

Joint Legislative Budget Hearing on Workforce Development
January 24, 2018
OMCE Testimony

Senator Young, Assemblywoman Weinstein, and members of The Committee – Thank you again for welcoming OMCE to discuss with you M/C employee and retiree issues and concerns.

This is the last year of the parity payments for M/C's to restore the salary increases withheld in 2009 & 2010. We once again thank you for your support of providing some measure of fairness to M/C employees.

While M/C employees who are still working are approaching parity, M/C's who retired between 2009 and now have received none or a portion of the 7% salary increase that was withheld in 2009 and 2010, depending on the timing of the retirement.

We believe these retirees have been treated unfairly and over the years we have presented a number of different proposals to provide them some relief.

This year we present a new proposal:

- 1) Each M/C retiree whose 2009 & 2010 salary increase was withheld shall receive a \$70 dollar per month rebate for every month of withholdings from April 1, 2009 until the date of retirement or 3/31/2015, not to exceed \$5000 - **OR** -
- 2) Any M/C retiree who retired between April 1, 2015 & June 30, 2017 whose salary increase for 2009 & 2010 was withheld shall receive \$5000 less any parity salary increases received during the specified time period.

The Comptroller shall certify to the NYS DOB a listing of all such retirees deemed eligible.

We estimate less than a \$9 million cost while retirees would get only a small portion of the dollar amount they lost, it is The Right Thing to Do-and would provide them some recognition of their forced sacrifice.

We have begun discussions with the fiscal committees on this proposal and look for your support.

This year again the Governor is proposing several measures that would negatively impact M/C retirees along with other state retirees. These proposals are:

- Eliminate Taxpayer Subsidy for the Medicare Part B Income Related Monthly Adjustment Amounts (IRMAA) for High Income State Retirees (PPGG Part S).
- Maintain Reimbursement of the Medicare Part B Standard Premium for State Retirees at Current Levels (PPGG Part S).

We opposed these proposals last year and the Legislature rejected them. We oppose the proposals this year and urge you to again reject them.

IRMAA and Medicare Cap:

This is the fifth year in a row that we oppose these proposals.

The Governor proposes to eliminate the subsidy for Medicare part B for " high income " retirees effective Jan. 1, 2018 and is also proposing to cap the reimbursement of the Medicare Part B Standard Premium at calendar year 2018 levels rather than providing automatic inflationary increases.

Over many years the state has saved many millions of dollars as a result of requiring that Medicare be the primary health insurance provider for the retiree. Breaking the compact with retirees who have given years of service to the people of NY is wrong especially in light of increasing health insurance and Medicare costs.

To minimize the cost to NYS of retiree health benefits, upon turning 65 all retirees participating in NYSHIP are required to enroll in Medicare. As a requirement for Medicare enrollment such retirees must pay the Part B premiums but they must also pay a NYSHIP premium to the state for their health insurance coverage. Recognizing the need to avoid this additional payment, the Legislature provided for full reimbursement of all Medicare Part B premiums.

NYSHIP retirees accepted Medicare as their primary health insurance provider 50 years ago to save the state money, but the Governor's proposals negate the implied intent of Medicare premium reimbursement - retirees will save the state money and will be held harmless for additional Medicare payments. This was the founding principle of this arrangement over 50 years ago and it has worked for all these years. We sustained this reimbursement in the courts and thus this continuous attempt to alter the law.

It is interesting and noteworthy that the Governor is fighting the federal tax changes which he believes are harmful to New Yorkers - but at the same time he proposes to impose additional costs for Medicare coverage to NYS retirees who have worked many years for and contributed to these earned benefits.

Perplexing - or is it ok for the state to treat people unfairly while fighting for federal fairness?

As we go through the budget I'm sure we could find other areas from which "Savings" could be identified that would not have such negative impact on people.

Chief Procurement Officer (GGER Part K):

The Governor proposes to appoint a Chief Procurement Officer reporting to the Executive Chamber to oversee the integrity and uniformity of procurement practices across the state.

Even if we all agree that such a procurement czar is necessary- we are not suggesting it is - assigning it to the Executive Chamber is absolutely the wrong way and the wrong place.

The Office of General Services has a long history of responsibility and oversight of procurement practices for state agencies. This responsibility used to be exercised by qualified and experienced career merit based professionals.

In addition the State Comptroller has the responsibility and authority to review, approve and audit procurement contracts. Unfortunately the Comptroller's office is hampered in carrying out this responsibility by the 2011 action to restrict the Comptroller's authority to review and approve ALL pending state contracts including SUNY and CUNY, Research Foundation and the non - profit established by those entities.

This authority must be restored to the Comptroller. Perhaps the discussion should be focused around passing the NY State Procurement Integrity Act S3948/A6355 which would give additional authority to the Comptroller and strengthen oversight.

Establishing a Chief Procurement Officer in the Executive Chamber subverts the responsibilities of the OGS & OSC to operate a professional procurement process and introduces the possibility and potential for political influences and interference to substitute for the judgment of career professionals.

Efficient and good government practice based on professional and ethical standards are the goal, must likely to be achieved through a system administered by non political experienced career professional staff.

Authority of the State Inspector General GGER, Part I:

The Governor proposes to expand the authority of The State Inspector General:

- To investigate alleged corruption, fraud, criminal activity, conflicts of interest or abuse by officers, employees and contracted parties related to any state procurement and
- To independently oversee implementation and enforcement of financial control policies at the State University of NY and the City University of NY and affiliated non - profit organization and foundations pursuant to this section.

We don't dispute that there needs to be review and oversight of the actions and activities of the SUNY and CUNY non -profit corporations - however we question why the governing entity, SUNY or CUNY, is not responsible for ensuring compliance by the non- profits organized under their aegis.

We are concerned that our government is increasingly being run by control agencies, Inspector Generals, Justice Center, Business Center instead of the "program" agencies that should be performing these functions.

As important as identifying corruption, fraud, conflicts of interest - etc. are, these efforts should grow out of the professionals doing their jobs, not by expanding "cops on the beat" to look for it.

If there was a focus on ensuring that all agencies have sufficient non political professional staff, that they are provided the necessary training and resources to carry out their responsibilities - without political influence, and that a culture of ethical behavior is promoted and rewarded in all agencies, could we actually have a more positive and productive work atmosphere which achieves better results.

The Governor's discussion of the state workforce is sparse and touts what he sees as success.

"Improving government efficiency -the state workforce under Executive control has declined via attrition by roughly 8700 positions (-7 percent) since Governor Cuomo took office as agencies streamline operations and enhance efficiencies".

While clearly the workforce has been reduced and we hear about it from our members who are required to manage with insufficient resources, the composition of the workforce - specifically the M/C workforce has changed.

The numbers show that there is a clear trend - at least for M/C positions -away from competitive class positions -the foundation of our civil service merit system,- selected numbers appear below:

MC Jurisdictional Classification

	2009	2011	2014	2017
Class				
Competitive	6786	5416	5167	5317
	62.9%	61.7%	56.9%	53.1%
Non-Competitive	1382	1081	1160	1512
	12.7%	12.3%	12.8%	15.4%
Exempt	2615	2287	2747	2985
	24%	25.1%	29.5%	29.8%
Total	10906	8937	9299	10017

The Department of Civil Service is charged with carrying out and ensuring compliance with the constitutional and statutory requirements for a civil service system. Unfortunately the department is so under resourced and compliant with Executive requests that the constitutional requirements seem to go by the wayside or are considered optional. The Department needs to be staffed to carry out its responsibilities. The administration of the Merit System needs to be bolstered and needs closer oversight.

This trend of diminishing the competitive class management group bodes ill for the future of the state workforce and ensuring that the public is well served. Adherence to professional and ethical standards, continuity of service, competence and institutional knowledge, and loyalty to the public service rather than to the elected official of the day is the right prescription for how to effectively manage.

For example – we reviewed 3 recent requests from 3 different agencies for exempt Special Assistants. In reviewing the job duties outlined:

1 should be classified Key Board Specialist or Secretary

1 should be classified as a Research Analyst/Director

1 should be classified as a Program Analyst

1 should be classified as a Policy Analyst

All of these were competitive class titles for which exams used to be administered.

The agencies further justify exempt classification by using phrases such as:

“Exempt jurisdictional classification is needed for the Special Assistant due to the fact that the incumbent will report to the Executive Deputy Commissioner or designee and must maintain a high degree of diplomacy and discretion to guarantee the confidentiality of sensitive information”. This describes why the position should be M/C but does not justify exempt classification.

“Placement of the requested position in the exempt jurisdictional class is appropriate due to the confidential and sensitive nature of the duties associated with investigations of violations and enforcement proceedings” - this again justifies M/C category.

“Placement of the position outside of the competitive class will assist the department in considering candidates from diverse backgrounds who could be able to successfully perform the duties”. Even if we believe this are they saying they wouldn’t attract diverse candidates through the competitive class route?

Rarely do these kind of requests get rejected by the Civil Service Department.

Another indication of the department’s inability to do its job because of understaffing is the volume of calls we get from MC employees who have tried to get the information they need from Civil Service but either can’t get through on the phone or are told by the person they eventually talk to “call OMCE, we can’t help you”. As a matter of fact, program and control agencies, the retirement system as well as Civil Service frequently refer the employees to OMCE to answer their questions. We do, but employees are ill served by the agencies that are responsible for the specific programs or services and the system as a whole is not functioning efficiently or effectively.

While the Governor and his administration tout the reorganization and centralization of human resources, finance and ITS functions into the Business Service Center so agencies can focus on their program missions, we get many questions from employees on issues that the Business Services Center should be able to easily answer.

Succession Planning

In most state agencies there is no real succession planning underway for the training and replacement of those in critical MC positions. Couple that with a reticence by union represented employees to ascend to MC positions given the history of compensation woes and we have a “Pipeline” to MC positions that is broken. Given the demographic fact that those union represented employees eligible for advancement are nearly the same age as those in the MC positions

(2016 CS Workforce Management Report p.11) there remains no incentive to give up bargaining unit security and raises to accept a MC position where increased responsibilities have been coupled with an artificially diminished pay schedule. It is repetitive but bears repeating-the system is broken.....broken...broken. We have discussed succession planning proposals with Governor's staff and hope to make progress this year but it is hard to be hopeful based on many years of lack of attention to the issues.

We continue to have concerns about the Fellows program particularly in the context of long term professional management in the agencies. Replacing a merit based MC workforce with a class of "Fellows" does nothing to fix the problem. This appointment mechanism adds a layer of cost without any real benefit to the management of the state's resources. Based on the Executive's flawed experiment (see the HUD Inspector General's scathing review) while serving as HUD Secretary, we see MCs across the agencies trying to educate this cadre of appointees while they struggle to get the job done with inadequate numbers of career staff, and see their advancement opportunities curtailed as Fellows are sometimes given priority for placement in former competitive higher level positions now recast as non-competitive or exempt titles.

When employees can't get the information they need quickly and easily it affects their work life and performance. We need to pay more attention to ensuring employees needs are addressed.

Justice Center:

We previously outlined our concerns about the Justice Center Operations. Unequivocally we state that abuse and neglect of our citizens with special needs cannot and should not be tolerated. However, the employees who care for our vulnerable populations also must be protected from abuse.

During the past year there has been slight improvement in two areas. Multiple reporting requirement and administration review of decisions which led to some "substantiated decisions" being reversed. The multiple reporting requirements were amended as follows:

Multiple reports of the same incident NOT required if the mandated reporter has actual knowledge that:

1. The incident has been reported, and
2. He or she was named in the report as a person with knowledge of the incident.

Guidance on this policy change was rolled out over a period of time instead of in a written policy issuance; nevertheless it is a positive step.

We continue to believe that the interrogation, investigation and adjudication processes need to be streamlined and administered with less antipathy to the employees serving the vulnerable population.

Their “guilty until proven otherwise” attitude needs to be replaced with an “innocent until proven guilty” attitude.

We support Senator Ortt’s bill S1481 which provides for a specific level of oversight of the Justice Center that we believe is necessary.

IPP-Income Protection Plan

The M/C Income Protection Plan (IPP), begun in January of 1986, is mandated by the New York State Department of Civil Service to eligible management confidential-designated executive branch New York State employees working on at least a half-time basis. This benefit program offers both short (< 6 months @ 50% of salary)- and long-term (>6 months @ 60% of salary) disability at no cost to the employee. This taxable coverage is underwritten through MetLife. MC employees earn 8 days of sick leave per year rather than the 13 sick days of most State employees. The IPP is also the carrier of the MC Family Leave coverage. Our issue is that the State’s investment in this program needs increased scrutiny and oversight.

Over the last 6 months we have seen an unprecedented array of claims being bungled (carrier claiming that the Agency’s are at fault and vice versa), rejected claims involving differing medical opinions and untimely handled appeals. The result is that another promise made to MCs-short and long term limited salary protection during disability- is being broken. Too many MC employees are waiting for weeks to months to have their claims approved and the limited IPP payments to begin.

We work with our members, the agencies, and the carrier to assist in resolving these disputes but are witnessing an unprecedented increase in bungled and rejected claims. Now that the Family Leave for MCs has been added to the IPP portfolio, we are even more skeptical of the carrier’s ability to perform in a fair and adequate fashion.

There is a need for improved oversight of this IPP program in both its timeliness in handling claims and the rejection rationale which ultimately gets reversed on appeal.

We have urged before and urge again that MCs be allowed to “opt-out” of IPP coverage and be restored to full 13 days of annual sick leave. There are MCs who feel the IPP works for them and those who want out. To be ill and trying to survive on the IPP income that comes late or not at all is NOT a promise kept. The IPP is not fulfilling the promise made to the MC employees.

AN ACT to amend the civil service law, in relation to establishing a retiree parity payment for certain employees who served in a position or positions in the classified service of the state of New York designated managerial or confidential pursuant to article fourteen of the civil service law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The Civil Service law is amended by adding a new section 137 to read as follows:

§ 137. Management/confidential retiree parity payment.

- (1) Notwithstanding any law, rule or regulation to the contrary, any retiree who served in a position or positions in the classified service of the state of New York designated managerial or confidential pursuant to article fourteen of the civil service law and retired between April 1, 2009 and March 31, 2015 and had a salary increase authorized under chapter 10 of the Laws of 2008 which was withheld for the fiscal years 2009 and/or 2010 shall receive a seventy dollar rebate payment for every month of withholding from April 1, 2009 until the date of retirement or March 31, 2015, whichever is earlier, not to exceed a total of \$5,000.00. The Comptroller shall certify to the NYS Division of Budget a listing of all such retirees deemed eligible as defined above.
- (2) Notwithstanding any law, rule or regulation to the contrary, any retiree who served in a position or positions in the classified service of the state of New York designated managerial or confidential pursuant to article fourteen of the civil service law and retired between April 1, 2015 and June 30, 2017 and had a salary increase authorized under chapter 10 of the Laws of 2008 which was withheld for the fiscal years 2009 and/or 2010 shall receive \$5,000.00 less the parity salary increases received during the specified time period. The Comptroller shall certify to the NYS Division of Budget a listing of all such retirees deemed eligible as defined above.

§ 2. This act shall take effect for immediately.

BILL NUMBER:

SPONSOR:

TITLE OF BILL: An act to amend the civil service law, in relation to establishing a retiree parity payment for certain employees who served in a position or positions in the classified service of the state of New York designated managerial or confidential pursuant to article fourteen of the civil service law

PURPOSE OR GENERAL IDEA OF BILL:

This bill provides certain employees designated managerial or confidential to receive a rebate payment for salary increases that were authorized, yet ultimately withheld by New York State.

SUMMARY OF PROVISIONS:

This bill amends the civil service law by adding a new section 137 to provide a rebate payment to certain employees designated managerial or confidential and retired between April 1, 2009 and March 31, 2017.

For those employees that retired between April 1, 2009 and March 31, 2015 and had an authorized salary increase which was withheld, the employee shall receive a monthly rebate of \$70, for every month which was withheld, which shall not exceed \$5,000 per employee.

For those employees that retired between April 1, 2015 and March 31, 2017 and had an authorized salary increase which was withheld, the employee shall receive a rebate of \$5,000, less any salary increases that were received during this time period.

JUSTIFICATION:

During the 2008 recession, management confidential employees (M/Cs) had their authorized salary increases withheld by the state in an effort to reduce expenditures.

While many M/Cs ultimately received their withheld pay raises, thousands of M/Cs retired during the "withheld period" and thus were denied this rightful benefit. This measure provides a rebate to those management confidential employees that retired after having salary increases withheld for 2009 and/or 2010. New York State saved over \$450 million in salaries and fringe benefits from the withholding of salary increase for 2009 and 2010. No more than 4,000 eligible retirees are expected to take advantage of this rebate.

While this measure does not wholly recover these lost wages, it is only fair to restore some of the lost value of the withheld salaries.

PRIOR LEGISLATIVE HISTORY:

New Bill

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

For the 4/1/2009-3/31/2015 period the NYS DOB utilized an average management /confidential (M/C) annual salary of \$72000. Using data and service records from NYSLRS there were 2608 M/C retirees whose salary restoration through this proposal would cost approximately \$6.5 Million.

For the period 4/1/15-6/30/2017 an estimated 900 M/Cs retired. Given the estimated annual average M/C salary of \$75000 for this period and the cost offset of parity salary increases, the salary restoration for this group would cost approximately \$2.5 Million.

Total cost for this bill is estimated at \$9 million.

EFFECTIVE DATE:

Immediately.