

OMCE Testimony
Joint Legislative Budget Hearing on Workforce Development
February 5, 2020

OMCE testimony this year focuses on gaining support for our Retiree Parity bill A2462/S4079 and discussion of those items in the Governor's Executive Budget that we find most objectionable as well as long standing workplace issues that remain unresolved.

OMCE Supports:

Enactment of A2462/S4079 Retiree Parity Bill /Executive Budget PPGG Section W continuing to protect and support unions.

OMCE Opposes:

Elimination of Medicare IRMAA Part B reimbursement, PPGG Section S.

Implementation of Differential Health Insurance reimbursement, PPGG Section V.

Proposal to cap Medicare Part B reimbursement, PPGG Section U.

Support for A2462/S4079:

In 2018 M/C employees still on the payroll received the last 1% of the 7% salary increases withheld in 2009 & 2010, 2% increases had been paid in 2015, 2016, and 2017. Legislative support of providing some measure of fairness to M/C employees is much appreciated.

While M/C employees who were still working received the 7% payment, M/C's who retired between 2009 and 2017 have received none or only a portion of the 7% salary increase that was withheld in 2009 and 2010, depending on the timing of their retirement.

We believe these retirees have been treated unfairly and over the years we have presented a number of different proposals to provide them some relief. Last year our parity proposal was well on its way to passage in both houses when it was stopped in the assembly after it passed in the senate.

This year we resubmit our proposal:

- 1) Each M/C retiree whose 2009 & 2010 salary increase was withheld shall receive a \$70 dollar per month rebate for every month of withholdings from April 1, 2009 until the date of retirement or 3/31/2015, not to exceed \$5000 – **OR** –
- 2) Any M/C retiree who retired between April 1, 2015 & June 30, 2017 whose salary increase for 2009 & 2010 was withheld shall receive \$5000 less any parity salary increases received during the specified time period.

The Comptroller shall certify to the NYS DOB a listing of all such retirees deemed eligible. This would be a one-time only payment not a continuing expense.

We estimate less than a \$8 million cost by which retirees would get only a small portion of the dollar amount they lost. It is The Right Thing To Do -and – would provide them some recognition of their forced sacrifice. This year we submitted our proposal to GOER & DOB for inclusion in the Executive Budget – but it was not included. The bills have been introduced as A2462/S4079 and S4079 is in the finance committee.

Since October 2019 we have had discussions with the fiscal, Government Employees & Civil Service & Pensions committees and other assembly members on this proposal and **look** for your support. We hope that the Senate & Assembly will champion this bill and will include this proposal in your one house budgets.

PPGG Section W - Continuing to Protect and Strengthen Unions:

OMCE supports these provisions and believes they also need to be extended to cover management/confidential employees and OMCE as their recognized representative.

OMCE has for many years received information on new, or transferred or promoted, M/C employees but has not been provided with the personal information e.g. home addresses, referenced in this part. Recently we have had resistance from Civil Service Department Counsel to providing us any of this information claiming that OMCE is not an employee organization that represents a bargaining unit. Note that OMCE has been the sole representative for the M/C employees for 44 years.

Some agencies/facilities request OMCE participation in their orientation programs when they have new M/C employees, and some agencies/facilities request that OMCE provide our materials that they will give to new M/C's at their orientation session.

OMCE communicates regularly with the Governor's Office, Governor's Office of Employee Relations, Division of the Budget, Civil Service Department and Commission and State agencies on workforce issues, programs and services, disciplinary procedures and is the officially recognized representative of M/C employees in disciplinary procedures.

It is time to formalize OMCE's position as the M/C employees representative organization and fulfill that long ago promise made to them by then Governor Rockefeller at the creation of the M/C class, "You will be treated no less well than other employees.

The Executive Budget Proposals on Retiree Health Insurance:

This year again the governor is proposing several measures that would negatively impact M/C retirees along with other state retirees.

These proposals are:

- Implement Differential Health Care Premium Contributions for new civilian hires at retirement based on years of service (PPGG Part V).
- Eliminate Taxpayer Subsidy for the Medicare Part B Income Related Monthly Adjustment Amounts (IRMAA) for High Income State Retirees (PPGG Part S).
- Maintain Reimbursement of the Medicare Part B Standard Premium for State Retirees at Current Levels (PPGG Part U).

We opposed these proposals last year and the Legislature rejected them. We oppose the proposals this year and urge you to again reject them.

Medicare Part B Reimbursement Cap (Section U- PPGG)

The Governor's proposal seeks to **cap** state reimbursement for Medicare Part B eligible retirees and their dependents effective April 1, 2020 at \$144.60 per month.

In future years any increases in premiums would not be automatically reimbursed but would be subject to budget negotiations which would put reimbursement of the increases in jeopardy. The Governor's proposal estimates that the Medicare Part B Cap would reduce the State's Other Postemployment Benefits (OPEB) liability by \$2.2 M in FY 2021 & \$11.8 M in FY 2022.

Income Related Medicare Adjustment Amounts (IRMAA) Reimbursement (Section S - PPGG):

The Governor's proposal would amend Section 167-a of the Civil Service Law to cease reimbursement of additional Income Related Medicare Adjustment Amount premiums paid by higher-income retirees retroactive to January 1, 2020.

To minimize employee health benefit costs, the State requires all retirees participating in the NYSHIP to enroll in Medicare Part B upon turning age 65. After enrolling in Medicare Part B, the federal government requires enrollees to pay a monthly premium (\$144.60 –2020 maximum). State retirees pay this monthly premium to the federal government (typically taken as a Social Security check deduction) but are later reimbursed the full amount by the state as a credit in their monthly pension allowance.

In 2007, the federal government implemented an additional income-related Part B premium requiring higher income enrollees to pay higher monthly premiums. These higher monthly premiums are called Income Related Medicare Adjustment Amounts (IRMAA).

Under the current law, the State also fully reimburses affected retirees if they are required to pay the additional IRMAA premiums. Under the Governor's proposal, state reimbursement of IRMAA would be eliminated effective January 1, 2020 and retirees paying the IRMAA would no longer be reimbursed.

(Appellate Court ruled against this in 2006 when non-payment of the surcharge was administratively attempted).

The Governor's proposal estimates that elimination of IRMAA reimbursement would reduce the State's OPEB (Other than Payroll Employee Benefits) liability by \$3.7 M in FY 2021 and \$15.7 M in FY 2022.

NYSHIP Retiree Health Insurance Premium Differential – Section V– PPGG:

Under current law, the state reimburses retirees for their NYSHIP Health Insurance costs after 10 years of service and NYSHIP participation. For state retirees with at least 10 years of service at grade 10 or higher, the state pays 84% of the cost of Individual Coverage and 69% of the cost of Dependent Coverage – the retiree pays 16% and 31% respectively. For state retirees with at least 10 years of service at grade 9 or lower, the state pays 88% of the cost of Individual Coverage and 73% of the cost of Dependent Coverage – the retiree pays 12% and 27% respectively.

The Governor's proposal seeks to establish a graduated health insurance reimbursement system for **civilian state employees hired on/after 10/01/2020** whereby retirees would contribute a greater share toward health insurance costs. The Governor's proposal **does not** apply to members of the NYS Local Police and Fire Retirement System, members of the uniformed personnel in the Department of Corrections and Community Supervision, and/or a state employee who is determined to have retired with a disability retirement.

The Governor's proposal estimates the graduated reimbursement system will reduce the state's OPEB liability by about 4% in the future.

(The current formula used to convert accumulated sick leave into an employee retirement health insurance fund already addresses this issue of parity and equity. The fewer years worked means fewer years you have to accrue unused sick days. Additional adverse impact is felt by those designated MC since they only earn 8 sick days per year and are further disadvantaged since it takes them 38% longer to accrue unused sick days). This is part of the reasoning behind our proposal to implement a one-time opt out for the IPP program – we believe it is singularly unfair to treat M/C employees inequitably.

Civil Service & Workforce Issues:

The Governor's discussion of the state workforce is spare focusing on workforce increases in some agencies and decreases in others, e.g. DOCCS, improving government efficiency – the state workforce under Executive control has declined since Governor Cuomo took office as agencies "streamline operations and enhance

efficiencies”. Improving productivity and efficiency is positive and important but no mention is made of caring for employees and providing those employees with the resources and support services they need. While we hear about workforce reductions from our members who are required to manage with insufficient resources, the composition of the workforce – specifically the M/C workforce has changed.

The Department of Civil Service is charged with carrying out and ensuring compliance with the constitutional and statutory requirements for a merit civil service system. Unfortunately, the department allows too many Executive Agency requests for exempt classification so that the constitutional requirements of merit and fitness seem to go by the wayside or are considered optional. The Department needs to be staffed and tasked to carry out its responsibilities. The administration of the Merit System needs to be taken seriously and needs closer oversight.

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, training, 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. Information just received from the Civil Service Department provides an example of this disturbing trend. While it is a snapshot of one facet of the M/C workforce it is indicative of a larger problem.

Management Confidential Hires:

Jurisdictional Classification	CY 2018	CY 2019
Competitive	109	95
Non-Competitive	193	173
Exempt	358	397
Unclassified	7	21
	667	686

Agencies justify exempt classification by using phrases such as:

- “Exempt jurisdictional classification is needed for the Special Assistant due to the fact that the incumbent will report to the Executive Deputy Commissioner or designee and must maintain a high degree of diplomacy and discretion to guarantee the confidentiality of sensitive information”. This describes why the position should be M/C but does not justify exempt classification.
- “Placement of the requested position in the exempt jurisdictional class is appropriate due to the confidential and sensitive nature of the duties associated with investigations of violations and enforcement proceedings” – this again justifies placement in the M/C category but not justification for no examination.
- “Placement of the position outside of the competitive class will assist the department in considering candidates from diverse backgrounds who could be able to successfully perform the duties”. Are we to believe that diverse candidates would not be identified through the competitive class route?
- “We believe it is impractical to test for the requirements necessary for successful performance in this position. The incumbents must have strong technical (testable), effective communication skills (testable), the character and personality traits necessary to properly handle the tasks and information, and they must be supportive of the overall goals, objectives and policies of the Commissioner of our agency. In view of this, it is essential that the Commissioner have the flexibility necessary to appoint candidates in whom he can have full faith and confidence”.

What a sad commentary that state agencies and the civil service department actively engage in avoiding the constitutional requirements for employee selection and use the “diversify our workforce” and “ need for flexibility” as “legitimate” criteria for avoiding competitive selection processes.

Rarely do these kinds of requests get rejected by the Civil Service Department and the CSD itself has used the same reasoning for staffing that agency.

While the Governor and his administration tout streamlining operations and enhancing efficiencies the effects are not always positive – e.g. the reorganization and centralization of human resources, finance and ITS functions into the Business Service Center so agencies can focus on their program missions, we get many questions from employees on issues that the Business Services Center should be able to answer but doesn’t. Further, human resources staff in many agencies are poorly or untrained and employees do not trust that the information they receive from their agency HR offices or the Business Service Center is correct. We also answer many questions that should be and are directed to the Civil Service Department and are referred by Civil Service staff to OMCE.

Succession Planning:

In most state agencies there has been limited succession planning for the training and replacement of those in critical M/C positions. Couple that with a reticence by union represented employees to accept M/C positions given the history of compensation woes and we have a “Pipeline” to M/C positions that is broken. This is complicated by the demographic fact that those union represented employees eligible for advancement are nearly the same age as those in the M/C positions and even if they don’t plan to retire soon see no advantage to accepting a M/C position.

Our review of the Civil Service Department workforce management report provides a concerning view of the state workforce as of January 2019 (Latest Available).

Jurisdictional Class	Percent Workforce	M/C’s Percent
	100%	6.5%
Competitive Class	79.4%	53%
Noncompetitive Class	19.6%	14.8%
Exempt	2.1%	29%
Labor	3.7%	
Other	0.2%	

This comparison clearly shows that the M/C class is being populated by employees whose fitness has not been determined by competitive examination and/or where no minimum training and experience requirements are established. The determination that it is not practicable to determine merit & fitness of applicants by competitive examination appears to be based on understaffing and a lack of interest in developing and/or implementing effective screening and evaluation tools coupled with an attitude that, despite what the governor says about protecting public employees, is particularly uncaring about treating career public servants with dignity, respect and acknowledging their value in serving the public.

As indicated in the 2019 CS Workforce Management Report, pages 9 & 11, (Attachment A), there remains little incentive to give up bargaining unit security and raises to accept a M/C 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.

The Report further states: The high average age (36) of new hires and salary compression issues in the M/C portion of the workforce could cause a shortage of future managers to fill state positions. We contend that a serious review of the salary inequities and action to fix those inequities is long overdue.

IPP-Income Protection Plan:

The M/C Income Protection Plan (IPP), begun in January of 1986 is mandated by the New York State Department of Civil Service to eligible management confidential-designated executive branch New York State employees working on at least a half time basis. This benefit program offers both short (< 6 months @ 50% of salary) and long term (> 6 months at 60% of salary) disability at no cost (actually the cost of 5 days of sick leave lost to the employee). This taxable coverage is underwritten through MetLife. M/C employees earn 8 days of sick leave per year rather than the 13 sick days of most State employees. The IPP is also the carrier of the M/C Family Leave coverage. We believe the State's investment in this program needs increased scrutiny and oversight. Most M/C employees never need the short/long term disability coverage & would like to be accruing 13 days of sick leave per year.

We have urged before and urge again that M/C's be allowed to "opt-out" of IPP coverage and be restored to full 13 days of annual sick leave. There are M/C's who feel the IPP works for them and those who want out. To be ill and trying to survive on the IPP income that comes late or not at all is NOT a promise kept. The IPP is not fulfilling the promise made to the M/C employees.

Several of the other issues of concern, e.g need for longevity steps for M/C employees' grade 18 and above, re-instituting a vacation buy back program and establishing a salary schedule that will address long standing salary inequities are outlined in attachment B.

Attachments:

- A. 2019 NYS Workforce Management Report M/C Employees pages 9&11
- B. OMCE Letter to DOB & GOER re: M/C Budget & Workforce Program Initiative
- C. OMCE Fact Sheet