 to 33% less than their peers working elsewhere in the region. Chemists make 24% less. Civil Engineers make 20 to 25% less. Maintenance Mechanics make 31% less. Administrative workers make between 20 to 35% less. Rehabilitation Counselors make 25% less. Correctional Officers make 16% less, and Correctional Captains make 26% less than their counterparts.

The second component of Segal's review was their analysis of the classification system. In consultation with the Steering Committee, Segal created a Job Description Questionnaire, or "JDQ," for each employee in State government to complete. The JDQ was designed to elucidate the core components of each position, including essential duties and responsibilities, the degree of discretion and independent judgment, minimum job requirements, supervisory responsibilities, knowledge and skills, fiscal responsibility, working conditions, and the like. From there, Segal analyzed the data. On November 8, 2020, Segal presented the Steering Committee with the first draft of its proposed "Classification Structure."

In theory, after some fine tuning of the Classification Structure, Segal was to merge the compensation data from the Market Study Report with the Classification Structure, provide a cost analysis, and make its final recommendations. According to Segal's timeline, this entire process was supposed to be wrapped up in February 2021.

Segal's proposed Classification Structure detailed and analyzed 1,172 positions within the Executive Branch and proposed new job titles, merged positions, new occupational groupings, new job summaries, and new pay grades based on a newly developed scoring system. Upon digging into the draft Structure, we found myriad issues. For example, a particular job description might not match what we knew about the position. In other places, seemingly disparate positions, or positions from very different pay grades, were being combined into a single position. Elsewhere, the assigned pay grade for a certain position would not make sense relative to other positions. The proposed Classification Structure was salvageable, but required more work.

The Steering Committee began working with Segal and offering substantive revisions to the Classification Structure. In December 2020, Segal sent a revised Structure which incorporated some of our feedback, and we continued our analysis. In early February 2021, they sent a second revised draft. However, at about the same time, Segal announced that they had reached the end date of their contract with the State and therefore any ongoing work would be at an hourly rate. The Steering Committee has not had direct contact with Segal since March 2021.

Over the last two years, the Steering Committee has continued our review of the proposed Classification Structure. Essentially, Bureau of Human Resources employees been meeting with departmental stakeholders and review the proposed revisions to positions within that department. The BHR employees then reports back to the Steering Committee with their findings. I am happy

to say that, as of yesterday, the Steering Committee has completed this department-by-department review and has discussed all 1,172 unique job classifications in State government.

So where does that leave us? Essentially, we are exactly where we were in 2019, with a broken and out of date compensation and classification system and a review that is still not close to being done.

State workers are hyper-aware that the classification system is broken and that their compensation lags far behind their competitors. We hear these concerns from State workers, as well as questions about the pay study, almost every day. I am not going to recap their concerns in my testimony, but scores of State workers will be submitting testimony today, speaking from their personal experiences dealing with staffing shortages, pay inequity, and the like. I would ask that you listen to the concerns of these workers.

To be clear, we have accomplished a lot in the three years since study began. We have done an initial and thorough review of the State's classification system and the recommendations of the outside consultation. And we have quantified the size of the pay gap as it existed three years ago.

However, we still have to get the job done.

This legislation has four main and essential components.

First and foremost, it obligates the State to complete the comprehensive review of the compensation and classification system and report back to the Legislature by January 31, 2024, and it provides \$1,000,000 in funding for the State to do it. We believe this funding is necessary because, frankly, the State and Steering Committee cannot do this alone. We need an outside consultant with both the expertise in compensation and classification reviews and an arms' length objectivity to conduct the overall review and finish the job. Additionally, the Market Study report from 2020 is already obsolete. We need a consultant to re-run the Market Study comparing the Executive Branch's compensation levels with those of its competitors using current salary data.

Second, this legislation obligates the State to implement the recommendations of the report and close the pay gap by July 1, 2024. Earlier in my testimony, I mentioned that the State has conducted similar studies in the past but failed to implement them. This legislation builds accountability into the process, mandating that if the study is not finalized and implemented by July 1, 2024, there will be an across-the-board salary increase of 5% for all Executive Branch workers.

Third, this legislation creates a mechanism for closing the pay gap in the form of the State Employee Compensation Stabilization Fund, which redirects a slight portion of the Highway Fund towards state employee salaries.

And fourth, this legislation requires the State to conduct a market pay study every two years and a comprehensive review of the classification system every ten years. This is routine maintenance and should not be controversial. We are currently attempting to untangle a system that has not had a comprehensive review for almost half a century. This legislation would ensure that the system is actively and routinely managed, and that we never again get to the point where we are at right now, where the State cannot adequately staff positions necessary to perform vital State services.

This is an important bill, and it impacts everyone who relies on State services.

Thank you and I would be glad to answer any questions.