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2023 Civil Service Committee Hearing Testimony

**Submitted on Behalf of the
The Police Benevolent Association
of New York State**

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Good morning. My name is Kurt Nolan and I am the Executive Director and Counsel for the Police Benevolent Association of New York State, Inc (PBA). The PBA is the exclusive bargaining unit for the Agency Police Services Unit (APSU), which includes the New York State University Police, New York State Park Police, Environmental Conservation Police, and Forest Rangers. Our members serve and protect the students, faculty, and staff at each of our 28 SUNY campuses, our historic parks and recreation sites, our forests, and our natural resources.

I would like to begin by thanking you for this opportunity to speak with you about issues that are extremely important to our members and to public safety in the State of New York. My intent today is to bring your attention to some of the issues that arise as a result of the current civil service system as it applies to each of our agencies, while also recognizing the critical role that civil service plays in ensuring fairness, due process, and preventing political patronage within our police departments. The civil service system, while well-intentioned, unfortunately maintains rules and regulations that are relics of the past and fail to address modern issues such as recruitment, retention, diversity, equity, inclusion, and the lack of pay and pension parity.

The lack of an adequate civil service career ladder within our agencies creates several major problems for PBA members and for public safety. The lack of a career ladder leads to inefficient supervision, hostile work environments, favoritism, and ultimately contributes to retention issues.

First, there are not enough civil service positions to adequately distribute the patrol, supervisory, investigative, and administrative tasks required of a modern police department. This situation forces our police departments to create “in-house” titles to address these needs. The PBA members in these positions receive no additional compensation or authority in exchange for these additional responsibilities. More importantly, there is no civil service exam or other objective criteria for receiving these in-house titles. The use of these in-house titles eliminates any initiative for the agency to advocate on behalf of our members for a true career ladder and additional civil service titles.

The New York State University Police have four civil service titles: University Police Officer 1, University Police Officer 2 (Lieutenant), University Police Investigator, and University Police Investigator 2 (Senior Investigator). Especially at larger campuses, the lack of civil service titles has forced campuses to create in-house titles such as “Sergeant” and “Captain” in order to perform various administrative and supervisory tasks.

The New York State Park Police have civil service titles for Police Officer, Sergeant, Lieutenant, Captain, and Major. Unfortunately, however, there is no civil service title for investigator. This resulted in uniformed members of the Park Police being assigned the in-house title of Detective. These Detectives served the Park Police for over 50 years. However, when the New York State Police assumed operational control of the Park Police, these Detectives were stripped of their assignments and reassigned to road patrol.

The lack of a civil service career ladder incentivizes and often requires the agencies we work for to circumnavigate the civil service process entirely through the use of employees designed as Management Confidential (M/C). The Civil Service “rule of three” requires the employer to choose candidates who have scored within the top three on a civil service exam. However, this rule of three doesn’t always allow the Chief of Police, the College President, or the Commissioner to choose their favorite candidate. This is precisely why civil service exams and a career ladder are so important. In order to avoid this problem entirely, our agencies actively reassign the job duties of civil service titles to M/C positions that serve at the pleasure of the appointing authority. The use of M/C employees has resulted in a top-heavy supervisory structure across each of our agencies.

Despite the Governor’s endorsement of the 30 x 30 initiative and the emphasis on diversity, equity, and inclusion at each of our agencies, our agencies have a difficult time recruiting and retaining women and minority candidates. This problem is only compounded by the use of M/C titles and the lack of a career ladder. In addition to the potential for discrimination in the interview and appointment process, the salaries for M/C employees are generally negotiated on an individual basis because the Taylor Law does not allow M/C employees to engage in collective bargaining. This system creates the potential for pay disparity within our ranks.

As an example, I encourage you to try to find the job description, minimum qualifications, and preferred qualifications for a Chief of Police within the New York State University Police. You will quickly discover that these criteria vary from campus to campus and are often tailored in order to limit the candidate pool to a single, predetermined applicant. In fact, SUNY campuses have often tailored these criteria so specifically that none of our members were able to qualify for the position and a 211

waiver is granted to a retiree that the college or university always intended to hire in the first place.

The PBA strongly encourages the establishment of additional civil service titles within each of our agencies in order to protect against discrimination and to ensure pay equity.

Due to increased scrutiny on the law enforcement profession these last few years, every law enforcement agency is experiencing difficulty recruiting qualified candidates. We need to offer entry-level civil service exams as often as possible to ensure that our agencies are not scraping the bottom of the barrel to maintain minimum staffing levels.

The New York State Park Police currently have approximately 200 sworn members. In May of 2023, there were 32 graduates of the New York State Park Police Academy's 17th session. This was the first academy class since 2019. Approximately 60 candidates were invited to attend the current academy class. However, only 32 candidates enrolled in the academy, 2 quit on the first night, and an additional 8 recruits have quit since that time. The most recent civil service exam for Park Police Officer expired this summer. To address the critical staffing levels, the Park Police are recruiting and processing applicants who haven't even taken the civil service exam. While there are rumors that Civil Service will be holding an exam in the near future, there has been no official announcement to date.

Recruitment is also an issue for the Department of Environmental Conservation's Division of Law Enforcement. Approximately 2100 people took the most recent civil service exam for Environmental Conservation Police Officer, which is an increase over previous exams. However, only 800 people responded to the canvass and there are only about 80 people remaining in the candidate pool to hire for an academy class of 45. These

45 police officers would help to fill the 65 vacancies within the Department of Environment Conservation's (DEC) Division of Law Enforcement (DLE). It is important to note that the staffing levels for DLE have not increased since the 1970s. Our Environmental Conservation Officers need additional resources and staffing to adequately address the impacts of climate change.

Our agencies do not offer promotional exams with sufficient frequency to ensure a qualified candidate pool. In fact, our agencies often exploit loopholes within the civil service rules to provisionally promote their preferred candidates when a promotional list has expired. Currently, our agencies are required to call for civil service to hold promotional exams. The PBA strongly believes that Civil Service should hold promotional exams at regular intervals in order to avoid the abuse of provisional appointments and/or the creation of M/C titles to perform job duties that belong to civil service titles.

In August of 2020, the Inspector General published a report of its Investigation of the New York State Department of Environmental Conservation Division of Forest Protection. This investigation found "widespread deficiencies in the Division of Forest Protection." The Inspector General criticized the Division of Forest Protection for having poor supervision, commenting that "forest rangers are infrequently supervised by captains and lieutenants within the Division."

The Division of Forest Protection has done little to address these issues. There have not been promotional exams in several years and the existing civil service lists have long since expired. While the Division has made some provisional appointments, it has also addressed the lack of supervision by advising several of our members that they will be promoted to "acting" titles. Our members are assigned the duties and responsibilities of

supervisors and regularly perform out-of-title work. Unlike provisional appointments, these promotions fall completely outside of the civil service process. There are no minimum qualifications, no canvasses, no interviews, and our members receive no additional compensation for accepting these “acting” titles. Our members are forced to file out-of-title work grievances to get the pay they deserve.

As illustrated by the foregoing examples, it is clear that the Department of Civil Service needs to take a more proactive approach to holding promotional exams, especially when the existing civil service lists have expired and agencies have no other recourse than to make provisional appointments or to create MC positions.

The police officers represented by the PBA are amongst the most highly trained and specialized police officers in the State of New York. Despite increased education requirements, specialized training, and expanded duties, our agencies are unable to compete with the pay and benefits of other law enforcement agencies, especially downstate. The PBA has attempted to address the disparity in pay and benefits through contract negotiations, lobbying, and by submitting applications for civil service upgrades.

Applications for Change in Title or Salary are filed with the Classification and Compensation Division of the Department of Civil Service. The PBA has submitted numerous applications on behalf of our members throughout the years. These applications were last approved for the Environmental Conservation Police in 1990, the Park Police in 2002, the University Police in 2002, and the Forest Rangers in 2000. The PBA submitted applications for the Environmental Conservation Officers in 2002, the Forest Rangers in 2013, the University Police Officers in 2016, and the Park Police in 2019. Each of these applications were denied.

At a time where every law enforcement agency is struggling to recruit and retain diverse and highly-qualified candidates that reflect our communities, the lack of pension equity for PBA members makes it impossible for our agencies to compete with other police departments. Only 3% of police officers in the State of New York are required to work for twenty-five years before they are eligible to collect their pension benefits. Our members have the unfortunate distinction of belonging to this 3%. Our agencies are losing employees to surrounding law enforcement agencies, to the New York State Police, and even to law enforcement agencies in other states because a twenty-year pension is the industry standard.

In addition to losing our best and brightest, the lack of a twenty-year pension inhibits our agencies from promoting the best and brightest into leadership roles. Especially in today's anti-police environment, taking a promotion to an M/C position before reaching twenty-five years of service is a huge gamble for any civil service employee. All too often, the best candidates for these jobs do not even apply because they are unwilling to give up the due process offered by civil service protection to serve at the pleasure of an unelected bureaucrat. As a result, the upper-level management within our agencies often lack the institutional knowledge or leadership skills that are required to lead our members.

The civil service system plays a crucial role in public employment and public safety in the State of New York. The PBA strongly encourages the Department of Civil Service to review these issues and to work with the PBA to find creative solutions to the recruitment and retention issues facing our workforce. In addition, the PBA would like to thank our elected representatives for their continued support of pension equity for our members.