

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 3, 2016

Barbara Zaron
President

Joseph B. Sano
Executive Director

Joint Legislative Budget Hearing on Workforce Development

February 3, 2016 - OMCE Testimony presented by Barbara Zaron and Joe Sano

MC Pay Parity – Ten Years Is Too Long To Wait

Senator Young, 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 maybe 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 included 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 was 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 provided incremental general salary increases over 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 paid in April 2015 (Chapter 491 of the Laws of 2011). The cost of the increases had to be paid for within existing agency budgets and would exclude former unionized employees who are now MCs who received the increases in 2009 and/or 2010.

Six years of sustained OMCE advocacy combined with legislative support for fixing the pay parity problem was finally 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 seven years that they have had to previously 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 remaining 5% during this fiscal year. However, that would seriously stretch the agency's ability to pay from their flat budgets so an additional appropriation of up to approximately \$33 million would be required.

If the Governor's proposed payment schedule is approved M/Cs continue to fear that the increases will again be withheld in future years. Also, contract negotiations with CSEA, PEF and other units are underway and may result in contracts that would have M/C employees falling further behind other employees pay schedule.

2. There is no acknowledgement of or plan by the Administration to address the ongoing diminution of the pension of MC employees who had their 2009 and 2010 previously 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. Their pension benefits, their social security benefits and the value of their sick leave accruals that are used to pay for retiree health insurance are all permanently diminished.

With the daily buzz about wage equity and fairness let's remember the M/C's.

These M/C's 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) and the Governor in 2016 is proposing another health insurance cost increase for retirees. *Withheld previously authorized* 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 2015 – 2016 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. The budget recognizes this fact and seeks to restore the withheld monies through a schedule that adds insult to injury.

3. Let's remember that, NYC management employees, represented by the New York City Managerial Employees Association (NYCMEA), had salary increases withheld in 2009 and then restored by Mayor Bloomberg. They have 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. Please remember that DOB in past restoration discussions has attempted to exclude former union represented employees who allegedly received some or all of the 2009 and/or 2010 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. What we have is another man made mess born out of manipulation.

We have been talking to the administration about these issues and how to fix them including acceleration of the payment schedule. The Governor did not include an accelerated payment in his 2016 – 2017 budget so once again we need your help. We request that you include in each house's budget resolution an additional 3% to the previously authorized 2% which equals the 5% of previously authorized but withheld salary increases still outstanding, including a provision for lump sum payment of any outstanding balance for those who leave state service before payment is completed.

In 2014 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 A 7448 (to be included in the budget) would *authorize the payment of the remaining 5% of previously authorized withheld M/C salary increases.*

While the current statute shows a scheduled 2% payment of the remaining 5% withheld salary, 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 with the current withholding problem addressed there remain many inequities in the schedule. Once the unions currently negotiating contracts settle, any salary increases won will correspondingly destroy the M/C salary relationship undergoing repair. It is imperative that any new across the board salary increases achieved by the unions be extended to the M/C salary schedule too.

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. Our bills are called, the WPPAA – the Withheld Pay Pension Adjustment Acts.

WPPAA Withheld Pay Pension Adjustment Act M/C's Retired between 4/2/2009 through 3/31/2014

This proposal will provide an additional month of retirement service credit, but not in excess of 24 months, for each month of employment from April 1, 2009 through 3/31/2014 for members either in the classified service of the state of New York in a position designated managerial or confidential pursuant to article 14 of the civil service law or in the service of a public authority under the jurisdiction of the state civil service department. Such members must have been in active service during the previously stated time period and had previously authorized general salary increases withheld in fiscal year 2009 and 2010. This revised retirement benefit reflecting the additional service credit will become effective on April 2016.

These changes shall become effective notwithstanding any other law rule or regulation.

WPPAA Withheld Pay Pension Adjustment Act M/C's Retired between 4/1/2014 through 3/31/2019

This proposal will provide that those retirement system members designated managerial or confidential pursuant to article 14 of the civil service law or in the service of a public authority under the jurisdiction of the state civil service department and had previously authorized general salary increases withheld in fiscal years 2009 and 2010 shall have their annual pension benefit adjusted as follows:

When computing the FAS (Final Average Salary) using the highest average of wages earned during any three consecutive years, each year of wages earned that is utilized in the FAS computation shall be increased by the annual cost of living index percentage for that year (All Urban Consumers – CPI index). The resulting FAS will reflect the original highest average of wages earned as stated above, increased by the applicable cost of living index for that respective time period.

These changes shall become effective notwithstanding any other law rule or regulation.

Governor's Health Insurance Budget Proposal
IRMAA

The Governor is once again proposing to cease reimbursement of IRMAA (Income Related Monthly Adjustment Amounts) for high-income state retirees. This is the third time in as many years that this proposal is brought forward – this is the third time we urge you to reject this proposal.

This year the Governor is also proposing to cap the reimbursement of the Medicare Part B Standard Premium at \$104.90 and is refusing to pay the \$17 per month cost of living adjustment. This proposal too should be rejected.

The state over the years has saved many millions of dollars as a result of Medicare being the primary health insurance provider for retirees. Breaking the compact with retirees who have given years of service to the people of NY is wrong.

To minimize the cost to NYS retiree health benefits, upon turning 65 all retirees participating in NYSHIP are required to enroll in Medicare. As a requirement for Medicare enrollment such retirees must pay Part B premium, but they must also pay a NYSHIP premium to the state for their health insurance coverage. Recognizing the need to avoid this additional payment, the Legislature provided for full reimbursement of all Medicare Part B premiums.

NYSHIP retirees 50 years ago accepted Medicare as their primary health insurance provider to save the state money, but the Governor's proposals negate the implied intent of Medicare premium reimbursement – retirees will save the state money, and will be held harmless for additional Medicare payments. This was the founding principal of this arrangement 50 years ago.

Differential Health Care Premium

Implementing differential health care premium contributions for civilian new retirees based on years of service is an outrageous proposal. Although the briefing materials describe it as “more equitable funding for retiree health insurance coverage for certain new civilian state retirees with less than 30 years of service, it is actually the opposite.

How is it more equitable to charge retirees with less service more to pay for their health insurance. These retirees have had less opportunity to accrue substantial amounts of sick leave credits to be converted to pay for their health insurance retirement, so they are already paying more than those with more service. To now charge them significantly more, up to 50% of the cost puts them in double jeopardy. It would also create a system where there are 8 different percentages for non uniformed employees/retirees to administer hardly an efficient system.

Only Medicare eligible retirees – and non Medicare eligible active employees – are required to enroll in Medicare for the purpose of helping the state reduce the cost of the NYSHIP program, so failure to reimburse the additional premiums is discriminatory and unfair. If approved, it will put an unfair burden on more Medicare eligible retirees as the Federal Government is shifting the cost of Medicare more and more to enrollees, and , it will apply to Legislators and Legislative staff too!!.

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 volume 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 on the phone 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. As a matter of fact, program and control agencies, the retirement system as well as Civil Service frequently refer the employees to OMCE to answer their questions.

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.

While the Governor and his administration tout the reorganization and centralization of human resources, finance and ITS functions into the Business Service Center so agencies can focus on their program missions, the Civil Service department which is responsible for administering the Merit System continues to be starved of needed resources. The major share of staff increases there have been for the EBD – (Employee Benefits Division) and not the Merit System administration.

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

There are, in addition, serious questions about the real efficacy and efficiency of the Business Service Center and the operations of the Justice Center. We believe the Legislature should review both operations.

The Justice Center as it now operates is designed as the investigator, prosecutor, court, and appeals court for all allegations of abuse and neglect. There is no increase in the # of alleged abuse and neglect cases for this special needs population and the actual operations and need for this redundant operation must be examined.

The Governor stated, "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.