



The Organization of New York State Management Confidential Employees

OMCE TESTIMONY

HEARING ON RETENTION OR RECRUITMENT OF STATE WORKFORCE

OCTOBER 11, 2023

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 retention and recruitment for Civil Service jobs in New York State and the New York State Pension Fund.

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.

COMPENSATIONS PLANS

Despite the age of the current compensation plan, there are many benefits to the grade allocation system in place. These include:

- Planned incremental salary advancement linked to years of satisfactory job performance;
- Formal transfer mechanisms between titles in similar grades that allow for career advancement and additional career opportunities;
- Reduced opportunity for favoritism; and
- Established and deliberate processes to strategically increase salaries based upon geographic or occupational hiring difficulties.

Any proposed change in the compensation plan should avoid reducing current employee salaries and anticipated or scheduled increases in employee salaries; include meaningful cost of living adjustments for metropolitan regions of the State; and improve distinctions in salaries between employees and their supervisors and managers. OMCE would also support **expansion of overtime eligibility** beyond the grade limits established by the NYS Division of the Budget in 1969.

We caution that a compensation system that attempts to match private sector trends may cause challenges in administration and budgeting. For example, the impact of inflation on wage increases for in-demand occupations can outpace the State's ability to pay and may also result in the private sector simply raising their salaries to compete with us.

PAY EQUITY

While salary increases for M/C employees have generally tracked PEF & CSEA increases the underlying inequity built into the salary schedule remains. An example is portrayed in the hiring rate and job rate salary comparisons chart included in this report.

For example, the hiring rate for M/C positions in grades 3 – 23 is higher than comparable PEF positions, but the job rate for M/C positions is higher than the comparable PEF positions in grades 3 – 17 and then for grades M-3 – M-8, PEF positions in G-18 – G-27 (M-2) are higher. We believe this is inequitable and should be remedied. (See Attachment #1)

OMCE notes that a statewide pay equity study was conducted during the Mario Cuomo administration. It resulted in the upward adjustment in compensation for scores of titles that were filled predominantly by protected classes. OMCE cautions that any future pay equity studies must also consider maintaining salary distinctions between entry-level titles and supervisory and managerial titles. It is also critical that such studies address distinctions in pay and benefits between union-represented and non-represented M/C titles to ensure that stark disincentives to joining management ranks are eliminated. Candidates should be confident in knowing that pay, benefits, overtime and job protection advantages offered at the beginning of one's career will be continued as they advance in their State career.

Turning from possible pay equity studies to today's real world experience, M/C employees often earn lower salaries, do not receive longevity pay and do not receive pay differentials and stipends that union represented employees get even though they share the same title or salary grade. We believe in equal pay for equal work for all state positions including M/C designated positions. Pay disparity is a disincentive to join the State workforce and for union represented staff to accept promotions to managerial positions which don't pay as much as PEF represented employees earn.

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.

RETIREMENT EQUITY

While pay equity is vital, it is equally important that the State address retirement equity among its employees. OMCE would support legislation to equalize treatment in how State pension benefits are calculated across titles and occupations. All too often pension benefit calculations benefit those in security and law enforcement titles. We believe that ALL employees, regardless of pay level or occupation, should be on an equal footing when pension benefits are calculated. To pursue pay equity alone fails to address the increasing gap in retirement equity that has been identified in numerous studies.

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” as stated in an article in the Fordham Law Review. 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.

Several very recent examples of agency requests for exempt classification of positions that appear to us to be positions that belong in the competitive class follow:

1. The Office of General Services requested the classification of 15 positions of Special Assistant, NS, in the exempt jurisdictional class to increase the number of Special Assistants from 29 to 44. The duties outlined in the OGS submission are not unique or special and appear to be typical duties of M/C employees in program director/manager positions in the specialties indicated – there is no discussion on why existing competitive class titles are not being used. OGS claims, “We believe these positions warrant placement in the exempt jurisdictional class based on their sensitive and confidential nature

and the strong interpersonal and management skills required in performing the duties. In addition, we believe the attributes essential for success in these positions, such as fact, discretion, diplomacy, and sound judgement are impractical to examine. The classification of these in the exempt jurisdictional class is appropriate to allow OGS with the opportunity to utilize this flexibility to attract a diverse pool of candidates to further diversify our workforce.”

This may be a good argument for classifying the positions as M/C – it is not convincing for excluding them from the competitive class, it shows disrespect for career M/C employees and short sightedness in identifying employees with the desired skills, attributes and experiences by excluding those career competitive class employees from the candidate pool. (*See Attachment #2*)

2. The Office of Temporary & Disability Assistance requested the classification and placement of 3 positions of Assistant Commissioner, NS, in the exempt jurisdictional class. After describing what the Assistant Commissioners would do – the agency states “Division of Disability Determinations (“DDD”) cannot fill these positions competitively based upon the confidential and highly sensitive nature of these positions and the flexibility needed when hiring for these unique positions, and therefore requests that the positions be designated as Management/Confidential.” We agree that the positions are appropriately determined to be M/C but that does not justify putting them in the exempt class – most M/C positions are in the competitive class, and some are also in the non-competitive class – both are more appropriate than using the exempt class. M/C employees routinely deal with confidential and highly sensitive information – that does not justify using the exempt class. (*See Attachment 3*)
3. Office for the Aging recently requested 6 positions of Special Assistants in the exempt jurisdictional class. There are 6 different proposed uses of this single title but little to justify the exempt classification. (*See Attachment 4*)

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.

ADMINISTRATOR ON DUTY (AOD) AT OPWDD

An issue of particular concern recently brought to our attention is the scheduling of Administrator on Duty (AOD) shifts at OPWDD offices.

The AOD policy vests an employee, via a rotational assignment basis, with on-call responsibility and oversight for after hours problem resolution and crisis management on a region-by-region basis.

The policy, as issued in a July 24, 2023 memo requires M/C employees to participate in the program while union-represented colleagues are not required to participate, but PEF represented employees may volunteer. The AOD shift can be as long as seven consecutive days in length. Prior to that date the original AOD policy required only single day or weekend AOD shifts.

Concerns have been raised not only that this policy may have a negative impact on work/life balance, but that it could have a negative impact on the ability of employees to make the best possible decisions during critical incidents involving the health and safety of New York's vulnerable population.

In some offices M/C employees are required to serve a seven-day Administrator on Duty (AOD) assignment concurrent with a 12 consecutive day work schedule which not only results in M/C staff feeling overburdened but also questioning their long-term commitment to serving their clients and ensuring that the clients in the care of OPWDD are not put at risk by this policy change.

We believe this new policy needs careful review and openness to reverting to the previous policy.

RECRUITMENT

We agree that a "Public Service Matters" marketing campaign proposed in the state budget may be helpful, and commend any and all efforts to boost the health care and nursing workforce.

However, we are less certain of the value provided by establishing "Centers for Careers in Government" across New York State. The Department of Civil Service attempted to implement similar regional efforts in the past; these did not prove successful in the long run. And now that we have extensive digital tools at hand such regional offices may be less relevant than they once might have been.

Alternatively, resources could be provided to agencies to allow them to focus their recruitment efforts on the jobs that they need to fill in the communities they serve.

The Department of Labor could be equipped to direct job seekers to State government positions and its staff trained accordingly.

Rather than staff a civil service employee in each DOL regional office, we suggest that DOL regional offices provide video access to Civil Service staff as needed. This is preferable, because DOL can reach out to the staff most knowledgeable in the subject in question. For example, if questions concern technology jobs, the unit that works with technology jobs would be ready with the best information available in that field, thus creating an efficient, valuable, and cost-saving partnership.

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.

EXPANDING ACCESS TO PAID PARENTAL LEAVE

We support the expansion of fully paid parental leave to use for bonding with a newborn, fostered, or adopted child to all State employees and are pleased that the Governor directed the Office of Employee Relations to institute this policy for all unrepresented (M/C) employees earlier this year.

HEALTHCARE AND MENTAL HYGIENE WORKER BONUS

OMCE supports the continuation of this program for eligible M/C employees participating with providing direct care services.

ETHICS AND SEXUAL HARASSMENT TRAINING

OMCE supports ethics and sexual harassment training and agrees that in-person learning is the preferable methodology. However, since there are many thousands of employees to be trained and limited resources to conduct the training, OMCE suggests that until it can be implemented, an online training package should be utilized.

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, 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. 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 this 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**.

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.

This 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.

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.

WORKFORCE ENHANCEMENTS

The challenges brought about by the COVID-19 pandemic have changed the world of work, and whether it is COVID or something new, it is clear that we must be better prepared.

OMCE would support the State in responding accordingly by ensuring the safety of the workforce while recognizing the flexibility required by working families as follows:

- To keep our employees and citizens safe, buildings in which they work and visit should have appropriate air filtration, work site reconfiguration to provide distancing, and institution of effective and regular disinfection protocols. Further, employees should not be assigned to work in unsafe spaces e.g., uneven concrete floors, dangling wires, mold infested, etc.
- Flexible work schedules can reduce the number of employees in the workplace at any one time to further improve the ability to meet distancing guidelines or to ease transition back to the office for those employees who have been working from home and don't want to go back to the offices.
- Telecommuting, which is being phased out, will address not only ongoing pandemic issues, including allowing employees to work from home when under quarantine, but also brings us more in line with progressive employers who have expanded remote work options for employees who can effectively work from home. It would also reduce the need for office space, reduce our carbon footprint, alleviate rush hour traffic, and improve the competitive footing of the State as an employer of choice.
- Currently each agency may produce their own policy on these options, as agencies have diverse needs in this regard. However, it is important to ensure that our employees are treated fairly and equitably both within an

agency and between agencies, to the greatest extent possible. "Just say no" was coined for drug use; it should not be used just because change is undesired or deemed too difficult by a particular agency. Agencies should be able to justify the policies they develop with cogent reasoning to support them.

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

Attachments (4)

"Hiring Rate" Comparison between 2023 PEF & M/C

PEF & M/C Salary Grade	PEF Hiring Rate	M/C Hiring Rate	Difference (+/-)
03	\$28,298	\$29,747	\$1,449
04	\$29,567	\$31,061	\$1,494
05	\$30,969	\$32,924	\$1,955
06	\$32,628	\$34,321	\$1,693
07	\$34,460	\$36,299	\$1,839
08	\$36,357	\$38,293	\$1,936
09	\$38,383	\$40,481	\$2,098
10	\$40,559	\$42,662	\$2,103
11	\$42,883	\$45,250	\$2,367
12	\$45,289	\$47,639	\$2,350
13	\$47,925	\$50,408	\$2,483
14	\$50,678	\$53,403	\$2,725
15	\$53,546	\$56,375	\$2,829
16	\$56,550	\$59,553	\$3,003
17	\$59,724	\$62,933	\$3,209
18	\$63,108	\$66,266	\$3,158
19	\$66,527	\$69,660	\$3,133
20	\$69,934	\$73,058	\$3,124
21	\$73,641	\$76,453	\$2,812
22	\$77,600	\$80,847	\$3,247
23	\$81,705	\$85,236	\$3,531
25 (M1)	\$90,806	\$94,623	\$3,817
26	\$95,588	\$99,466	\$3,878
27 (M2)	\$100,761	\$104,611	\$3,850
28	\$106,068	\$110,000	\$3,932
29 (M3)	\$111,627	\$115,500	\$3,873
30	\$117,460	\$121,333	\$3,873
31 (M4)	\$123,721	\$127,554	\$3,833
32	\$130,299	\$134,133	\$3,834
33 (M5)	\$137,387	\$141,222	\$3,835
34	\$144,706	\$148,541	\$3,835
35 (M6)	\$152,207	\$156,036	\$3,829
36	\$159,856	\$163,685	\$3,829
37 (M7)	\$168,247	\$172,126	\$3,879

* Numbers **Bolded** represent higher "hiring rate" salaries
 ** **Red** numbers is the amount PEF is making more than M/C

"Job Rate" Comparison between 2023 PEF & M/C

PEF & M/C Salary Grade	PEF Job Rate	M/C Job Rate	Difference (+/-)
03	\$36,595	\$38,030	\$1,435
04	\$38,300	\$39,755	\$1,455
05	\$40,127	\$41,685	\$1,558
06	\$42,251	\$43,822	\$1,571
07	\$44,531	\$46,194	\$1,663
08	\$46,886	\$48,575	\$1,689
09	\$49,405	\$51,160	\$1,755
10	\$52,146	\$54,000	\$1,854
11	\$55,093	\$56,996	\$1,903
12	\$58,016	\$59,986	\$1,970
13	\$61,330	\$63,319	\$1,989
14	\$64,693	\$66,801	\$2,108
15	\$68,269	\$70,407	\$2,138
16	\$71,979	\$74,163	\$2,184
17	\$76,029	\$78,255	\$2,226
18	\$80,248	\$82,505	\$2,257
19	\$84,496	\$86,730	\$2,234
20	\$88,721	\$91,210	\$2,489
21	\$93,374	\$96,002	\$2,628
22	\$98,252	\$102,189	\$3,937
23	\$103,350	\$108,592	\$5,242
25 (M1)	\$114,444	\$117,825	\$3,381
26	\$117,825	\$123,761	\$5,936
27 (M2)	\$124,107	\$130,270	\$6,163
28	\$130,270	\$136,174	\$5,904
29 (M3)	\$136,174	\$143,423	\$7,249
30	\$143,423	\$150,612	\$7,189
31 (M4)	\$150,612	\$158,054	\$7,442
32	\$158,054	\$166,013	\$7,959
33 (M5)	\$166,013	\$174,283	\$8,270
34	\$174,283	\$182,697	\$8,414
35 (M6)	\$182,697	\$191,352	\$8,655
36	\$191,352	\$200,683	\$9,331
37 (M7)	\$200,683	\$201,711	\$1,028

* Numbers **Bolded** represent higher "job rate" salaries
 ** **Red** numbers is the amount PEF is making more than M/C



Attachment 2

The Organization of New York State Management Confidential Employees

September, 26, 2023

Honorable Timothy Hogues
Honorable Caroline Ahl
Honorable Lani Jones
NYS Civil Service Commission
NYS Department of Civil Service
Agency Building 1, Empire State Plaza
Albany, NY 12239

Re: Control #23-140

Dear Commissioners:

In the above-referenced submission, the Office of General Services (OGS) has requested the classification and placement of 15 positions of Special Assistant, NS, in the Exempt jurisdictional class. This request has raised concerns for the Organization of NYS Management Confidential Employees (OMCE).

The proposed increase in Special Assistant positions by more than 50% is shocking on its face as it is atypical to have a more than 50% increase in the number of Exempt positions in any single title in a single agency at one time. Beyond this dramatic increase, the request is problematic as it lacks a factual basis upon which the Civil Service Commission could reasonably base its approval. Objectively, it appears that the agency is simply adding to an existing store of Special Assistant, NS, Exempt positions that are untethered to either constitutional merit system requirements or statutory salary grade limits. Our finding is based upon the following facts:

Fact:

The requested positions lack any organizational context.

Without descriptive reporting relationships, an established chain of command, or a description of the interrelationships with coworkers, it is difficult if not impossible to determine title classification let alone the proper jurisdictional classification of the requested positions. As evidence, the organization chart demonstrates that all requested positions report to a single executive position rendering that very attachment meaningless and providing the Civil Service Commission no credible information upon which to base its decision.

Fact:

No specific duties have been described for any of the requested positions; rather an identical single set of generic duties have been submitted for all 15 positions. Without specific duties

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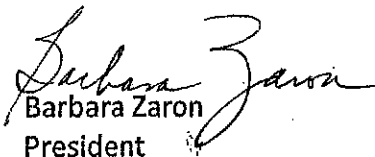
descriptions pertinent to each requested position, as well as the specific subject matter expertise required of each position, it is difficult if not impossible to determine title classification let alone proper jurisdictional classification of the requested positions.

OGS is asking the Civil Service Commission for a "blank check" to expand its treasure chest of positions outside the constraints of the Competitive Jurisdictional class. OMCE does not argue that there is never a need, on a case-by-case basis, for approval of such positions if supported by fact. OMCE desires that the Governor's initiatives, herein unnamed and undescribed by OGS, find full success. The positions responsible for the success of these same initiatives must, however, be established and classified in accordance with the State's Constitution and Civil Service Law. Accordingly, there is a responsibility on the part of the Civil Service Commission to only approve those positions where there is an explicit and objective need. There is no basis upon which the Civil Service Commission can or should issue the requested blank check. As an article in the *Fordham Law Review* so aptly wrote: "The NYS Constitution **commands** (emphasis added) competitive examination for, and consequently competitive classification of, positions wherever practicable." The instant request, unfortunately, does not provide the Civil Service Commission the information necessary to avoid this command. Absent such information, any decision on the part of the Civil Service Commission would be blatantly subjective if not wholly arbitrary. It is acknowledged that Civil Service Commission meetings are not formal administrative hearings pursuant to State law where there are standards of evidence, burdens of proof, and findings of fact and conclusions of law. There is, however, an expectation that a decision by this (or any) Commission have at its core some material set of facts or circumstances supportive of that decision.

As OMCE has consistently stated in past correspondence, 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 the reviewable record. The agency has failed to meet this bar. As such, we respectfully ask that the instant request should be denied.

If we can provide additional information or discussion, please contact us at 518-456-5241 or at omce@nysomce.org. Thank you for your consideration.

Sincerely,


Barbara Zaron
President

KATHY HOCHUL
Governor



**Civil Service
Commission**

TIMOTHY R. HOGUES
President

CAROLINE W. AHL
Commissioner

LANI V. JONES, PhD
Commissioner

September 22, 2023

Mr. Donald Grandchamp
Associate Director Human Resources 3
Office of General Services
Corning Tower
Empire State Plaza
Albany, New York 12242

Dear Mr. Grandchamp:

Control No. 23-140

This acknowledges your request of September 21, 2023, to establish and classify as exempt fifteen additional positions of **Special Assistant** (Item Nos. 00440-00454).

Subsequent to appropriate staff review, your request will be presented to the Civil Service Commission for consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tina Hotaling".

Tina Hotaling
Commission Operations Analyst 1 (Civil Service)

cc: OMCE)
PEF) Attachments
CSEA)



**Office of
General Services**

KATHY HOCHUL
Governor

JEANETTE M. MOY
Commissioner

September 21, 2023

The Honorable Timothy R. Hogue
The Honorable Caroline Ahl
The Honorable Dr. Lani Jones
New York State Civil Service Commission
NYS Department of Civil Service
Empire State Plaza, Agency Building 1
Albany, NY 12239

Dear Honorable Commissioners:

The Office of General Services (OGS) is requesting the establishment of additional exempt positions and Civil Service Commission approval to amend Appendix 1 of the Rules for the Classified Service to increase the number of Special Assistant positions for OGS from 29 to 44. The positions will reside within OGS' Executive Office and a corresponding classification request has been sent to the Division of Classification and Compensation.

These items are being requested to establish an adequate number of Exempt positions within the OGS roster to staff and oversee initiatives and programs within the 2023 – 2028 OGS Strategic Plan (Plan). These initiatives tie directly to many of the recently announced Governor initiatives included in the recent NYS Budget. The initiatives within the Plan were determined from systematic research collected through surveys conducted among internal and external stakeholders, employees, agency partners, customer agencies, and vendors. The Plan incorporates a staggered implementation approach for the initiatives throughout the five years and includes complex initiative plans, which require some initiatives to be fully implemented and completed before these subsequent initiatives can be commenced. In addition to these OGS-specific needs, OGS provides support to other executive agencies by providing "on loan" positions for Executive Chamber identified individuals who are appointed with responsibility for researching, managing policy development, and implementing agency initiatives and/or Governor directed programs for the other executive agency.

Special Assistants, under the direction of the Commissioner, Executive Deputy Commissioner, and/or another Executive Management Team member, are responsible for coordinating and monitoring activities of interest and concern. Special Assistants design, develop and implement projects that impact the agency's ability to achieve its goals. Additionally, they research, collect, review, and analyze information involving highly sensitive and confidential issues impacting OGS' policies, procedures, operations, and objectives. They may also serve in a role supporting other executive agency initiatives as directed by the Executive Chamber.

We believe these positions warrant placement in the exempt jurisdictional class based on their sensitive and confidential nature and the strong interpersonal and management skills required in performing the duties. In addition, we believe the attributes essential for success in these positions, such as tact, discretion, diplomacy, and sound judgment, are impractical to examine for. The classification of these in the exempt jurisdictional class is appropriate to allow OGS with the opportunity to utilize this flexibility to attract a diverse pool of candidates to further diversify our workforce.

OGS is an affirmative action/equal opportunity employer, and these are values we take seriously and ensure commitment and adherence for this philosophy is extended to all our hosted agencies. Women, minorities,

veterans, and persons with disabilities are always encouraged to apply for any position regardless of race, gender, age, national origin, sexual orientation, religion, or a disability that can be reasonably accommodated. To employ a diverse workforce, we wish to express our commitment to recruiting and embracing diversity in our efforts to fill these positions. Our recruitment for these positions will include reaching out to and recruiting from groups currently underrepresented at our agency. Our recruitment efforts will include, but not be limited to, web-based recruitment, community organizations and outreach on various job posting sites as well as working with the Office of Inclusion & Engagement and Center for Recruitment and Public Service.

Additional information, including duties description and an organization chart of the OGS Executive group, are also attached to this request.

Thank you for your consideration to this request and should you require additional information, please feel free to call me at (518) 473-0891.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Grandchamp", with a stylized flourish at the end.

Donald Grandchamp
Associate Director Human Resources 3

DUTIES DESCRIPTION

Title: Special Assistant
JC: Exempt Class
Grade: NS
Item #s: 00440 through 00454

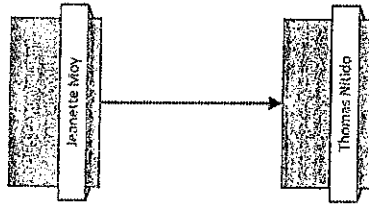
Duties:

Within the Office of General Services (OGS), Special Assistants, under the direction of the Commissioner and/or Executive Deputy Commissioner, or another Executive Management Team member, are responsible for coordinating and monitoring activities of interest and concern. Special Assistants design, develop and implement projects impacting the agency's ability to achieve its goals and mission. Additionally, they research, collect, review, and analyze information involving highly sensitive and confidential issues impacting OGS' policies, procedures, operations, and objectives. These Special Assistants will specifically perform these duties in conjunction with the enterprise initiatives which include but are not limited to: Business Services Center, Design & Construction, Event, Curatorial & Visitor Services, Finance and Accountability, Internal Audit, Legal Services, Procurement Services, Division of Real Estate, Strategic Planning, Office of Language Access, and Support Services, as well as to be prepared for any additional initiatives under OGS or to provide necessary support to other executive agencies initiatives and missions.

Duties may include and are not limited to:

- Coordinates and monitors on-going projects, programs and activities of interest and concern to the Commissioner and maintains contact with program management to ensure the availability of accurate, up-to-date information.
- Reviews, analyzes, and evaluates the efficiency and effectiveness of the execution and delivery of OGS program operations, policies and procedures and determines the desirability and feasibility to establish new and/or modify OGS operations.
- Coordinates and monitors the planning, design, and development of new and/or modifications to existing projects, programs, and activities.
- Provides to the Commissioner information requested by OGS and other State agency executives and managerial staff and interested parties concerning the status of projects, programs, and activities.
- Represents the Commissioner in meetings with OGS and other State agency, legislative and private sector executives, and managerial staff.
- Assists the Commissioner in the preparation of reports, correspondence, proposals, and speeches.
- Gathers data and information for generating reports and updates to the Commissioner, Executive Deputy Commissioner, and other internal and external stakeholders.
- Acts as a liaison involving administrative matters between the Commissioner, Executive Deputy Commissioner, and Deputy Commissioners and OGS and other State agency and private sector executives and managerial staff.
- Performs other related duties as required.

NYS Office of General Services
Executive Office
September 2023



Requested
Special Assistant, NS
00440

Requested
Special Assistant, NS
00441

Requested
Special Assistant, NS
00442

Requested
Special Assistant, NS
00443

Requested
Special Assistant, NS
00444

Requested
Special Assistant, NS
00445

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Special Assistant, NS
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Special Assistant, NS
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Special Assistant, NS
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Special Assistant, NS
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Special Assistant, NS
00450

Requested
Special Assistant, NS
00451

Requested
Special Assistant, NS
00452

Requested
Special Assistant, NS
00453

Requested
Special Assistant, NS
00454



Attachment 3

The Organization of New York State Management Confidential Employees

October 2, 2023

Honorable Timothy Hogues
Honorable Caroline Ahl
Honorable Lani Jones
NYS Civil Service Commission
NYS Department of Civil Service
Agency Building 1, Empire State Plaza
Albany, NY 12239

Re: Control #23-137

Dear Commissioners:

In the above-referenced submission, the Office of Temporary and Disability Assistance (OTDA) has requested the classification and placement of three positions of Assistant Commissioner, NS, in the Exempt jurisdictional class. This request has raised concerns for the Organization of NYS Management Confidential Employees (OMCE).

This OTDA request is an unsupported expansion of positions in the Exempt jurisdictional class. The roles and responsibilities of the Competitive jurisdictional class positions of Director Disability Determinations Operations, M-5, (1 position) and subordinate Disability Determination Program Managers, M-4, (four positions) are being diluted with the addition of yet another managerial level, this time in the Exempt jurisdictional class. Our review, and we trust yours as well, finds significant overlap in duties between the above-referenced positions and the requested Assistant Commissioner, NS, positions.

The request for placement of these positions in the Exempt jurisdictional classification is lacking any substance. The entirety of the OTDA justification is that the needed positions cannot be filled competitively due to the "confidential and highly sensitive nature of these positions." There is no OTDA description of what now constitutes the "confidential and highly sensitive nature of the positions" that demands an exception to Competitive jurisdictional classification. The roles, duties, and responsibilities of the requested positions reflect those already performed by the existing single Assistant Commissioner, NS, and the Competitive jurisdictional class managerial positions cited above.

The OTDA request provides no justification for this expansion. There is no significant personnel expansion or significant program change described. It appears to be a gratuitous insertion of yet another level of management but one that allows cherry-picking of candidates with a blatant and shameless disregard of the Constitutional requirement of selection via merit and fitness. If indeed yet another level of management is needed, then the default action of any responsible human resources practitioner would be to either classify a higher level Competitive jurisdictional class title (or titles) or consider the reallocation and title structure change of the existing managerial Disability Determinations titles. Neither action has been taken by OTDA.

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omce@nysomce.org / www.nysomce.org

KATHY HOCHUL
Governor



**Civil Service
Commission**

TIMOTHY R. HOGUES
President

CAROLINE W. AHL
Commissioner

LANI V. JONES, PhD
Commissioner

September 15, 2023

Ms. Karen Frankey
Associate Director Human Resources 2
Office of Temporary and Disability
Assistance
40 North Pearl Street
Albany, NY 12243-0001

Dear Ms. Frankey:

Control No. 23-137

This acknowledges your request of September 14, 2023, to establish and classify as exempt three additional positions of **Assistant Commissioner** (Item Nos. 63950-63952).

Subsequent to appropriate staff review, your request will be presented to the Civil Service Commission for consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tina Hotaling".

Tina Hotaling
Commission Operations Analyst 1 (Civil Service)

cc: OMCE)
PEF) Attachments
CSEA)



Office of Temporary and Disability Assistance

KATHY HOCHUL
Governor

BARBARA C. GUINN
Acting Commissioner

September 14, 2023

Timothy R. Hogues, Commissioner
President of the Civil Service Commission
NYS Department of Civil Service
Empire State Plaza, Agency Building 1
Albany, New York 12239

Dear Commissioner Hogues:

The Office of Temporary and Disability Assistance (OTDA) requests Civil Service Commission approval to add three (3) Assistant Commissioners, salary grade NS=665, positions to the exempt jurisdictional class. These positions will be located in Buffalo and Albany in the Division of Disability Determinations (DDD).

The Assistance Commissioners will be responsible for the care, mentoring and training of staff in the critical components of the DDD program that include operations, systems, medical evaluations, and quality. In addition, the Assistant Commissioners will provide continual oversight of staff development that focuses on balancing employee morale and case processing that results in quantity, quality, and time determinations; and will manage and maintain oversight of the key administrative functions related to resource allocation and use. DDD cannot fill these positions competitively based upon the confidential and highly sensitive nature of these positions and the flexibility needed when hiring for these unique positions, and therefore requests that the positions be designated as Management/Confidential.

In accordance with General Information Bulletin 17-05, the Office of Temporary and Disability Assistance (OTDA) remains committed to ensuring equal employment opportunities to all applicants for positions we are filling. We continue to foster diversity and inclusion in the workplace. In keeping with the Governor's initiative and commitment toward diversity, we will utilize various avenues to recruit for this position. OTDA utilizes both a diversity recruitment contacts list and job posting sites such as StateJobsNY and Indeed.com. We may also coordinate with our Public Information Office for social media outreach as another avenue in hopes of attracting a diverse candidate pool. The candidates will be interviewed by the Deputy Commissioner of DDD, and they will focus on choosing candidates that have the requisite experience for these positions in a manner that will not discriminate against any person because of race, religion, national origin, age, sex, sexual orientation, disability, veteran status, or ex-offender status where it is not job related. In addition, NYS OTDA is an Affirmative Action/Equal Opportunity Employer. We actively solicit and encourage applications from Black, Indigenous, and People of Color ("BIPOC"); LGBTQI+ individuals; women; disabled individuals; and military veterans.

Should you require any additional information, please contact me at karen.frankey@otda.ny.gov or (518) 402-3991. Thank you for your consideration.

Sincerely,

Karen Frankey
Associate Director Human Resources 2

Duties Statement
Assistant Commissioner, NS=665
Item#: 63950, 63951, 63952
September 2023

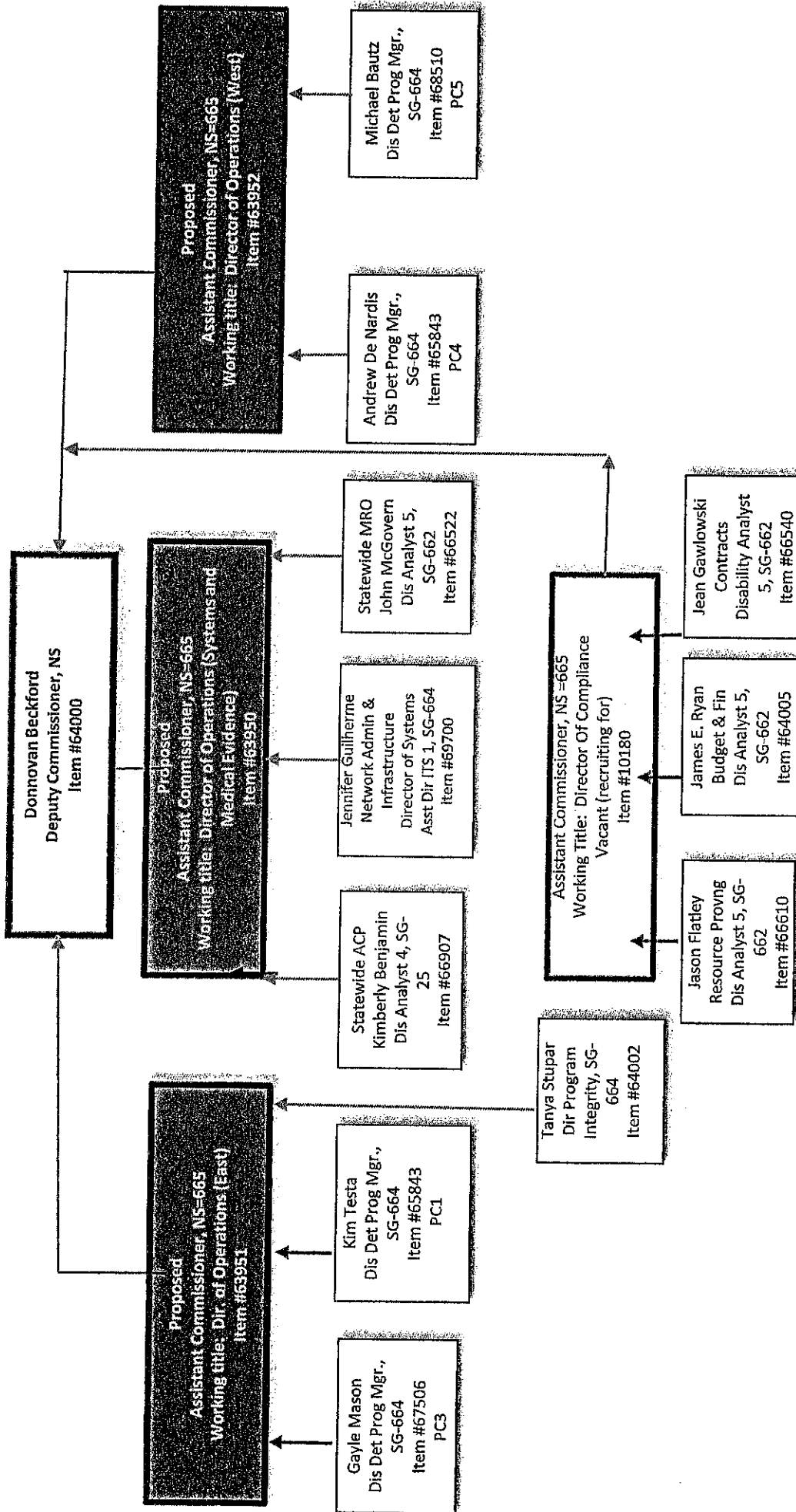
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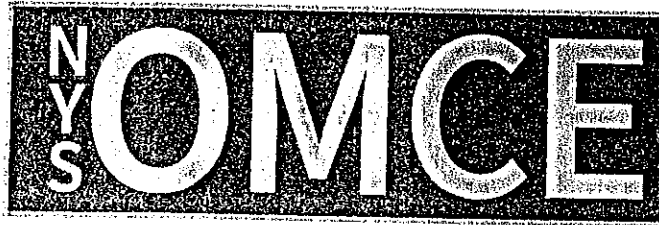
Duties include but are not limited to:

- Under the directions of the Deputy Commissioner and working Through Disability Determinations Program Managers and their respective teams, exert final responsibility for all aspects of case processing in the region. Ensure procedures are in place and business process activities support adequate control and tracking of all cases, appropriate acquisition of pertinent data (medical and vocational), and appropriate ordering practices for consultative examinations that are both fiscally and programmatically sound in the region. Ensure that statewide practices result in timely and appropriate determinations with programmatically compliant due process provisions. Direct the provisioning of statewide and regional resources to ensure that assistance requests received from other states, the office of Hearing and Appeals, and other Federal components are properly accommodated.
- Disseminate all relevant information to the regional processing centers to effectively conduct ongoing daily operations timely and accurately.
- Oversee the implementation of new or modified case processing procedures and policies developed by DDD central administration, region, or the Federal government.
- Participate in development of long term and short-term range goals and objectives to fulfill Social Security Administration (SSA) requirements and DDD's mission in that region.
- Provide input into all new or modified proposed legislation that has a potential impact on the disability program and operation of processing centers.
- Develop, maintain, and monitor reports on production, case statistics and quality for the region. Assure that procedures for case quality and quantity are followed and that standards are met. Provide regularly issued status reports on all activities of the processing centers to central administration.
- Develop, enhance, and maintain inter-relationships with Federal, State, county, and civil agencies whose clientele may be involved in the disability process.
- Assist medical relations staff to identify medical staff resource needs and consultative examination provider requirements for the region. Direct monitoring of CE providers to insure adequacy and timeliness of CE reports. Maintain strong and cooperative relationships with the medical community.
- Stay apprised of changes to federal budgeting provisions by case type as the federal fiscal year progresses. Ensure that resource provisioning is adequate across all Processing Centers to meet budgeted expectations. Monitor statewide receipt and closure patterns against budgeted expectations and direct corrective actions to resolve identified processing impediments and anomalies.

- Direct ongoing studies and reviews of procedures and methodologies to identify weaknesses and develop improvements.
- Ensure that staffing and supervision are at sufficient levels for accurate and timely case processing in the region.
- Interface as necessary with individuals from OTDA, other state & federal agencies.
- Identify and discuss operations training needs with the Directors of Planning, Compliance Director and Development and Program Integrity to ensure adequate development and presentation of training.
- Work with DDD's systems unit and database team to ensure user processing software keeps pace with changes to program requirements and expectations, including changes to SSA's electronic business process and SSA's productivity goals.
- Work directly with the Program Managers in the region to ascertain data management needs and guide the Division's database team in establishing strategies for developing and promulgating updated reports to support the management of any business process changes. Provide guidance to Program Managers in the use of the Division's electronic reporting tools and available database information including any updated dashboard tools.
- Work collaboratively with Director of Planning and Development and Director of Compliance and others, providing information about processing and applications and other resources needs to address provisioning, infrastructure, and resource planning.

Office of Temporary and Disability Assistance Division of Disability Determinations *Future Proposed*





The Organization of New York State Management Confidential Employees

September 7, 2023

Honorable Timothy Hogues
 Honorable Caroline Ahl
 Honorable Lani Jones
 NYS Civil Service Commission
 NYS Department of Civil Service
 Agency Building 1, Empire State Plaza
 Albany, NY 12239

Re: Control #23-103

Dear Commissioners:

In the above-referenced submission, the Office for the Aging (OFA) has requested the classification and placement of two positions of Assistant Director, NS, and six positions of Special Assistant, NS, in the Exempt jurisdictional class. This request has raised concerns for the Organization of NYS Management Confidential Employees (OMCE).

The title of Special Assistant, NS, is ripe for misuse as the title offers an agency the ability to appoint any candidate without restrictions imposed by salary schedules or merit system requirements. Additionally, Special Assistant, NS, is exclusively in the Exempt jurisdictional class and almost exclusively M/C designated, removing any "complications" related to employee tenure or union protections. In this request alone, there are six different proposed uses of this single title, but very little in the way of substantive argument for Exempt jurisdictional classification. In fact, the instant request for Exempt jurisdictional classification is built upon weak arguments for M/C designation. In this way OFA attempts to use M/C designation as a "Trojan Horse" for Exempt jurisdictional classification approval.

Part of this request argues that access and/or handling of confidential information/data supports confidential designation. It does not. Section 201.7 of the Civil Service Law specifically states that confidential designation (the "C" in M/C) is for "persons who assist and act in a confidential capacity" to managerial employees involved in collective negotiations or have a major role in administration of agreements or personnel administration. All sorts of positions that have access and use of confidential information are both Competitive JC and union-represented: police, investigators, payroll processors, tax auditors, and medical professionals are just a few. This issue has been upheld time and again by the courts: access or use of confidential information/data outside of collective negotiations/personnel administration support is not grounds for confidential designation. Secondly, OFA has misinterpreted the policy-making criteria to support managerial designation. The law states that "persons who formulate policy" may be designated managerial. Lippman v. PERB and other court cases have demonstrated that there is a comprehensive analysis needed in order to determine what activity qualifies as policy

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formulation. To paraphrase these court cases, policy formulators must participate in the essential processes by which the agency makes decisions about its mission and means by which those policy objectives can be best achieved. They must shape or define agency operation, direction, or objectives in furtherance of its institutional mission or determine its methods, means, or extent of achieving such objectives. Providing advice or support to those who ARE the policy formulators may be insufficient for managerial designation. There must be fundamental control over the agency's direction and scope of the mission and the ability to exercise independent judgment reflecting substantial discretionary responsibility in order to "formulate policy." The requested positions fail to meet these tests. This instant request for the Special Assistant, NS, positions misinterprets M/C designation to further a weak request for Exempt jurisdictional clarification.

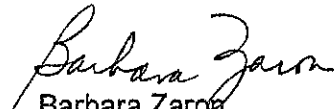
As for the duties and responsibilities of the requested Special Assistant, NS, positions, we believe that there are Competitive jurisdictional class titles that may be used. For one example, we believe that the requested Special Assistant, NS, positions for the Division of Finance and Administration could easily be classified in any one of many Competitive jurisdictional class titles found in the budgeting and fiscal administration titles of the State. Once the proper title or titles have been ascertained, THEN the issue of whether the positions should be managerial or confidential (M/C) can be addressed.

Finally, we also point out that the requested Assistant Director, NS, positions should be reviewed for classification in existing Competitive jurisdictional class titles currently used at OFA. This review of titles should include but not be limited to the titles of Aging Program Manager and Assistant Director Office of Aging Programs. A rush to expand the number of Exempt managerial titles at OFA creates a new glass ceiling that limits the advancement of Competitive jurisdictional class career employees without justification.

As OMCE has consistently stated in past correspondence, 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 justification. As such, we respectfully request that the instant request should be denied.

If we can provide additional information or discussion, please contact us at (518) 456-5241 or at omce@nysomce.org. Thank you for your consideration.

Sincerely,


Barbara Zaron
President



Office of General Services

KATHY HOCHUL
Governor

JEANETTE M. MOY
Commissioner

July 21, 2023

The Honorable Timothy R. Hogues
The Honorable Caroline Ahl
The Honorable Dr. Lani Jones
New York State Civil Service Commission
NYS Department of Civil Service
Empire State Plaza, Agency Building 1
Albany, NY 12239

Dear Honorable Commissioners:

The Office of General Services (OGS), on behalf of the New York State Office for the Aging (OFA), is requesting the Civil Service Commission amend Appendix 1 of the Rules for the Classified Service to add the following 8 positions:

- Special Assistant – 6 items
- Assistant Director – 2 items

A corresponding classification request has been sent to the Division of Classification and Compensation. These positions are required to carry out the responsibilities contained within the recently announced initiatives to be overseen by OFA in the Governor's 2024 fiscal year budget announcement.

In December 2021, Governor Hochul signed legislation for multiple initiatives and an Executive Order (EO) for Aging and Long-Term Care (LTC) which were passed by the Legislature during the 2021 Legislative session. These initiatives and the EO include:

- Reimagining the Long-Term Care Task Force bill which establishes a LTC task force to examine the state of facility-based, home-based, and community-based LTC services in the state and consider potential opportunities for improvement.
- Long-Term Care Ombudsman Reform Act bill which enacts a series of reforms to the State LTC Ombudsman Program and related programs to increase accessibility for residents of nursing home and residential care facilities. The bill contains three distinct parts: 1) Part A requires the Office of the State LTC Ombudsman to facilitate and implement the Awareness Program to promote the LTC Ombudsman Program; 2) Part B requires the establishment of policies and procedures for staff and volunteers of the LTC Ombudsman Program to report issues identified or witnessed that may adversely affect the health, safety, and welfare of residents at residential health care facilities; and 3) Part C requires nursing homes and residential health care facilities to provide all residents access to the State LTC Ombudsman Program staff and volunteers at no cost to the resident and requires nursing homes to grant Ombudsman Program staff access to the facility.
- Assisted Living Residence Closures bill specifies procedures for the closure and/or decertification of assisted living residences in New York State and requires a comprehensive written closure plan from the provider. A key aspect of the plan is a collaboration between the NYS Department of Health (DOH), OFA's LTC Ombudsman, and residents to ensure a transition to another setting that adequately meets their needs and wishes in order to best protect residents and prevent disruptions in care.
- Executive Order 23, Master Plan for Aging, signed by Governor Hochul to create the State's first-ever Master Plan for Aging to ensure older New Yorkers can live healthy, fulfilling lives while aging with dignity and independence. EO 23 directs the DOH Commissioner and the Director of OFA to lead a Master Plan for Aging Council to provide guidance for building healthy, livable communities that offer opportunities for older adults, and to coordinate policies, services and programs related to meet the needs of aging New Yorkers and people with disabilities who require long-term care services and support.

To support the implementation of these initiatives, OFA received funding in the 2022-23 and 2023-24 fiscal year budgets with authorization to increase the OFA FTE levels by 31 to carry out the mission of the Governor's vision.

Within the Executive group in OFA, we are requesting three new exempt items to carry out responsibilities for the following initiatives:

- The Special Assistant, item #61027, will be responsible for researching, analyzing, and evaluating complex, confidential, sensitive, and controversial issues impacting OFA's policies, procedures, and LTC objectives and mission meeting responsibilities under EO 23 Master Plan for Aging, the Reimagining the Long-Term Care Task Force bill, and the Long-Term Care Assisted Living Residence Closures bill.
- The Special Assistant, item #61028, will report to the Acting Director and will serve as liaison between senior level executive staff and program staff to advance LTC system reform, including the review and approval of policy and program reports for external dissemination, providing policy recommendations to upper level management and responding to critical and high profile issues and requests for information; serve as a subject matter expert and represent the agency as a liaison with other governmental entities on both State Federal levels; and manage relationships with diverse stakeholders, including stakeholder outreach, education, and engagement. within the OFA Executive group.
- The Special Assistant, item #61030, will report to the OFA General Counsel and assist in handling tasks such as preparing information for FOIL requests; compiling information from agency data sources; assisting with responses to requests from the Executive Chamber; assisting with Governor Hochul's EO 23 Master Plan on Aging and Long Term Care initiatives; drafting responsive letters and inter-agency communications; conducting legal research and writing generally, specifically on issues related to program integrity; assisting with legislative and regulatory initiatives such as reviewing and tracking proposed legislative bills, drafting language and providing research; assisting with the development and administration of Requests for Proposals and the review and selection process, in collaboration with fiscal and program staff.

Within the Division of Policy, Planning, Program and Outcomes unit, we are requesting two new exempt items to carry out responsibilities for the following initiatives:

- The Assistant Director, item #95162, will function as the Assistant Deputy Director for the Division of Policy, Planning, Programs, and Outcomes. The incumbent will work directly with the Deputy Director and Assistant Directors on cross-divisional partnerships and coordination of agency processes, particularly related to legislative, programmatic and policy areas, and the new Governor OFA initiatives.
- The Special Assistant, item #85141, will conduct research, perform information gathering and data analysis using a variety of data gathering techniques to inform policy and/or management decisions. The incumbent will partner with cross-agency collaboratives and other external entities and engage in initiatives to leverage OFA's assessment data to support program effectiveness and will partner with directors within the Division to identify and create opportunities for data-supported decisions.

The new exempt role for the Division of Local Program Operations will carry out responsibilities for the following initiatives:

- The Assistant Director, item #95163, will assist the Deputy Director in the planning, design, development and implementation of initiatives, policy and programs, coordinate the workflow management and day-to-day operation within the Local Program Operations (LPO) Division, work inter-divisionally to support consistent application of policy with the other agency divisions, and will be responsible for oversight of several programs and federal grants, including the Governor's Master Plan for Aging.

The final two exempt positions will be housed within the Division of Finance and Administration and will carry out responsibilities for the following initiatives:

- Special Assistant, item #95160, will report to the Deputy Director and will work directly with Executives, agency management, and divisional assistant directors on cross-divisional partnerships and coordination of agency processes, particularly related to fiscal/budgetary processes, workforce development, and all current Governor initiatives.
- Special Assistant, item #71010, will report to the Deputy Director and assist in the management and day-to-day oversight of several programs and funds assigned by the Director of OFA to be administered by the Division of

Finance and Administration. These programs and funds include the Master Plan for Aging, the Association on Aging, the Long-Term Care Ombudsman Program (fiscal), the Age Friendly Communities, legislative assignments and other programs and initiatives as assigned to the division from the Director of OFA.

Per enacted legislation, we are requesting the requested exempt positions be placed in the exempt class with Managerial/Confidential designation. These positions are needed to perform duties guided by the enacted legislation including, but not limited to, establishing connections within local governments, soliciting external stakeholder expertise on proposed regulations, and representing OFA on task forces, making decisions and commitments. The incumbents will be interpreting laws, conducting research, and coordinating efforts across State agencies including the Department of Health, the Office of the State Comptroller, and the Division of the Budget. These positions will require strong interpersonal and management skills, tact, discretion, diplomacy, and sound judgement. Additionally, their responsibilities require sensitive handling of information and data to ensure privileged information is not redisclosed.

OGS is an affirmative action/equal opportunity employer, and these are values we take seriously and ensure commitment and adherence for this philosophy is extended to all our hosted agencies. Women, minorities, veterans, and persons with disabilities are always encouraged to apply for any position regardless of race, gender, age, national origin, sexual orientation, religion, or a disability that can be reasonably accommodated. To employ a diverse workforce, we wish to express our commitment to recruiting and embracing diversity in our efforts to fill these positions. Our recruitment for these positions will include reaching out to and recruiting from groups currently underrepresented at our agency. Our recruitment efforts will include, but not be limited to, web-based recruitment, community organizations and outreach on various job posting sites as well as working with the Office of Inclusion & Engagement and Center for Recruitment and Public Service.

The review of applications/resumes will be vetted through the OGS Human Resources team and further reviewed by the Deputy Director of Finance and Administration for OFA and members from the OFA leadership team. Additionally, a representative from the Office of Inclusion & Engagement may participate as members of the interview panel for positions in which protected class individuals are underrepresented.

Additional information, including detailed duties descriptions and an organizational chart for OFA are attached to this request. Thank you for your consideration to this request and should you require additional information, please feel contact me at (518) 473-0891 or Donald.grandchamp@ogs.ny.gov.

Sincerely,



Donald Grandchamp
Associate Director Human Resources 3