



The Organization of New York State Management Confidential Employees

OMCE TESTIMONY

2024 JOINT LEGISLATIVE BUDGET HEARING ON WORKFORCE DEVELOPMENT

JANUARY 30, 2024

On behalf of the members of the Organization of NYS Management/Confidential Employees (OMCE), I thank you for the opportunity to present our views on Executive Budget proposals related to the state workforce.

While there are several areas that concern us, there is a single, common thread that runs through each of these concerns. And that is the need for fair and equitable treatment of Management/Confidential (M/C) employees and retirees.

Management/Confidential employees, by State Law, are unable to join a union or engage in collective bargaining, and therefore they are not protected by a contract. As a result, they are frequently treated differently than their union represented co-workers - to their disadvantage.

In light of this, OMCE was formed to serve the 10,000+ M/C employees working for New York State and the Executive Branch, to protect their rights, be their advocate and be their collective voice. Our rich experience in employee relations and advocacy recommends OMCE as a partner to work with the administration as it explores and implements needed improvements to existing Civil Service and human resources systems. In this role, we come to you today to speak on behalf of M/Cs, and to offer the following comments and suggestions regarding government workforce proposals.

First, let me note that the majority of M/C's are civil servants who obtained their positions through competitive examination and who work alongside their union-represented co-workers in institutions, facilities, and agencies. M/C employees often share the same titles as their PEF and CSEA colleagues, differentiated from them only by the need for those working in areas such as human resources, labor relations, negotiations, and budgeting, and for those working in a confidential position to managers in these fields, which requires them to be designated M/C. Most are in graded positions from 6 to M-6, not the high-level appointees some imagine. Further, our members are all too familiar with workforce shortages that are exacerbated by retirement trends and the resulting need to attract and retain new employees. Therefore, we welcome positive changes to the State's Civil Service system as it pertains to recruitment and selection as well as compensation.

EXECUTIVE BUDGET PROPOSALS

Several of these proposals warrant comment - they include the following.

REMOVING EDUCATIONAL BARRIERS TO EMPLOYMENT

The Executive Budget proposes to direct the Department of Civil Service to review college degree requirements for hundreds of civil service titles and consider equivalent experience where it is sensible to do so. According to the Governor, “by combining experience-based hiring with degree-based hiring, the state will expand opportunities for many New Yorkers without diluting the quality of the candidate pool.”

- OMCE is not opposed but cautions on the need for careful case by case review.

ELIMINATE LAG PAYROLL & SALARY WITHHOLDING PROGRAM

The Executive Budget advances legislation to eliminate the Lag Payroll and Salary Withholding Program for new State employees hired on or after July 1, 2024, pursuant to agreements with the labor unions representing Executive Branch State employees, and the election of the Judiciary and Legislature for employees under their purview. The elimination of these decades-old, collectively negotiated measures is necessary to improve the State’s recruitment of new employees, particularly in entry-level jobs. The Lag Payroll requires employees to wait approximately one month before receiving their first paycheck, and the Salary Withholding Program requires a 10 percent pay reduction over the first ten weeks of employment. The continuation of these measures is not feasible in today’s ultracompetitive labor market considering the economic realities individuals are facing in providing for the necessities of life.

- OMCE supports this proposal.

ELIMINATE SUBSIDY FOR MEDICARE PART B IRMAA

To limit costs to the Medicare program, the Federal government requires higher-income retirees to pay a greater share of Medicare Part B premium expenses. These additional expenses are known as the Income Related Monthly Adjustment Amount (IRMAA). In 2024, these IRMAA expenses are imposed on retirees with an annual income of \$103,000 or higher (\$206,000 or higher for joint filers) and range from \$70 to \$419 per month. Currently, the State fully reimburses retirees for the value of Part B IRMAA expenses. The Executive Budget proposes the State mirror the federal government’s policy decision to have higher income retirees pay a higher proportion of their health insurance costs by ceasing IRMAA reimbursement. Eliminating this reimbursement will save the State \$23.5 million annually (\$5.7 million in FY 2025 due to the lag in reimbursement). This proposal to eliminate the IRMAA subsidy has been made each year for the past several years and has not been included in the budget.

- OMCE opposes eliminating the IRMAA subsidy.

OMCE LEGISLATIVE PRIORITY BILLS

Because OMCE cannot engage in collective bargaining, we are dependent on legislative action to effect needed change. Our 4 priority bills which are designed to provide fair and equitable treatment for M/Cs are described below and may result in positive retention rates:

1. Representation of State Employees Designated Managerial or Confidential (S.2394 Jackson/A.3767 Pheffer Amato)

Since 1976, OMCE has been the only voice on behalf of the state's managerial or confidential workforce. While the state's Taylor Law prohibits M/Cs from organizing for the purposes of collective bargaining, OMCE has worked forcefully for decades to ensure that M/C employees are represented and have a voice in state government. This bill recognizes in state law that OMCE is deemed as the sole organization certified or recognized for purposes of M/C employee representation in New York State.

2. Hearing Procedures for Managerial or Confidential Employees (S.6478 Jackson/A.3760 Pheffer Amato)

This bill will provide an impartial due process for M/C employees during disciplinary hearings, by ensuring that the recommendations of the hearing officers are "final and not subject to change or modification." While other state employees are provided this clear disciplinary determination as a result of collective bargaining agreements, there are no protections for M/C employees under state law. Unfortunately, there have been incidents where employers ignore the recommendations of hearing officers and unilaterally determine their own judgment. The enactment of this provision into law will correct this unfair practice.

3. State Workforce Parity on Salary and Other Benefits (S.2395 Jackson/A.3766 Pheffer Amato)

Under the state's Taylor Law, M/C employees are unable to join unions for the purposes of collective bargaining, and as a result, the state can and has withheld and delayed scheduled salary increases. Other state employees, with union representation, are typically protected from such salary adjustments, therefore unfairly singling out the M/C population for state budgetary savings when needed. This legislation will ensure that M/Cs will be treated in an equitable fashion with the New York State Public Employees Federation (PEF) and the Civil Service Employees Association (CSEA) represented employees regarding the percentage of salary increases, performance advancement adjustments, and other longevity lump sum payments.

4. Retiree Parity Payments (S.6053 Jackson/A.5864 Fahy)

In 2008, New York State withheld authorized M/C salary increases of 3% for 2009 and 4% for 2010. While salary increases were ultimately provided to active M/C employees between 2015 and 2018, those M/C employees who retired between 2009 and April 2015 did not receive the salary that they rightfully deserved. This has negatively affected those retired individuals as their Final Average Salary (FAS), which determines the amount of pension they receive for the rest of their lives, has been diminished. In addition, M/Cs were the only portion of the state workforce that had their salaries withheld and later adjusted. This legislation provides a minimum restitution of \$70 per each month the retiree worked without receipt of the 2009-10 withheld 7% salary increase, with a maximum payment of \$5,000 per individual.

M/C RETIREES

Throughout 2015 to 2018 M/C employees still on the payroll received the 7% salary increases withheld from them in 2009 and 2010. M/C's who retired between 2009 and 2017 received none or only some portion of the 7% salary increase that was withheld in 2009 and 2010, depending on the timing of their retirement.

Please note, these retirees are negatively impacted in the following ways:

- Permanently lost wages, which in turn resulted in;
- Permanently reduced State pensions; and
- Reduced cash value of sick leave used to pay for health insurance in retirement.

These retirees have been treated unfairly, and since 2010, we have presented a number of different proposals to provide them some relief.

Last year, we introduced legislation S.6053/A.5864 to provide these retirees with a modest payment as follows:

Each M/C retiree whose 2009 and 2010 salary increase was withheld shall receive a \$70 per month rebate for every month of withholdings from April 1, 2009, until the date of retirement or March 31, 2015, not to exceed \$5,000. The approximate cost is estimated at \$8 million. **We requested that these provisions for retirees be included in the State Budget but they were not.**

Please note that these payments represent only a fraction of the losses that these retirees incurred.

DIVERSITY IN HIRING AND EMPLOYMENT

Increasing diversity can be achieved without ignoring the merit system by:

- Allowing for expanded remote working arrangements where feasible;

- Filling positions that would typically be stationed in the Capital Region in metropolitan areas instead, allowing technology to bridge the distance between locations;
- Employing technology to expedite all aspects of hiring processes;
- Cultivating closer relationships between State HR offices with schools and colleges to attract graduates; and
- Reconsidering title minimum qualifications that over-value academic credentials and thereby serve as a bar to employment opportunity while discounting valuable candidate experience and aptitude.

ELIMINATING CIVIL SERVICE BARRIERS TO HIRING AND RETENTION

Any amendments to the Civil Service Law that allow agencies to continuously recruit for in-demand titles, add to the pool of qualified candidates at more regular intervals, and create a more efficient and modernized exam process, must still preserve the constitutional requirements of merit and fitness in employment. Difficulty to recruit for a position, for example, is not grounds to remove a position from the competitive examination process. The Civil Service Law requires that positions can **only** be removed from the competitive class when and where there is justification that a position or positions are impracticable to examine for competitively. Too often this requirement is ignored and jobs are classified as either NC or exempt.

We urge this administration to avoid expanding exempt and non-competitive jurisdictional classifications that do not meet these requirements. Although such may be easier for agencies, it seriously erodes the merit system on which our New York's civil service system is based. Rather we urge that the state reduce classification of exempt and non-competitive jurisdictional class positions to perform the work of competitive jurisdictional positions – to extend the best possible job protection and union representation to new hires.

Agencies are increasingly seeking the classification of additional positions in the Exempt and Non-competitive jurisdictional classes to avoid the proper use of Competitive jurisdictional class positions. This has three negative impacts. First, in the name of expediency, it ignores the constitutional requirement of a merit system. Second, Exempt positions are paid without regard to the State's statutory compensation plans. Third, hires to such positions often lack basic Civil Service job protections and union-representation counter to intent of the Taylor Law which sought to expand union representation to as many State employees as possible.

This is a long-standing issue of concern to OMCE and one we have included in our Workforce Development testimony over the years. OMCE is a strong supporter of the constitutional requirement – “The New York State Constitution commands competitive examination for and consequently competitive classification of, positions whenever practicable”. We believe the Civil Service Commission should not allow the merit system to be dismantled through the placement of positions outside the Competitive jurisdictional class absent clear, objective justification. In our view this is not happening.

A strong alternative is to support the Department of Civil Service with improvements in technology that allow faster testing and scoring and provide the staff necessary to produce lists quickly and efficiently. Continuous recruitment examinations, expansion of electronic evaluations of training and experience as an alternative to paper examinations, and demystifying the recruitment and selection process so that candidates do not need assistance to navigate the Civil Service system any more than they need assistance to find a job in the private sector, will further improve hiring speed for agencies.

NY HELP PROGRAM

Curtail the Department of Civil Service's HELP initiative. The HELP initiative runs counter to the constitutional requirement of an active merit system by allowing many Competitive jurisdictional class titles to be filled without examination. Portions of our letter to the Civil Service Commission on the HELP initiative follow below:

First and foremost, placement of a position in the non-competitive jurisdictional class requires, per Civil Service Law, that there be a finding that it is not practicable to ascertain the merit and fitness of applications for that specific position, or positions, by competitive examination. Recruitment difficulty does not equate to practicability to competitively examine. Accordingly, placing a position or positions in a title or titles into the non-competitive class due to recruitment difficulty is wholly inappropriate and counter to Civil Service Law.

Second, we agree that there may be a need for an objective evaluation of which health care and direct care titles should be in the non-competitive jurisdictional class; such an evaluation must be on a case-by-case basis and not via a wholesale approach indicative of the pilot program. The Food Service Worker 1 title is a case in point; it was removed from the competitive jurisdictional class after the Department of Civil Service formally re-evaluated the practicality of a written examination for that title.

Third, we recognize that the Civil Service Commission has previously exercised authority to "cover in" employees without permanent competitive status. The use of such authority has been discrete, rare, and targeted to extraordinary situations often limited to a certain agency, operational unit, function, or location. To grant permanent competitive status to individuals without the benefit of examination across titles, agencies and locations due to recruitment difficulty is unprecedented and we believe serves to diminish and degrade the constitutional prescription for a merit and fitness evaluation.

Fourth, while the pilot program has been described as limited and temporary, barring any immediate and substantial changes to both the job market and the State's recruitment and selection process, current recruitment difficulties will likely continue into the foreseeable future. On that basis, the pilot project has already expanded and will potentially continue to expand in duration and in scope to increase the number and variety of titles and positions. Unfortunately, an unintended consequence of this pilot program will be the removal of pressure on the Department of Civil Service to promptly devise and implement broad, systematic improvements to address chronic and long-standing examination and appointment issues that pre-date the COVID-19 pandemic.

Fifth, we note that certain nursing and health care titles included in the pilot project have been filled through continuous recruitment examinations and decentralized evaluations of training and experience. Given that level of flexibility we question why such titles would be included in the pilot project. Additionally, as an alternative to the pilot project, what would preclude the extension of continuous recruitment examinations and decentralized evaluations of training and experience to “hard to recruit” titles?

OMCE understands and appreciates the staffing challenges that State agencies face. While certain steps have been taken by the administration and the Department of Civil Service, a broader and more inclusive discussion of how the State of New York must change to meet these challenges should take place. These discussions should include organizations like OMCE and the unions that represent the employees of the State of New York.

EQUAL TREATMENT IN COMPENSATION

The highest priority for M/C employees is to be treated with the same sense of value, worth, and respect afforded their union counterparts in matters of salary and benefits, but this does not always occur. Some examples:

- We understand and appreciate shared sacrifice in the wake of the COVID-19 pandemic and that means that everyone shares in belt-tightening until the fiscal climate improves. However, in the past more burdens were placed on M/Cs than were placed on union represented employees.
- Longevity payments are given to unionized employees at **all salary grade levels**, from Grades 1 through 37. M/Cs receive longevity payments only for Grades 1 through 17.
- Performance Advances are scheduled incremental increases over the first six years of service to reflect advancement in job skills and abilities. It is a promise that with satisfactory performance, an employee’s salary will grow within the grade’s salary range. As has been done in the past, to withhold these advances from M/Cs but pay them to union-represented employees is neither fair nor equitable.
- Every year the Civil Service Workforce Report clearly demonstrates the salary compression between M/C employees and their subordinates, causing numerous and damaging consequences to the efficient management and provision of services to our NYS citizens.

Together these actions contribute to the inequitable compensation of M/C employees compared to their union-represented co-workers and may negatively affect both recruitment and retention.

Please keep in mind that M/Cs only constitute 6% of the State workforce, and monies “saved” by withholding salary increases, performance advances, and longevity payments do not significantly impact the State budget, but the negative impact on the dignity and morale of M/C employees who have been yet again singled out for disparate treatment cannot be justified.

The first steps to rectifying this is to:

- A. Implement the same longevity pay program currently applied to CSEA and PEF represented employees to their M/C co-workers in all grade levels.
- B. Desist from withholding salary increases and other benefits to M/C's when such is not withheld from union-represented employees.
- C. Pass legislation introduced last year, that guarantees that general salary increases, longevity payments, and performance advances made to unionized employees are concurrently and equally made to M/C employees – **S.2395/A.3766**.

EQUAL TREATMENT IN BENEFITS

Since January 1986 only M/C employees have been mandated to join the Income Protection Plan (IPP), a short and long-term disability income program, in place of earning sick leave accruals comparable to other State employees. As a result, M/C employees earn eight days of sick leave per year rather than the 13 sick days of most other State employees. Over the course of a 30-year career, M/Cs receive 150 fewer days of sick leave to use for personal illness and for illness of children and other dependents. This also results in a reduction in the sick leave cash value retiring M/C employees can apply to retiree health insurance premiums.

OMCE supports a plan that would allow M/C employees to have a choice between IPP coverage or the 13 days of annual sick leave earned by their union-represented co-workers, and we ask your support to make this happen.

In conclusion, M/C employees constitute over 10,000 active employees and thousands of retirees who have spent their careers in service to the State of New York. They deserve to be treated at least as well as their union-represented counterparts, and not be singled out for disparate treatment just because they do not and cannot have a contract to protect them. Instead, there is a greater need to protect our valuable M/C employees and to consider the needs of M/C retirees. Not only because it is fair, it is the right thing to do. And note that all of our suggestions can improve recruitment and retention by showing job seekers that the State is a fair and desirable employer.

We appreciate the Governor's and the Legislature's commitment to revitalizing the State workforce. We thank you for considering our concerns, and we look forward to being your partner in this process.

Barbara Zaron
President