



NYS Senate Hearing on Understanding the Impacts of COVID-19  
from a Worker Perspective, Including Unemployment Insurance  
Receipts, Workplace Safety Standards, and the Impact on the  
Federal Payroll Protection Program on Maintaining Employment

August 13, 2020

Testimony by Wayne Spence, President, NYS Public Employee  
Federation

Good afternoon. Thank you Senate Chairs Ramos, Sanders and Skoufis and Assembly Chairs Abinati and McDonald and other distinguished Senators and Assembly members for the opportunity to testify here today. I am Wayne Spence, President of the NYS Public Employees Federation and a career Parole Officer for the state of New York.

The Public Employees Federation (PEF) represents over 52,000 state workers in the Professional, Scientific and Technical bargaining unit. Many of the frontline and essential members of the state workforce are PEF members like me. My colleagues and I are nurses and other healthcare professionals at New York's understaffed public hospitals (SUNY Upstate, SUNY Downstate, SUNY Stony Brook); the state correctional facility staff and parole officers working to keep inmates and parolees secure and communities safe; the workers at the state-operated residential facilities providing continuing care and treatment for our most vulnerable citizens; the staff at the Department of Labor, the State Insurance Fund, Workers' Compensation Board, and the Office of the State Comptroller all struggling to help New Yorkers apply for unemployment, retirement and disability benefits and workers' compensation claims, the staff at the Department of Health who are testing people for the virus and conducting contact tracing; and for the staff at all of the agencies that have been involved in supporting the state's on-going response efforts. We literally put our lives on the line by continuing to perform our jobs at a time when many workers were ordered to stay home.

The pandemic and the state's response has made clear that New Yorkers understand the importance of government and the services it provides. It is also apparent, now more than ever, how critical state employees are in meeting the needs of New Yorkers, especially during the emergency response to this pandemic. The agencies and jobs mentioned previously are just a few examples of what PEF members have been doing since mid-March. There are too many to list them all. We have people who have gone above and beyond at each and every state agency. It is important to recognize that dedicated state employees, many who have served the public for decades, remain the backbone of the state's response.

I also want to take this opportunity to recognize Governor Andrew Cuomo and his team for their work during this crisis. The Governor is the chief executive of the state and he is our employer. And, while we had many problems in many different areas, the Governor and his team should be commended for their steady hand in addressing the crisis and for following the facts and the science around the spread of virus. By working together, we were able to turn the corner and limit the exposure of New Yorkers to this virus. I also want to state that we understand and recognize that this is all new to everyone and that there was a very steep learning curve that has been magnified by the continued lack of Presidential leadership in combatting this scourge.

Given this framework, I do want to highlight some serious issues that remain unresolved and which require redress for the heroes that I represent. These issues are not only critical to the work they performed, but

they need to be addressed before the state faces a resurgence, a second wave or even a new public health or other emergency.

**CHRONICALLY UNDERSTAFF AND UNDER-RESOURCES STATE AGENCIES:**

One issue that we have continued to bring to your attention and which became apparent from the beginning of the pandemic is the state's response to this pandemic was hampered by the long-term, systemic reduction in the state workforce – a trend that has been ongoing for over a quarter of a century. We could not agree more with Senator Ramos, who told the Buffalo News on April 10<sup>th</sup>, that “the state is operating under an artificial 2% spending cap, which limits the money the Department of Labor can actually be allocated. The department is understandably overwhelmed as people's jobs are affected by the pandemic, but we could've avoided this man-made crisis by giving DOL the funds it needs to serve New Yorkers.” The agencies' flat budget and hiring freezes precluded agencies from meeting their mandate. We need to re-invest in the state workforce so that we are better prepared to deal with this crisis and so we are ready for the next emergency we encounter.

While the DOL was highlighted in this piece due to the critical work they perform to process unemployment benefits for at-risk New Yorkers, several other agencies ran into serious workforce shortage issues as a result of COVID-19 pandemic, including Department of Motor Vehicles, Office of the State Comptroller, Department of Health, Office of Mental Health, Office for People with Developmental Disabilities, Workers' Compensation Fund, State Insurance Fund, Department of Corrections and Community Supervision, and the SUNY Hospitals. All of these offices provide incredibly important services to at-risk New Yorkers, including workers' retirement, death and disability benefits and workers' compensation benefits. It is clear that a lack of adequate staffing stifled the ability of the state to expedite the claims process and it was only through the dedicated work of staff and the reliance on the use of overtime that the state was able to deal with the surge in claims and other needs of New Yorkers impacted by the virus.

It should also be noted that the shortage of nurses remains a significant problem for the state and its agencies. As we continue to await the final report of the study of health care staffing that was mandated as part of last year's state budget and was due on December 31, 2019, we know from our experiences during this pandemic that the state needs to address the chronic shortage and maltreatment of nurses. Unfortunately, the profession of nursing has been mired in a cycle of dysfunction for over a decade and the effects of that dysfunction are readily apparent. While the state legislature rightfully enacted legislation to protect both clients and staff from the dangers stemming from management's abuse of mandatory overtime, hiring freezes, significantly lower wages than their counterparts in other facilities, challenging patient populations and poor working conditions, high student debt loads and other factors are all impeding the ability of the state to attract and retain nurses to render care to the state's most at-risk residents. Moreover, the abject failure of policymakers to address these issues is undercutting the willingness of individuals from pursuing careers in nursing and further compounding short- and long-term staffing issues.

Our nurses continue to face unmanageable conditions in the midst of this pandemic. The typical tools of management to address chronic workforce shortages continue unabated, including the use of mandatory overtime, staff redeployments, lowering minimum staffing requirements, and last minute shift adjustments. These tools all increase stress on families and negatively impact morale and are a poor substitute for adequate staffing. As the nursing staff gets stretched further and further, state facilities face greater challenges in maintaining the quality and continuity of care and these issues may, in turn, may lead to staff referral to the Justice Center. Additionally, we know that the lack of adequate staff has resulted in an increase in assaults against nurses and other staff by clients at OMH, OMRDD, CORRS and the SUNY Health Science Centers. One example of the destructiveness of this ongoing cycle is the recent decision by the Brooklyn Developmental Disability Regional Office (DDSO) to cease operations because it cannot attract, retain and/or hire sufficient nursing staff to meet federal certification requirements. This will leave a tremendous service gap for the state's clients in the borough of Brooklyn.

Despite repeated attempts by PEF to develop and advance strategies for management to address these issues, the state has taken no discernable action and the result of this in-action clearly limited the state's response.

Our nurses are responsible for the care they render even after working 16-18 hour shifts four days a week with inadequate supplies and no support. When will management be held responsible for the individuals under their care?

**MANGEMENT AND OTHER WORKFORCE PLANNING ISSUES:**

Again, we want to commend the Governor and his team for their response to the crisis. This was a serious, unforeseen challenge that this state has been able to meet thanks to the Governor's leadership, the hard work of his team and the dedication of our members and the thousands of other state employees who kept the wheels of government moving.

It should be noted that the state's public employees willingly worked as directed to meet the needs of the state in its response to this pandemic. These issues, however, persist despite being brought to management on multiple occasions. It is also important to note, both the Senate and Assembly took action to require state agencies and other public employers to develop plans for future public health emergencies (S.8617-B/A10832). We thank Senator Andrew Gounardes, Assemblymember Peter Abbate, the leaders of both houses and all of you for your work on that legislation and we hope that the Governor will sign this bill into law so that we can work collectively to develop plans that will address the needs of the various agencies, the residents of the state and the state workforce.

**(1) Designation of Essential vs. Non-Essential Employees and Access to Support:**

It was also noticeable that the agencies varied greatly when dealing with the Governor's directives about the designation of essential vs. non-essential personnel. We understand the difficulty of addressing staffing needs when no blueprint of plan had been developed in advance. However, there was a clear lack of coordination between individual agency heads and the Governor's office.

The "essential" vs. "non-essential" designation, in some circumstances, was done in a haphazard fashion and designations were shifted periodically leaving some staff questioning what their designation was.

While it may seem trivial, this lack of clarity affected many staff negatively, especially with regarding to child care and access to services under the Family First Act and other benefits afforded under federal and state law. On several occasions, the union sought clarity on this designation for staff both verbally and in formal correspondence with the Office of Employee Relations, the Director of State Operations, Division of the Budget and the Executive. Despite repeated verbal and written requests for guidance or clarification, none was provided. This created an unnecessary hardship for many staff and unnecessarily put our members on the defensive as they were grappling to deal with the pandemic.

**(2) Overtime Payments:**

Due to the long-term, systemic depletion of human and other resources in the various state agencies, many agencies relied on mandatory or volunteer overtime either in their current roles or in other titles to get the work completed. PEF members were ready and willing to assist the state in meeting the demand and worked tirelessly to get the job done. At the Department of Labor, the Department of Health and in several other agencies, staff have volunteered or been directed to work overtime. For example, staff at the DOL were required to work 15 hours of overtime a week, staff at DMV are being asked to work six days a week to cover expanded hours and staff at the DOH are being asked to work overtime as contact tracers at regional airports.

After performing the services, many of these staff were notified that their overtime pay was being based on their contract job rate OR the job rate in which they performed the services whichever was LOWER.

While we believe this is unlawful, it is nonetheless disturbing that such directives would be enforced, let alone the fact that they were rendered AFTER the service has been performed. Given the hiring freeze and the potential for further staffing reductions, are staff just expected to continue to work overtime away from their families for less than their contract rate or the rate in the position that they are performing their duties?

### **(3) Mandatory Staff Redeployments:**

Another problem associated with chronic understaffing, especially with regard to nursing and other direct patient care services, is the forced redeployment of staff to other work locations. At the Capital District Psychological Center, OPWDD, DOH and in several other agencies across the state, staff have been re-assigned to cover different roles and responsibilities at various different worksites. In some instances, these worksites are hours from their homes.

Understanding the dynamics of the situation and their responsibility to their employer and the people of this state, staff willingly undertook these new functions and roles at these various facilities at the height of the pandemic. However, months after the Coronavirus surge had been successfully flattened in New York, there are still PEF members working on forced redeployments. Again, should the state see a resurgence, a second wave or run into another public health emergency, understaffed agencies will need to rely on the redeployment of staff that have already been stretched too thin to respond in the same effective manner that brought us to the current low incidence rate.

To date, the State has made no apparent effort to fix this patch job that has left our members unable to fully serve in their positions, let alone the unfilled and understaffed positions they are covering for during the pandemic. Also, these redeployments are primarily in direct patient/resident care settings – the state should not be balancing its failure to adequately staff and support its services to the most vulnerable New Yorkers on the backs of already stretched workers.

### **(4) Work Locations/Telecommuting:**

- a. **Telecommuting:** One area where some productive work has occurred is in dealing with management on addressing the work locations of essential and non-essential staff and affording telecommuting options for staff. Several agencies, including the Office of the Attorney General Letitia James, moved quickly to develop plans to continue the work and protect staff by adopting telecommuting plans.
- b. Research indicates that employers enjoy increased worker productivity, improved worker recruitment and retention, lower overhead costs and easing of traffic congestion when workers participate in telework programs. Additionally, members who have been authorized to telecommute report that it has been highly successful in increasing productivity, decreasing out of pocket costs (fuel, parking, etc.) and enhancing overall job satisfaction.

New York is ranked 37th nationally for the amount of teleworkers. Tennessee currently has 17% of its state workforce participating in some level of telework and that number could reach 70% in the coming years and will save the state millions of dollars by allowing it to

decrease physical office space. While teleworking has been embraced by many private employers and some state agencies, others agencies have yet to realize the benefits of such a program until recently.

It is disheartening that despite the resounding success of the telecommuting program, the state is still planning on bringing all staff back to their office locations shortly. We hope to extend and expand telecommuting opportunities for staff moving forward both through bargaining and through the development of agency-specific plans to address future public health emergencies.

- c. **Common Work Areas:** The state owns and leases many office and residential buildings that require staff and/or clients to remain in close proximity. Many of these facilities are absolutely critical to maintaining services to the state's most at-risk residents and to house dangerous individuals.

There has been a serious lack of consistent and clear guidance on protecting workers and clients at these facilities and the guidance that has been issued is usually agency-specific.

For example:

- Employees at various DOCCS facilities were precluded from wearing masks at their worksites;
- Staff at various call centers reported a lack of planning regarding appropriate social distancing in common areas and a failure to provide appropriate PPE

The state needs to develop a process which provides clear and consistent guidance for all of the staff in its employ. This guidance should be comprehensive and consistent across agencies and should apply to staff and clients in both State-owned and privately leased worksites.

- d. **Air Filtration Systems and Air Quality:** Air quality has been a persistent issue at various agencies, especially DOCCS. The pandemic has raised new concerns about the adequacy of existing systems in all agencies, especially those housed in older facilities. Most existing air conditioning and air filtration systems, common in most facilities, re-circulate the existing air and little consideration is given to flushing the air out. With an airborne virus such as COVID-19, this magnifies the exposure of the public, clients, parents and staff.

To address this, the Governor rightly placed important new requirements on enhanced air filtration systems for indoor malls prior to re-opening. He rightly said that using fresh air to

dilute the virus and high efficiency filters to filter it out of the air would reduce the risk of exposure on enclosed spaces. But, no such requirements were made of state owned facilities or for offices leased by the state.

Unfortunately, there are no uniform or enforceable standards in place to protect clients or staff from bad air quality or inappropriate temperatures in correctional and other state-owned or operated facilities. Moving forward, we need to have older systems updated and all new facilities fitted with systems that control temperatures and flush existing air safely out of these facilities.

#### **(5) Lack of Personal Protective Equipment and Staff Housing**

We all know and understand the inability of the state to identify and acquire adequate and appropriate personal protective equipment for staff. We remain hopeful that the Governor signs the pending legislation requiring agencies to identify and stockpile appropriate PPE in the event of a future public health or other emergency.

However, at the height of the pandemic, staff at the state operated hospitals were placed in harms way with inappropriate guidance on the use of existing PPE, directives precluding staff from bringing their own PPE and a lack of alternative housing for staff who were exposed to the virus. The state still does not have adequate PPE for staff today.

Given this situation, our union spent more than \$300,000 in union dues to acquire and distribute PPE for our members and to pay for hotel rooms for our health care professionals rendering services at the university hospitals at Stony Brook and Downstate. The failure of the state to acquire and make available separate housing – at the state-owned and operated campus at Stony Brook or elsewhere – is unexplainable.

These failures put staff at risk, put their families at risk and risked expanding the spread of the virus into the community.

#### **SUPPORT UNIFORMED OFFICERS AND END DISCRIMINATION AND INSTITUTIONAL BIAS**

New York could not have weathered this pandemic without the strong support of its public employees in the uniformed services. The 52,000 members of the NYS Public Employees Federation, including all of our members serve as Peace Officers in the roles of Parole Officers, Parole Revocation Specialists, and County Corrections Officers, Revenue Crime Specialists and Investigators stand in strong support of advancing the civil and human rights of all human beings.

As unionists, we know that the use of broad generalizations about any group of people is inaccurate, unfair and unproductive. However, despite their selfless service to the state and their communities, these officers have been subjected to broad generalizations about their motivations and their character. The current approach of legislating the tools available to law enforcement officers does not address the real, rudimentary issues that can plague law enforcement agencies with regard to institutional bias and undermines the morale of the vast majority of law enforcement officers who take their oaths to “serve and protect” seriously. Additionally, in some instances, it may put them needlessly in harms way.

This pandemic exposed issues around already large caseloads and the diminishing resources available to our officers and civilians as they work on the front lines to help at-risk clients work to reintegrate back as productive members of society. Our officers and other staff take pride in helping clients locate housing, child care, health care and job hunting services and supports, as well as providing regular wellness check-ins to help these clients stay on track to become productive members in their communities.

What has been lacking in the attempt to achieve tangible policing/law enforcement reform to date are the resources necessary for the success of our employees and our clients. The only manner through which to effectuate real systemic change is to ensure appropriate and deep screening before hiring, regular performance evaluations, on-going training and professional development opportunities, and holding the state accountable to effectively manage its workforce.

Additionally, every law enforcement officers supports the systematic effort to transform troubled youth and other at-risk individuals who have intersected with the law enforcement community into productive members of our communities. However, we need resources and support to help our clients make that transition especially at a time when the availability of jobs and other opportunities have been decimated by the pandemic.

If we want a criminal justice system that works for everyone, then we need the resources to make that happen. We encourage the members of the State Legislature to help our members, our state and its citizens to combat institutional racism and to protect the civil and human rights of all our citizens without vilifying those who protect and serve us all. This state cannot sustain itself through another wave of this pandemic or meet other future crises without our uniformed officers having the authority and confidence necessary to protect all our citizens.

### **THE ROLE AND VALUE OF OUTSIDE SERVICE CONTRACTORS**

As previously discussed and as exemplified by the ongoing staffing issues at various state agencies, the long term depletion of state agency capacity and workforce reductions has hampered the state’s ability to meet and heal from the first wave in this crisis.

We know very little about the various contract service providers that the state pays \$1 billion annually to perform various tasks. We do not know if they were required to render their services to the people of this state, if they continue to receive payments for services not rendered or even if they are on the job today.

What we do know is that when the state was confronted with an historical public health crisis the state turned to its staff to meet the crisis. Now that the state is facing an historical financial challenge, coupled with a generational public health crisis, the state should strongly consider the redeployment of the \$1 billion it pays to outside private companies to deliver services to New Yorkers. If we can't call upon or count on these companies to meet the need in a crisis, why would we continue to pursue their services over hard working, talented public employees who we know we can count on regardless of the situation.

#### **RECOMMENDATIONS:**

**Reject Agency Budget Cuts, Raise Revenues and Invest in Building Capacity and Workforce Development:**  
The state needs to develop a workforce plan and invest resources to develop a sustainable workforce in the state agencies so that the state is better prepared to deliver critical services and address crises in the future.

This is especially true with regard to the profession of nursing. Nursing is an incredibly important and noble profession. It speaks volumes that the state cannot attract and retain nurses for the critical services it provides to our most at-risk residents. We urge you to adopt comprehensive legislation to address chronic understaffing, student loan forgiveness and the failure to offer appropriate, market compensation so that the state can maintain the cadre of skilled staff necessary to provide quality services for the people under its care.

We understand the fiscal situation. We have been advocating with our federal officials and our national affiliates to secure the needed resources to help our state meet its operational needs. That said, even given the dysfunction in the U.S. Senate, we cannot afford to cut agency budgets, eliminate programs and lay off workers in the middle of a pandemic.

In times of crisis, our state has a long history of ensuring shared sacrifice to achieve outcomes that benefit all our residents. As previously detailed, our members have sacrificed their time, health and the health of their families to combat this scourge. It is time for those with substantial means to make some sacrifices to keep our state strong. We strongly encourage the Governor and the Legislature to implement a bolder, longer-term solution to re-envision and redevelop our state agencies.

To begin that process, we are asking our state legislators to increase taxes on the state's wealthiest individuals. More specifically, at a minimum, we are asking for the implementation of additional assessments on our wealthiest residents as follows:

- (1) Billionaires Tax (S.8277 by Senator Ramos) – Establishes a mark to market tax on unrealized capital gains on the 112 New Yorkers currently holding \$525 billion in assets
- (2) Multi-millionaires Tax (S.8164 by Senator May/A.10364 by Asm. Simota) – Establishes increased tax rates on individuals based on income of \$5 million, \$10 million and \$100 million per year; and
- (3) 2nd and 3rd Vacation Homes (S.44 by Sen. Hoylman/A.4540 by Asm. Glick) – Establishes a progressive assessment on non-primary residences worth over \$5 million.

In total, we expect these three proposals to generate between \$8-10 billion annually. This is not something new, similar actions were taken after the 9-11 terrorist attacks and during the “great recession” in 2009.

**Enact the Agency Planning Bill Into Law (S.8617-B by Sen. Gounardes/A.10032 by Asm. Abbate):** If enacted, this legislation could serve as an important building block between management and workers in planning for a resurgence of this virus or if we are confronted by a new public health emergency. We strongly encourage that management work with the union to troubleshoot the development of contingency planning to avoid unnecessary conflict, develop uniform practices and protocols, maximize interagency coordination and ensure each agency is prepared to deliver critical public services in the event of a future crisis.

**Pass Hazard Pay for Essential Employees (S.8839 by Sen. Gounardes):** Essential staff, especially nurses and other health care professionals, served on the very front lines of the COVID-19 surge in New York. These staff worked incredibly long hours without sufficient or appropriate personal protective equipment often times isolated for weeks from their family and friends. Many of these staff fell ill with the virus and many did not survive. Their sacrifices should be recognized and rewarded.

In most private health care settings, as well as with many private employers, the essential staff that served to continue operations in the midst of this crisis were provided financial and/or other fringe benefits. These actions were taken to recognize and reward their faithful service and to prepare them for what is yet to come. At Northwell Health, for example, nurses and other essential staff were awarded \$2,500 bonuses and an extra week of vacation to recognize their commitment, selflessness and isolation from their families. To date, the state of New York has not provided ANY additional remuneration, recognition, fringe or other benefit to those essential workers who led this state through the first wave of the pandemic.

**Pass Legislation to Limit and Oversee the Use of Outside Service Contracts:**

As part of this year's state budget agreement, legislators agreed on a process to remedy budget shortfalls or expenditure increases related to the COVID-19 pandemic and the continuing negative economic impact on New York State.

One area of state expenditures and potential future expense liability that was not addressed specifically in that agreement was the use of outside contract services for state functions. The state agencies and the public employees that operate them have been at the forefront of the state's response to the COVID-19 pandemic. Have the state's outside service contract providers also been on the frontlines of the state's response to this crisis?

In the event of a mid-year cut to the state operations budget pursuant to the adopted state budget agreement then a corresponding reduction in the payments to vendors who render outside services to the state is only fair and appropriate. Additionally, we support the enactment of legislation that would preclude all state agencies from entering into new outside service contract agreements for the duration of the fiscal year. If there are agencies that feel they require such outside service providers, then those agencies should include such proposed outside service contracts as line item requests in the next ensuing Executive Budget so that thoughtful decisions can be made within the context of the entire state budget process.

**Authorize Telecommuting Where it Makes Sense (S.4647-B by Sen. Kaplan)/A.7127-B by Asm. Rozic).** The COVID-19 pandemic has demonstrated that many state workers can complete their jobs remotely while providing additional benefits to both the employee and employer.

We encourage the state to enact legislation encouraging the state to adopt this program for all state agencies.

**Correct the Payment of Overtime for All State Workers: (S.8698 by Sen. Jackson)/A.10822 by Asm. Bronson):** It is unfortunate that we need to seek a legislative remedy to correct the payment of overtime for essential workers charged with the state's response in fighting the pandemic here in New York. However, despite repeated attempts to address this discrepancy administratively, we have been unsuccessful in getting our members impacted the pay that they have earned.

Public sector workers like me have and will continue to sacrifice our time and risk our health to manage the state's response to the COVID-19 pandemic in New York State.

Essential workers performing voluntary or mandatory overtime should not be subjected to the unfair, inappropriate and callous manipulation of their earned wages. This legislation would merely clarify the overtime provisions and ensure the appropriate payment of wages earned.

**Early Retirement Incentive:**

There has been much discussion among PEF members about the possibility of an ERI. PEF only supports the utilization of an early retirement incentive if the federal government fails to meet its responsibilities to our state and if the state legislature, after enacting revenue enhancements, is unable to close the budget gap without impacting state operations. That said, an ERI should only be implemented if it is used with the overarching goal of retooling the state workforce and building capacity for the future.

As such, PEF only supports the imposition of an ERI if:

- (1) Any benefits afforded are available to all eligible employees; and
- (2) Provision is made to backfill all of the positions vacated by retirement thereunder.

In summary, we would like to remind all our legislators that we have worked our way through the initial wave of this pandemic only through the leadership of our Governor and his team, through the hard work and diligence of our state legislators and through the hard work and selfless service of the state's public servants. We will be facing additional challenges from this virus or other unforeseen emergencies in the future. This is our opportunity to learn from and address our mistakes and to make long-term plans that address the capacity needs of our state and its service agencies as we all work collectively to deliver quality services to our residents.

We thank you for your hard work and the opportunity to join you here today. Please feel free to contact Patrick Lyons, PEF's Legislative Director at [plyons@pef.org](mailto:plyons@pef.org) or (518) 424-8473 if you have any questions or concerns regarding this testimony or any other issues.

Respectfully Submitted,

Wayne Spence  
President, NYS Public Employees Federation