NYS OMCE

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JOINT LEGISLATIVE BUDGET HEARING ON WORKFORCE DEVELOPMENT

February 27, 2013

Remarks by Barbara Zaron, President and Joe Sano, Executive Director, OMCE

On behalf of OMCE we appreciate the opportunity to provide the committee with our comments and concerns about the Executive Budget proposal concerning or affecting the workforce. OMCE is the labor organization that represents the interests of the state Management/Confidential (M/C) employees, who are described as "unrepresented" due to the original Taylor Law being amended in 1972 to prohibit M/Cs from collective bargaining. OMCE is affiliated with the Office and Professional Employees International Union (OPEIU), Local 153, AFL-CIO.

Sad to say, this is at least the third year that we have to tell you that M/C employees have fallen further behind their colleagues in compensation. This lack of pay equity is having a serious, deleterious effect on ensuring a cadre of qualified, competent and dedicated managers to carry out the programmatic, financial, and services provision responsibilities of the state as well as provide supervision and support to the staff working with them. The conscious and deliberate downsizing of the workforce; significant reorganizations and restructurings of agencies, functions and staff; lack of adequate resources, training and support; and an increasingly hostile work environment makes the M/C s jobs very difficult. To pay these M/Cs less than the staff they supervise, or staff doing comparable work adds insult to injury. As a matter of fact, we hear almost every day from M/C employees about how nearly impossible it is for them to ensure that all the work is done.

The result of the ongoing pay inequity includes significant difficulty in recruiting and retaining qualified management and other m/c staff. We all have heard the Governor talk about the difficulty in recruiting for commissioner and other high-level positions because the salaries are not competitive. We agree, but we are confounded by the Governor's lack of action for more than two years to fix the problem. Actually, the situation is even worse in that the 2012 Performance advances that were due on April 1, 2012 still have not been paid to M/Cs. There is a direct connection between downgrading the value of M/C positions and their salaries and the ability to attract people to work for New York State.

The Governor has proposed a new Womens' Equality Agenda which includes pay equity provisions. State employees already have a statutory requirement for pay equity, found in Civil Service Law S115 which espouses the policy of the state as equal pay for equal work. M/Cs are certainly not receiving equal pay for equal work; how can this be allowed?

Several examples of the salary disparities will illuminate the problem: An M/C Secretary II (grade 15) at Job Rate (top of the salary scale for 10 years or more) makes $53,366 while the CSEA represented Secretary II at Job Rate makes $55,455, a difference of $2,089. The gap increases as one climbs the ladder of salary grades and responsibility. At the Grade 25/M1 level (e.g., Psychologists/Treatment Team Leaders) the M/C Team Leader, who directs the PEF represented team members activities, earns $8,400 to $10,900 less than the PEF represented staff. Looked at in a different way, the Secretary who has been at Job Rate since 2008, has lost $16,800 in compensation, while the Treatment Team Leader also at Job Rate since 2008 has lost $26, 625 in compensation.

The same Secretary II who was not at Job Rate and has not been paid the 3%, 4% and two steps has lost $28,236, and the Treatment Team Leader not at Job Rate who was not paid the 3%, 4%, and two steps has lost $45,532 in compensation.

These examples and the charts attached to this testimony clearly delineate the depth of the problem and the severe financial harm that has been done to M/C employees for the past four years, that will continue for the rest of their lives unless corrected. Since pension benefits are calculated typically on the last three years salary, M/C s are doomed to have significantly reduced pension benefits based on the artificial downgrading of their salary. (See attachments)

It has become common practice that M/C managers are making less money than their subordinates and other M/C employees are making less money than their peers. This is being accomplished not through the statutory process of grade assignment by Civil Services' Classification and Compensation Division but through the withholding actions of the Division of the Budget. A "green ceiling" which is the artificial salary limitation placed on M/C positions by the Division of the Budget has been created. This ceiling stifles recruitment, hiring and retention for M/C positions and certainly does nothing to promote diversity of the workforce since a promotion to a managerial position ultimately results in a cut in pay.

April 1 of this year will begin the fifth year where M/C employees are receiving a "0" % across the board increase. M/Cs have lost more than any other unit of employees. M/Cs will have five "0"s, rather than the three other units agreed to, M/Cs had the Deficit Reduction Program and the health insurance premium increases imposed on them. M/C performance advances (steps) for all eligible M/Cs, and longevity pay for Grade17 and below M/Cs, were unpaid in 2009 and are still unpaid for FY 2012-2013 although they should have been paid April 1, 2012. The financial and economic impact of this reduced compensation extends beyond the individual to the family, local community and the state. This public policy issue can no longer be ignored; it needs to be addressed and we need your assistance and support in this effort.

The practical result of underpaying M/C employees is that M/Cs are leaving their positions to retreat to PEF and CSEA represented positions they once held to be paid the higher salaries that M/Cs are denied. Replacements for these M/Cs are often "acting" so they can assume the duties and responsibilities of the M/C position but keep their higher PEF or CSEA salary. Essentially these employees are doing out of title work. The underpayment of M/C positions combined with the significant reduction in the number of M/C positions, especially in the competitive class, reduces promotional opportunities for career public service employees who are the backbone of state government. This is lousy public policy and mocks and circumvents Civil Service Law.

The Governor's Executive Budget does not address this M/C pay inequity issue. We note that M/Cs in other jurisdictions who had their salary increases withheld subsequently had them restored, most notably NYC Mayor Bloomberg restored withheld salary increases to M/Cs in 2009 and Massachusetts Governor Deval Patrick did the same in 2011. Just last month the NYS Office of Court Administration restored to its M/C employees salary increases that had been withheld. And some local governments are planning to increase M/C salaries in a manner comparable to salaries for their union-represented employees. And the state senate increased salaries for some of its M/C staff. The Thruway Authority said it would not include M/C employees in its proposed layoff plan because they had not gotten a salary increase in four years.

What a crazy way to run a government. Give M/Cs more and more work and responsibility and pay them less than the people they work with and supervise. Does this remind anyone of the book Animal Farm where "all animals are equal but some are more equal than others?"

OMCE has proposed a variety of options for repayment of the withheld compensation and is prepared to continue to pursue positive resolution of this issue until it is accomplished. **We urge the Legislature, in your budget negotiations with the Executive, to insist that the M/C salary inequity be fixed**. We believe very strongly, however, that even if this issue is resolved in the near future there is a need for the M/C Salary Commission legislation sponsored by Assemblyman Farrell and Senator De Francisco, A246/S2953. The classification and compensation system is so completely broken with regard to M/C compensation that an objective, neutral commission is necessary to look at it and propose fair, equitable and far-reaching change in the M/C compensation schedules. Passage of this legislation is essential and we ask your early action on it. Last year the Governor proposed a set of Civil Service Law "flexibility" items, including five year appointments without examination, certification of an "open" promotion list, change in the use of interdepartmental promotion lists, permitting non-competitive employees to transfer to a competitive class position and/or to participate in competitive promotion exams. We expressed our concern and opposition to these proposals, as well as to the appropriation language granting the Governor authority to move monies among state agencies and authorities without legislative approval.

This year the Executive Budget sets out a variety of proposals that will affect the workforce, some of which cause us concern and we therefore suggest the Legislature reject these proposals:

- The efforts to change the agency/facility closing notice from 12 months to 60 days. The 12 month requirement was put in place to allow for a community planning process for re-use of the facility and to provide sufficient time for the state's reemployment process to place displaced employees in other employment. This would apply to OMH, OPWDD, OCFS and DOCCS proposed closings.

- The merger of GOER and Department of Civil Service which have very different roles and responsibilities. GOER is the Governor's representative in labor relations and negotiation of contracts with employee organizations. As stated in the SAGE Commission final report, "The civil service system is constitutionally protected by the New York State Constitution and embodies important values such as the professionalism of the workforce and protection against cronyism and political patronage." As such the Department of Civil Service is charged with carrying out and ensuring compliance with the constitutional and statutory requirements for a civil service based on merit and fitness. These differing responsibilities may sometimes be in conflict so having the same agency carry them out is problematic.

- The proposal to give the Governor control of additional reorganization and restructuring of agencies through appropriation transfer and interchange language. No action should be permitted without specific detailed plans shared in advance with the legislature and all employee organizations for their input.

- The Governor's proposal to eliminate, retroactive to January 1, 2013, the State's reimbursement of the Income Related Medicare Adjustment Amount (IRMAA), the additional Part B Medicare premium that the Federal government imposes on certain retirees and their dependents; that is, individuals with modified adjusted gross incomes, as shown on their latest federal tax return, of $85,000 or more, or, if married and filing jointly, couples with incomes of $170,000 or more.

  For current and former State M/C employees who have suffered significant loss of income, both as a result of their salaries having been arbitrarily capped in April 2008 and their share of health insurance premium payments having been increased in January 2012, this additional assault on their already reduced anticipated compensation in retirement is unconscionable. And to add insult to injury, the Governor proposes to impose this requirement retroactive to January 1, 2013, despite the Budget not becoming effective until April 1, 2013. This proposal should be defeated and rejected outright. If it is accepted, under no circumstances should it apply to individuals and couples earning less than the higher-incomes defined in other policy discussions, which are $200,000 for individuals and $250,000 for couples, nor should it be applied retroactively. (See attachment)

Since this legislative budget hearing is titled Workforce Development we would like to have seen specific positive proposals that describe how the workforce will be recruited, trained, retained, recognized and rewarded. Yet the Budget contains little detailed insight into any of these areas.

Yes, there are a number of proposals in the final report of the SAGE Commission that lead us to say let's not forget our past experience, for example, with the newly resurrected call for performance evaluation systems. Over the years there have been many unwieldy performance evaluation systems implemented, some directly linked to compensation. These linkages produced system failure---in some measure because promised rewards were not forthcoming due to Division of the Budget control over the allocation and we witnessed the system's collapse.

While we don't object to change---we deal with it all the time---we want change to be positive for our career public service workforce so they can effectively serve the public. Some of the SAGE Commission proposals, such as Open Promotion, expanding the time period for "temporary project jobs" from 18 months to 5-7 years, increasing probationary terms and reversing the presumption of tenure at the end of probation, etc. raise questions. We need the right solutions to the problems or issues identified; training or retraining managers and staff, providing sufficient staff resources to really do the job. The right solutions will only be developed if the state seriously engages stakeholders, including OMCE, in developing and designing such programs.

We don't need to abandon the merit system. We need to embrace it, expand it, nurture it and celebrate it. As we integrate sound proven technology into the merit system as a means of keeping our human resource selection system vibrant, the Civil Service Department is a shell of what it once was. If we are going to be serious about workforce development we need to start with a revitalized fully staffed and trained Civil Service Department that is empowered and allowed to function without political interference.

/bjs

Effects of M/C Pay Withholding on M/Cs vs CSEA and PEF represented employees in comparable grades

The Organization of NYS Management/Confidential Employees, Inc. (OMCE)

(1) Grade	(2) MC 2009-10 (JR)	(3) - 3% W/H (Col 2-6)	(4) MC 2010-11 (JR)	(5) - 7% W/H (Col 4-6)	(6) MC 2008-09 (JR)	(7) 2010-11 (JR) CSEA	(7) 2010-11 (JR) PEF	(8) *Difference** *(Col 7-6)*
6	34,211	996	35,579	2,364	33,215	34,317	34,317	***1,102***
9	39,939	1,163	41,537	2,761	38,776	40,136	40,136	***1,360***
11	44,496	1,296	46,276	3,076	43,200	44,762	44,762	***1,562***
15	54,967	1,601	57,166	3,800	53,366	55,455	55,455	***2,089***
18	61,289	1,785	63,741	4,237	59,504	65,190	65,190	***5,686 - 8,186****
19	64,475	1,878	67,054	4,457	62,597	68,637	68,637	***6,040 - 8,540****
20	67,709	1,972	70,417	4,680	65,737	72,076	72,076	***6,339 - 8,839****
21	71,206	2,074	74,054	4,922	69,132	75,862	75,862	***6,730 - 9,230****
22	74,948	2,183	77,946	5,181	72,765	79,819	79,819	***7,054 - 9,554****
23	79,778	2,324	82,969	5,515	77,454	83,954	83,954	***6,500 - 9,000****
25/M1	87,118	2,537	90,603	6,022	84,581	92,974	92,974	***8,393 - 10,893****
27/M2	96,617	2,814	100,482	6,679	93,803		100,822	***7,019 - 9,519****
29/M3	107,202	3,122	111,490	7,410	104,080		111,064	***6,984 - 9,484****
31/M4	118,410	3,449	123,146	8,185	114,961		122,354	***7,393 - 9,893****
33/M5	131,628	3,834	136,893	9,099	127,794		134,868	***7,074 - 9,574****
35/M6	145,090	4,226	150,894	10,030	140,864		148,421	***7,557 - 10,057****
37/M7	157,473	4,587	163,772	10,886	152,886		163,033	***10,147 - 12,647****

Note: A further disincentive for PEF/CSEA employees to take management positions in 2009-10 and 2010-11 was that, upon transfer or promotion to an M/C position, they would lose the 3% or 4% raise they gained on April 1 of that year in their PEF or CSEA position (OSC payroll bulletin 702).

*PEF and CSEA represented employees in all grades and M/C employees in grades 6 through 17, who are at the job rate of their grade 5+ years, get a $1,250 performance award (longevity payment), and those who are at the job rate of their grade 10+ years, get a $2,500 performance award (longevity payment). This exacerbates the salary discrepancy with M/C employees in grades 18 and above, since the latter do not receive longevity payments.

(Rev 6/1/12)

M/C Employes At Job Rate (Last Step) Since 2008

Lost Compensation Due to Salary Withholdings

State Grade M/C 11	FY 2008	FY 2009*	FY 2010	FY 2011	FY 2012*	FY 2013	Total Lost
Salary per Pay Bill	43200	44496	46276	46276	46276	46276	
Actually Paid	**43200**	**43200**	**43200**	**43200**	**43200**	**43200**	
Lost Compensation	0	1296	3076	3076	3076	3076	**13600***
State Grade M/C15	**FY 2008**	**FY 2009***	**FY 2010**	**FY 2011**	**FY 2012***	**FY 2013**	
Salary per Pay Bill	53366	54967	57166	57166	57166	57166	
Actually Paid	**53366**	**53366**	**53366**	**53366**	**53366**	**53366**	
Lost Compensation	0	1601	3800	3800	3800	3800	**16801***
State Grade M/C 18	**FY 2008**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	
Salary per Pay Bill	59504	61289	63741	63741	63741	63741	
Actually Paid	**59504**	**59504**	**59504**	**59504**	**59504**	**59504**	
Lost Compensation	0	1785	4237	4237	4237	4237	**18733**
State Grade M/C 23	**FY 2008**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	
Salary per Pay Bill	77454	79778	82969	82969	82969	82969	
Actually Paid	**77454**	**77454**	**77454**	**77454**	**77454**	**77454**	
Lost Compensation	0	2324	5515	5515	5515	5515	**24384**
State Grade M 1	**FY 2008**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	
Salary per Pay Bill	84581	87118	90603	90603	90603	90603	
Actually Paid	**84581**	**84581**	**84581**	**84581**	**84581**	**84581**	
Lost Compensation	0	2537	6022	6022	6022	6022	**26625**
State Grade M 3	**FY 2008**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	
Salary per Pay Bill	104080	107202	111490	111490	111490	111490	
Actually Paid	**104080**	**104080**	**104080**	**104080**	**104080**	**104080**	
Lost Compensation	0	3122	7410	7410	7410	7410	**32762**

* **Longevity Award:** M/C Employees in Grades 17 and below, who are at the Job Rate (top of scale) for 5-9 years/10 years or more, respectively earn $1250 / $2500 for each year that they are at that top of scale. Longevity Awards are considered to be compensation for computation of FAS-Final Average Salary for retirement calculations.

These awards were not paid in 2009 nor have they been paid to date for FY 2012

Cumulative Lost Pay for M/Cs Entitled to Performance Advances (Steps) in Top 5 Populated State Grades

	Examples demonstrate an individual moving to Step 1 in FY 2008.						
Examples show no Performance Advances (Steps) paid in FY 2009 and FY 2012							
State Grade 11							
	FY 2008 Step 1	**FY 2009 Step 2**	**FY 2010 Step 3**	**FY 2011 Step 4**	**FY 2012 to Step 5**	**FY 2013* to Job Rate**	
Step 1 not Hiring Rate		**Salary w 3%**	**Salary w 4%**	**Salary w 0%**	**Salary w 0%**	**Salary w 0%**	
Pay Bill	35780	38383	41507	43097	44686	46276	249729
		FY 2009 Step 1/no advance	**FY 2010 Step 2**	**FY 2011 Step 3**	**FY 2012 to Step 3/no advance paid**	**FY 2013* to Step 4**	
Actually Paid	***35780***	***35780***	***37264***	***38748***	***38748***	***40232***	**226552**
Cumulative Lost Pay		2603	4243	4349	5938	6044	**23177**
State Grade 15							
	FY 2008 Step 1	**FY 2009 Step 2**	**FY 2010 Step 3**	**FY 2011 Step 4**	**FY 2012 to Step 5**	**FY 2013* to Job Rate**	
Step 1 not Hiring Rate		**Salary w 3%**	**Salary w 4%**	**Salary w 0%**	**Salary w 0%**	**Salary w 0%**	
Pay Bill	44502	47663	51468	53367	55266	57166	309432
		FY 2009 Step 1/no advance	**FY 2010 Step 2**	**FY 2011 Step 3**	**FY 2012 to Step 3/no advance paid**	**FY 2013* to Step 4**	
Actually Paid	***44502***	***44502***	***46275***	***48048***	***48048***	***49821***	***281196***
Cumulative Lost Pay		3161	5193	5319	7218	7345	**28236**
State Grade 18							
	FY 2008 Step 1	**FY 2009 Step 2**	**FY 2010 Step 3**	**FY 2011 Step 4**	**FY 2012 to Step 5**	**FY 2013* to Job Rate**	
Step 1 not Hiring Rate		**Salary w 3%**	**Salary w 4%**	**Salary w 0%**	**Salary w 0%**	**Salary w 0%**	
Pay Bill	49877	53357	57554	59616	61679	63741	345824
		FY 2009 Step 1/no advance	**FY 2010 Step 2**	**FY 2011 Step 3**	**FY 2012 to Step 3/no advance paid**	**FY 2013* to Step 4**	
Actually Paid	***49877***	***49877***	***51803***	***53728***	***53728***	***55653***	314666
Cumulative Lost Pay		3480	5751	5888	7951	8088	**31158**
State Grade 23							
	FY 2008 Step 1	**FY 2009 Step 2**	**FY 2010 Step 3**	**FY 2011 Step 4**	**FY 2012 to Step 5**	**FY 2013* to Job Rate**	
Step 1 not Hiring Rate		**Salary w 3%**	**Salary w 4%**	**Salary w 0%**	**Salary w 0%**	**Salary w 0%**	
Pay Bill	64570	69161	74688	77448	80209	82969	449045
		FY 2009 Step 1/no advance	**FY 2010 Step 2**	**FY 2011 Step 3**	**FY 2012 to Step 3/no advance paid**	**FY 2013* to Step 4**	
Actually Paid	***64570***	***64570***	***67147***	***69723***	***69723***	***72300***	408033
Cumulative Lost Pay		4591	7541	7725	10486	10669	**41012**

*assumes payment of the 2013 FY Performance Advance (Step)

Cumulative Lost Pay for M/Cs Entitled to Performance Advances (Steps) in Top 5 Populated State Grades

State Grade M 1							
	FY 2008 Step 1	**FY 2009 Step 2**	**FY 2010 Step 3**	**FY 2011 Step 4**	**FY 2012 to Step 5**	**FY 2013* to Job Rate**	
Step 1 not Hiring Rate		**Salary w 3%**	**Salary w 4%**	**Salary w 0%**	**Salary w 0%**	**Salary w 0%**	
Pay Bill	69859	74897	81140	84294	87448	90603	488241
		FY 2009 Step 1/no advance	**FY 2010 Step 2**	**FY 2011 Step 3**	**FY 2012 to Step 3/no advance paid**	**FY 2013* to Step 4**	
Actually Paid	***69859***	***69859***	***72803***	***75748***	***75748***	***78692***	442709
Cumulative Lost Pay		5038	8337	8546	11700	11911	**45532**
State Grade M 3							
	FY 2008 Step 1	**FY 2009 Step 2**	**FY 2010 Step 3**	**FY 2011 Step 4**	**FY 2012 to Step 5**	**FY 2013* to Job Rate**	
Step 1 not Hiring Rate		**Salary w 3%**	**Salary w 4%**	**Salary w 0%**	**Salary w 0%**	**Salary w 0%**	
Pay Bill	85983	92457	99858	103735	107612	111490	601135
		FY 2009 Step 1/no advance	**FY 2010 Step 2**	**FY 2011 Step 3**	**FY 2012 to Step 3/no advance paid**	**FY 2013* to Step 4**	
Actually Paid	85983	***85983***	***89602***	***93222***	***93222***	***96841***	544853
Cumulative Lost Pay	0	6474	10256	10513	14390	14649	**56282**

*assumes payment of the 2013 FY Performance Advance (Step)

LEGISLATIVE BUDGET HEARING ON THE WORKFORCE

Appendix to OMCE Testimony re:

Governor's Proposal to Eliminate Reimbursement of State Retiree Income Related Medicare Adjustment Amount (IRMAA) premium

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In order to reduce the State's costs of providing employee health benefits, the State requires retirees participating in the New York State Health Insurance Plan (NYSHIP) to enroll in Medicare Part B when they turn age 65. Medicare becomes primary, meaning that Medicare pays health insurance claims first, with NYSHIP picking up where Medicare leaves off.

With this legislation, the Governor proposes to eliminate, retroactive to January 1, 2013, the State's reimbursement of the Income Related Medicare Adjustment Amount (IRMAA), the additional Part B Medicare premium that the Federal government imposes on certain retirees and their dependents; that is, individuals with modified adjusted gross incomes, as shown on their latest federal tax return, of $85,000 or more, or, if married and filing jointly, couples with incomes of $170,000 or more.

If the Governor's bill is approved and the State ceases to reimburse the IRMAA premium, some Medicare-primary State retirees will be paying more than their fellow NYSHIP enrollees for the same level of health coverage that the latter receive. This is unfair, because even with reimbursement of the IRMAA Medicare premium, the State is still able to achieve substantial savings in its health benefit costs.

This year, effective January 1, 2013, the State switched all of its Medicare-primary retirees enrolled in the Empire Plan to a Medicare Part D prescription drug program, thereby subjecting some of them to a second IRMAA premium, which ranges from $11.60 to $48.10 monthly.

If the Governor's bill is amended as proposed by the Governor, the State will be able to avoid reimbursement of the Medicare Part D IRMAA premium, as well. The combined hit to these so-called "higher income" Medicare-primary enrollees will range from $53.60 to $215.90 monthly, depending upon their income and federal tax filing status.

Five (5%) of beneficiaries currently pay the Part B IRMAA surcharge, but that percentage is likely to grow in coming years, owing to a provision in the new Affordable Care Act that freezes the income brackets at 2010 levels through 2019. As a result, more and more older retirees will become liable for the surcharge – 14% of them by 2019, according to an estimate from the Kaiser Family Foundation.* In its Memorandum of Support for the proposed legislation, the Executive projects that the number of State retirees subject to the surcharge will nearly double by 2016-17.

An additional concern is that the income thresholds that trigger the imposition of the IRMAA premiums ($85,000/individual, $170,000/couple) are substantially lower than the thresholds often used to define higher-incomes in other policy discussions (e. g. $200,000/individual, $250,000/couple). We should note that the IRMAA triggering income can come from a variety of sources, not just an individual's NYS retirement check. Many legislators, for example, are part-time and rely on other sources for their retirement income. Amid rising health care costs, economic instability, and increasing financial vulnerability for aging Americans, these new higher IRMAA premiums for Medicare Part B and Part D represent an additional burden on a growing share of seniors over time.*

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* Kaiser Foundation Report – Medicare (http://www.kff.org/medicare/upload/8126.pdf)