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Ten years is too long to wait for Management/Confidential state employees to get full payment of withheld salary increases.



Photo illustration by Jeff Boyer / Times Union ()

**OMCE Testimony
Joint Legislative Budget Hearing on the Workforce
February 27, 2015**

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Joint Legislative Budget Hearing on Workforce Development

February 27, 2015 - OMCE Testimony presented by Barbara Zaron and Joe Sano

MC Pay Parity – Ten Years Is Too Long To Wait

Senator DeFrancisco, Assemblyman Farrell and members of the committee, thank you once again for welcoming us to talk to you about the ongoing plight of the state's management/confidential employees. Thank you for working with us and passing legislation that has kept this problem alive and apparently this year approaching resolution. After two successive years of vetoing the MC Salary Commission bill and saying that the issue should be addressed in the budget, the Governor did include in his proposed 2015-2016 Executive Budget, a phased M/C salary parity plan (Article VII PPGG Part H General Salary Increases for Management/Confidential Employees).

This is a positive step but the plan requires M/Cs to wait 4 more years before the final payment would be paid, which is unacceptable.

The plan provides incremental general salary increases over the next four years totaling a cumulative 7.18%, as follows:

- July 1, 2015 - 2%
- April 1, 2016 - 2%
- April 1, 2017 - 2%
- April 1, 2018 - 1%

These increases are in addition to a 2% general salary increase scheduled to be paid in April 2015 (Chapter 491 of the Laws of 2011). The cost of the increases would have to be paid for within existing agency budgets and would exclude former unionized employees who are now MCs who have received the increases in 2009 and/or 2010.

Six years of sustained OMCE advocacy combined with legislative support for fixing the pay parity problem has finally been recognized by the Governor who proposed a resolution, however flawed it is. We discussed with Division of the Budget (DOB), Executive Chamber and State Comptroller's staff, our concerns with the Governor's proposal.

1. Ten years is much too long to make M/Cs wait to be paid authorized salary increases that were withheld. It is already six years that they have had to live on seriously reduced salaries - during which time the Deficit Reduction Leave (DRL) program which further reduced their salary by 9 days (3.46%) was implemented and the percentage of their health insurance contributions were increased (from 10 to 16% for individuals and 25 to 31% for families). So, the payment schedule MUST be accelerated.

The ideal solution would be to pay the entire 7.18% during this fiscal year. However, that would seriously stretch the agency's ability to pay from their flat budgets so an additional appropriation of approximately \$55 million would be required.

If the Governor's proposed payment schedule is approved M/Cs fear that the increases will again be withheld in future years. Also, contract negotiations with public employee unions scheduled for this year and next may result in contracts that would have M/C employees falling further behind other employees pay schedule.

As an alternative approach we propose using the same payment formula as is being used for the Deficit Reduction Leave (DRL) program, equal payments of the withheld 7.18% over a 39 pay period schedule on top of the 26 pay period base April 2015 statutory salary. In this case payment would begin July 1, 2015 and be completed by December 31, 2016, and employees who retire or leave state service before full payment would have to receive a lump sum payment for the outstanding balance.

2. There is no acknowledgement of or plan to address the ongoing diminution of the pension of MC employees who had their 2009 and 2010 authorized salary increases withheld and have since retired or are about to retire. The Administration policy as expressed by DOB staff is when you leave we don't recognize you as someone we owe anything or when you're gone you don't exist anymore. Approximately 3000 MCs who retired between 2009 and 2014 are so affected with more joining this group every day (approximately 3000 additional M/Cs are eligible for retirement). This is totally unacceptable and simply not right.

These people worked and earned their salaries but were not paid the statutory salary increases so their pensions are diminished, their social security benefits are diminished, their sick leave credits are calculated at a lower salary rate which affects their ability to pay for health insurance in retirement (remember they are now required to pay a higher percentage of health insurance costs). **Earned income must be paid!** The State Constitution says pensions cannot be diminished or impaired. This action is comparable to diminishing the pension. Treating long term career employees who devoted their work lives to serving the people of New York in this way is unconscionable.

If retirees are paid the earned income they are owed, their pension benefits should be recalculated.

In the Governor's budget and budget summary he attests that these are previously authorized salary increases. Again, these funds were authorized, appropriated and withheld from those who were providing services for which they should have received the authorized compensation. This budget recognizes this fact and seeks to restore the withheld monies.

3. It is also very disheartening that retroactivity has not been on the table for M/Cs. A contract with NYSCOPBA (Corrections Officers, etc) implemented last year included retroactive pay. NYS negotiated a contract agreement with the NYS Troopers PBA which included retroactive pay - the contract was rejected by the members. In New York City Mayor DeBlasio has negotiated a number of contracts with city employees unions that provide for retroactive pay, in most cases back to 2011.

Under a five year contract approved recently by the Metropolitan Transportation Authority Board transit supervisors in Transport Workers Union Local 106 will receive 8 percent wage hikes and retroactive pay.

And most notably, NYC management employees, represented by the New York City Managerial Employees Association (NYCMEA), who had salary increases withheld in 2009 and then restored by Mayor Bloomberg, have recently been notified by the DeBlasio administration that they will receive salary increases comparable to those received by DC37 union represented employees, as follows:

The "contract" will run from September 1, 2011 through July 1, 2017 and include a \$1000 lump sum bonus, 4.5% increase retroactive to September 2011, 2.5% increase on September 2015, 3.0% increase on September 1, 2016 and .47% increase by September 2017.

Why retroactive payments are acceptable for other state employees and for NYC employees, but not for state MC employees, is beyond comprehension. All employees should be treated equitably.

4. Excluding former union represented employees who allegedly received some or all of the 2009 and/or 2010 increases is not fair and does not reverse the financial loss that they suffered. But it may be a moot issue. There is a serious question about whether these union represented employees were actually paid the 3% and 4% increases. Pursuant to Section 130 of the Civil Service Law and Ch.317 L1995, when an employee moves between bargaining units in a fiscal year where the percentage increase for the bargaining units differ, **the salary in the new position is recalculated, exclusive of any performance advance already paid during the fiscal year, to reflect the general salary increase that the employee would have received had the employee been in the new bargaining unit at the beginning of the fiscal year.**

What this means is that if the employee is promoted within a specific fiscal year, the raise that was received in the prior bargaining unit must be removed before applying a promotion percentage and the raise percentage for the new bargaining unit which is applicable; for example, A CSEA represented Secretary, G11 received a 3% raise, was promoted to an MC Secretary G15 during the same fiscal year. To calculate the salary the 3% raise is backed out, then the 1.5% for promotion and 1.5% for each grade (4 grades =6%) a total of 7.5% is applied per the Finance Law.

This policy was clearly stated in Payroll Bulletin No.702 dated February 22, 2007 and has been confirmed as still in effect with the State Comptroller's Payroll Services Office.

Does this mean that people who got raises in 2009 and 2010 who were promoted to MC are treated differently than those promoted in 2011, 2012, and 2013 when there were no raises? Apparently so. But there may also be bargaining unit employees who got the salary increase and were promoted to a MC position in a different fiscal year whose increase remains intact. Manipulating the salary schedule produces unintended consequences which are difficult to resolve to ensure everyone is treated fairly and equitably. We have had discussions with DOB about this issue but there is no clear answer about how the issue will be administered. What is being proposed by the Governor is another man made mess born out of manipulation and if DOB prevails, it will add further insult to already sustained financial injury.

We have been talking to the administration about these issues and how to fix them including acceleration of the payment schedule. But once again we need your help. We request that you include in each house's budget resolution full restoration of the 7.18% salary increase during this fiscal year including provision for lump sum payment of any outstanding balance for those who leave state service before payment is completed and a waiver of the NYSERS 10% earnings limitation accompanied by the necessary appropriation, and a payment plan for those already retired so their pensions can be correctly recalculated.

Last year Senator DeFrancisco and Assemblyman Farrell sponsored an MC Salary Restoration bill S6571/A8813 which provided for payment of the withheld 7.18% and the 2014 2% increase (Ch. 491 of the Laws of 2011). The bills moved through the process but at the end were not passed. This year's requested legislation (to be included in the budget) would include those provisions and add the lump sum payment, waiver of NYSERS 10% earnings limitation, payment plan for retirees and the necessary appropriation.

Should this one fiscal year schedule be unachievable the alternative would be to adopt the same formula for payment of the withheld salary increase as is used for payment of the withheld Deficit Reduction Leave (DRL) monies, repayment over 39 pay periods. Payroll Bulletin 1328, dated February 23, 2015, was just released. This payment schedule could begin in July 2015 and be completed by December 31, 2016 cutting the payment schedule from four to two years. The DRL payment schedule includes a lump sum payment for the unpaid balance upon separation from service; if the same scheduling concept is used to pay the withheld monies, then a lump sum payment of the **unpaid balance** of this withheld earned income (now being proposed for restoration) must be paid upon separation from service.

We have also been working on a parallel track to find a way to obtain pension "parity" for those already retired MCs whose pensions were diminished by the withholdings. You will recall last session we had a pension service credit bill that did not advance, the year before we had a different pension proposal. We are talking to Budget and Executive Chamber staff and met with Comptroller staff re: this issue. As indicated above paying the retirees their earned income (the withheld 2009 and 2010 increases never paid) should result in a pension benefits recalculation.

While it appears that some positive action may actually be taken in this budget to begin paying MC employees, we continue to have systemic problems with MC salary administration. Historically MC employees received the same percentage salary increases as the union represented employees but the administration of the payments and the sanctity of the schedule were skewed. Even when the current withholding problem is fixed there remain many inequities in the schedule which should be reviewed and addressed by an independent objective body - maybe even an MC Salary Commission. It's ironic that the Governor vetoed two years in a row a Salary Commission for MCs but proposes a Salary Commission for legislative and commissioner salaries.

M/C Career Workforce Reduction

The combination of conscious and deliberate downsizing of the workforce combined with lack of adequate resources, an increasingly hostile work environment and withholding of the MC salary increases has created an untenable and unsustainable workplace.

The state Constitution calls for a state workforce based on merit and fitness determined ...by competitive examination. Unfortunately the reality is that this prescription is frequently ignored or circumvented. The chart shows the trend over the past 6 years.

MC Jurisdictional Classification

	2009*	2011	2014	Entire Workforce
Class				
Competitive	6786	5416	5167	
	62.9%	61.7%	56.9%	81.3%
Non-Competitive	1382	1081	1160	
	12.7%	12.3%	12.8%	13.3%
Exempt	2615	2287	2747	
	24%	26%	30.2%	1.9%

*2009 date of first withholding; 2011 Governor Cuomo took office; 2014 last data available.

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

The "merit based civil service system" that is constitutionally required is under attack particularly with regard to MC positions. Many requests from agencies to Civil Service for placement of MC positions in the exempt jurisdictional class are routinely approved by the CS Commission despite protests from OMCE and the employee organizations and the recommendations of the professional staff at Civil Service that the exempt classification is not appropriate or justified.

The Department of Civil Service is charged with carrying out and ensuring compliance with the constitutional and statutory requirements for a civil service system. Unfortunately the department is so under resourced and compliant with Executive requests that the constitutional requirements seem to go by the wayside or are considered optional.

Another indication of the department's inability to do its job because of understaffing is the dozens and dozens of calls we get from MC employees who have tried to get the information they need from Civil Service but either can't get through or are told by the person they eventually talk to "call OMCE, we can't help you". It's reached the point that we're considering sending a bill to the department for services rendered by OMCE that are Civil Service's responsibility.

Succession Planning

In most state agencies there is no real succession planning underway for the training and replacement of those in critical MC positions. Couple that with a reticence by union represented employees to ascend to MC positions given the history of compensation woes and we have a "Pipeline" to MC positions that is broken. Given the demographic fact that those union represented employees eligible for advancement are nearly the same age as those in the MC positions (2014 CS Workforce Management Report p.11) there remains no incentive to give up bargaining unit security and raises to accept a MC position where increased responsibilities have been coupled with an artificially diminished pay schedule. It is repetitive but bears repeating-the system is broken.....broken...broken. Replacing a merit based MC workforce with a class of "Fellows" does nothing to fix the problem. This appointment mechanism adds a layer of cost without any real benefit to the management of the state's resources. Based on the Executive's flawed experiment (see the HUD Inspector General's scathing review) while serving as HUD Secretary, we see MCs across the agencies trying to find things to do for this cadre of appointees while they struggle to get the job done with inadequate number of career staff.

There is nothing wrong with "the best and the brightest" competing in a modernized merit based appointment process for MC positions except for the fact that the Civil Service Department has been starved of the resources needed. The employees left at the Civil Service Department have been asked to do everything with nothing. In fairness, the Executive Budget does call for an additional \$500,000 for Civil Service initiatives in the areas of succession planning and computer based testing, etc. but the details are non-existent regarding these funds. Are these proposed for outside contracts or development of Civil Service Department capacity to meet its obligations?

And why, after four years of the Governor and his administration touting the reorganization and centralization of human resources, finance and ITS functions so agencies can focus on their program missions, is the Civil

Service department which is responsible as part of its mission for Classification and Compensation of the state workforce decentralizing this responsibility to certain agencies for selected titles?

The Department needs to be staffed to carry out its responsibilities. And administration of the merit system needs and deserves closer oversight.

The following statement recently "Tweeted" by the Governor resonates with us, "Let's show that we respect labor, we respect workers and when they are respected, they do better and everyone does better. That is the New York way and let that resonate all across this country."

Please help us make this true for the state's Management/Confidential workers.