

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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BRIAN LEVINE, JOHN BARNETT, ARTHUR BREEN,  
GREGORY BROWN, PATRICIA CHICHESTER, CHRIS  
COVERT, SHELLEY DROSS, NANCY FERRANTE,  
ROBERT GODLEY, ANNETTE GRANT, CONSTANCE  
GRAVES, KATHRYN JAMISON, WILLIAM  
LIGHTBODY, MICKEY MASSIANO, WILLIAM  
MCCARTNEY, ANDREW NIVEN, DANIEL OSBORNE,  
MICHAEL RESNICK, ROSEMARY SAWYER, LINDA  
SHAW, THOMAS SLOAN, JOHN STELLAR, ROBIN  
TAYLOR, ANNETTE TOMBOLILLO, KIMBERLY VILE,  
SARAH WASHINGTON, on behalf of themselves and all  
others similarly situated, and the ORGANIZATION OF NEW  
YORK STATE MANAGEMENT CONFIDENTIAL  
EMPLOYEES (OMCE) on behalf of its members and by its  
Executive Director, JOSEPH SANO,

Plaintiffs,

-against-

DAVID A. PATERSON, as Governor of the State of New  
York, THOMAS P. DINAPOLI, as Comptroller of the State of  
New York, ROBERT L. MEGNA, as Budget Director for the  
Division of Budget, NEW YORK STATE DIVISION OF  
BUDGET, OFFICE OF THE STATE COMPTROLLER,  
NEW YORK STATE DEPARTMENT OF AUDIT AND  
CONTROL, and the STATE OF NEW YORK,

Defendants.

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Plaintiffs Brian Levine, John Barnett, Arthur Breen, Gregory Brown, Patricia Chichester,  
Chris Covert, Shelley Dross, Nancy Ferrante, Robert Godley, Annette Grant, Constance Graves,  
Kathryn Jamison, William Lightbody, Mickey Massiano, William McCartney, Andrew Niven,  
Daniel Osborne, Michael Resnick, Rosemary Sawyer, Linda Shaw, Thomas Sloan, John Stellar,  
Robin Taylor, Annette Tombolillo, Kimberly Vile, Sarah Washington and the Organization of  
New York State Management Confidential Employees (hereinafter referred to as "OMCE")

**COMPLAINT**

Civil Action No. 1:10-CV-1007  
(NAM/DRH)

**JURY TRIAL DEMANDED**

(hereinafter collectively referred to as "Plaintiffs"), by and through their attorneys, Hinman Straub P.C., (John F. Black, Esq., and Joseph M. Dougherty Esq.), for their complaint, respectfully allege as follows:

**NATURE OF THE PROCEEDING**

1. This is an action for: (a) deprivation of civil rights pursuant to 42 U.S.C. §§1983 and 1988 and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States; (b) violation of plaintiffs' rights guaranteed by Article I, §10 of the United States Constitution and Article I, §§6 and 11 of the New York State Constitution; (c) violations of the Separation of Powers pursuant to Articles III, IV, and VI of the New York State Constitution; and (d) violation of the plaintiffs' rights pursuant to §115 of the New York State Civil Service Law.

**JURISDICTION**

2. This Court has subject matter jurisdiction by virtue of 28 U.S.C. §§1331 and 1343, and supplemental jurisdiction pursuant to 28 U.S.C. §1367.

**VENUE**

3. Venue in this Court is proper under 28 U.S.C. §1391(b)(1) and (2), in that the offices of defendant Governor David A. Paterson and defendant Thomas P. DiNapoli are located in Albany, New York. Moreover, the acts complained of occurred in Albany, New York.

**PARTIES**

4. Plaintiff BRIAN LEVINE is a Senior Budgeting Analyst, Grade 18 Competitive Class, employed by the State of New York and designated Management and Confidential.

5. The position of Senior Budgeting Analyst, Grade 18 is substantially similar to and shares a job description with the position of Senior Budgeting Analyst, SG-18, in the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavit of Levine

(attached as Exhibit "1"), and New York State Department of Civil Service Classification Standard (hereinafter referred to as "CS Class. Std.") for SENIOR BUDGETING ANALYST, GRADE 18. (Attached as Exhibit 2).

6. Plaintiffs JOHN BARNETT, WILLIAM MCCARTNEY, DANIEL OSBORNE, MICHAEL RESNICK, and SARAH WASHINGTON are Supervising Parole Officers, Grade M3 Competitive Class, employed by the State of New York and designated Management and Confidential.

7. The position of Supervising Parole Officer, Grade M3 Competitive Class is substantially similar to and shares a job description with the position of Senior Parole Officer, SG-24 and Parole Officer SG-21 in the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavits of Barnett, McCartney, Osborne, Resnick, and Washington (attached as Exhibits "3", "4", "5", "6" and "7") and the CS Class. Std. for PAROLE OFFICER GRADE 21, SENIOR PAROLE OFFICER GRADE 24 and SUPERVISING PAROLE OFFICER M-3. (Attached as Exhibit "8").

8. Plaintiffs ARTHUR BREEN, ANNETTE GRANT and CONSTANCE GRAVES are Senior Personnel Administrators, Grade M/C-18 Competitive Class, employed by the State of New York and designated Management and Confidential.

9. The position of Senior Personnel Administrator, Grade M/C-18 Competitive Class, is substantially similar to the positions of Senior Administrative Analyst, SG-18 and Senior Budgeting Analyst, SG-18, in the Professional, Scientific and Technical Negotiating Unit as detailed in the Affidavits of Breen, Grant, and Graves. (Attached as Exhibits "9", "10" and "11") and the CS Class. Std. for SENIOR PERSONNEL ADMINISTRATOR, GRADE M/C-18 COMPETITIVE CLASS. (Attached as Exhibit "12").

10. Plaintiff GREGORY BROWN is a Park Manager 1, Grade M-1 Competitive Class, employed by the State of New York and designated Management and Confidential.

11. The position of Park Manager 1, Grade M-1 Competitive Class, is substantially similar to and shares a job description with the position of Park Manager 1, SG-18 in the Professional, Scientific and Technical Negotiating Unit as detailed in the Affidavit of Brown (attached as Exhibit "13"), and the CS Class. Std. for PARK MANAGER 1, 2 &3. (Attached as Exhibit "14").

12. Plaintiff CHRIS COVERT is a Traffic Maintenance Engineer 2, M-3 Competitive Class, employed by the State of New York and designated Management and Confidential.

13. The position of Traffic Maintenance Engineer 2, M-3 Competitive Class, is substantially similar to the positions of Civil Engineer 3, SG-27 and Civil Engineer 4, SG-29 in the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavit of Covert. (Attached as Exhibit "15").

14. Plaintiffs SHELLEY DROSS, PATRICIA CHICHESTER, KATHRYN JAMISON, ROSEMARY SAWYER, LINDA SHAW, and THOMAS SLOAN are Treatment Team Leaders, Grade M-1 Competitive Class, employed by the State of New York and designated Management and Confidential.

15. The position of Treatment Team Leader, Grade M-1 Competitive Class, is substantially similar to the positions of Licensed Psychologist, SG-25; Psychologist 2, SG-25, Associate Psychologist, SG-23, Developmental Disabilities Program Specialist 2, SG-25; Mental Health Program Specialist 3, SG-25 and Mental Health Program Specialist 2, SG-23 in the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavits of Dross, Chichester, Jamison, Sawyer, Shaw, and Sloan. (Attached as Exhibits "16", "17", "18", "19", "20", and "21").

16. Plaintiffs NANCY FERRANTE, ROBIN TAYLOR and ANNE TOMBOLILLO hold the position of Secretary 2, Grade MC-15 Competitive Class, are employed by the State of New York and are designated Management and Confidential.

17. The position of Secretary 2, Grade MC-15 Competitive Class is substantially similar to and shares a job description with the position of Secretary 2, SG-15 in the Administrative Services Negotiating Unit, as detailed in the Affidavits of Ferrante, Taylor and Tombolillo (attached as Exhibits "22", "23", and "24"), and the CS Class. Std. for SECRETARY 2, GRADE 15. (Attached as Exhibit "25").

18. Plaintiff ROBERT GODLEY is a Chief Psychologist, M-4, Competitive Class, employed by the State of New York and designated Management and Confidential.

19. The position of Chief Psychologist, M-4, Competitive Class is substantially similar to the position of Chief Psychologist, SG-27, in the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavit of Godley. (Attached as Exhibit "26").

20. Plaintiff WILLIAM LIGHTBODY is a Law Department Investigator, Competitive Class, employed by the State of New York and designated Management and Confidential.

21. The position of Law Department Investigator, Competitive Class, is substantially similar to and shares a job description with the position of Law Department Investigator held by members of the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavit of Lightbody (attached as Exhibit "27"), and CS Class. Std. for LAW DEPARTMENT INVESTIGATOR 1, 2, 3, & 4. (Attached as Exhibit "28").

22. Plaintiff MICKEY MASSIANO is a Community Outreach Specialist 2, Grade 23, employed by the State of New York and designated Management and Confidential.

23. The position of Community Outreach Specialist 2, is substantially similar to the position of Community Outreach Specialist 1 in the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavit of Massiano. (Attached as Exhibit "29").

24. Plaintiff ANDREW NIVEN is an Organizational Developmental Specialist 3, M-3 Competitive Class, employed by the State of New York and designated Management and Confidential.

25. The position of Organizational Developmental Specialist 3, M-3, Competitive Class, is substantially similar to the positions of Associate Administrative Analyst, SG-23 and Supervisor of Administrative Analysis, SG-25 of the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavit of Niven. (Attached as Exhibit "30").

26. Plaintiff JOHN STELLAR is an Associate Attorney, M-3 Competitive Class, employed by the State of New York and designated Management and Confidential.

27. The position of Associate Attorney, M-3 Competitive Class, is substantially similar to and shares a job description with the position of Associate Attorney, SG-28, held by members of the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavit of Stellar (attached as Exhibit "31"), and CS Class. Std. for ASSOCIATE ATTORNEY. (Attached as Exhibit "32").

28. Plaintiff KIMBERLY VILE is a Nutrition Services Administrator 2, Grade 23, employed by the State of New York and designated Management and Confidential.

29. The position of Nutrition Services Administrator 2, Grade 23, is substantially similar to and upon information and belief shares a job description with the position of Nutrition Services Administrator 2 held by members of the Professional, Scientific and Technical Negotiating Unit, as detailed in the Affidavit of Vile. (Attached as Exhibit "33").

30. Plaintiff ORGANIZATION OF NEW YORK STATE MANAGEMENT CONFIDENTIAL EMPLOYEES INC., (hereinafter referred to as "OMCE"), is a not-for-profit statewide membership organization which advocates exclusively for managerial and confidential employees before government agencies, the Legislature, and the courts, and is committed to preserve, protect and enhance the rights and benefits of managerial and confidential employees in New York State. (See Affidavit of Sano, attached as Exhibit "34").

31. Defendant DAVID A. PATERSON, is the Governor of the State of New York, is sued here in his official capacity, and is, pursuant to N.Y. Constitution Article IV, §1, responsible for the administration of the Executive Branch of New York State by virtue of his position.

32. Defendant THOMAS P. DINAPOLI, is the Comptroller of the State of New York and also the head of defendants' Office of the State Comptroller and Department of Audit and Control. He was appointed and acts pursuant to Executive Law §40 and other relevant statutes and regulations.

33. Defendant ROBERT L. MEGNA, is the duly appointed Budget Director for the Division of Budget. As such, he is the Chief Executive Officer of the Division of Budget pursuant to the Executive Law.

34. Defendant NEW YORK STATE DIVISION OF BUDGET, is part of the Executive Branch and is responsible for advising the Governor regarding the State Budget pursuant to Executive Law §100, State Finance Law, and Articles III and IV of the New York State Constitution.

35. Defendant DEPARTMENT OF AUDIT AND CONTROL OF THE STATE OF NEW YORK is established pursuant to State Executive Law §40, with all the powers and duties set forth in relevant statutes and regulations.

36. Defendant NEW YORK STATE OFFICE OF THE STATE COMPTROLLER is authorized, pursuant to the New York State Constitution, Article V, §1, and has such duties as are prescribed by the Constitution.

37. Defendant STATE OF NEW YORK is the public employer of the plaintiffs, and is organized into various agencies for the purposes of providing services to citizens of the State of New York, with its capitol located in Albany County, New York.

**FACTS**  
**Article 14 of the Civil Service Law**

38. As originally enacted, Article 14 of the New York State Civil Service Law (hereinafter referred to as the "Taylor Law"), permitted Management and Confidential employees to collectively negotiate.

39. Chapter 503 of the Laws of 1971 amended the Taylor Law to exclude those employees designated Management and Confidential from collectively negotiating.

40. Upon information and belief, the Executive and Legislative intent of Chapter 503 of the Laws of 1971 excluding Management and Confidential employees from collective negotiations, was that that the Management and Confidential employees would have no need for a bargaining agent because they would be treated at least as well as unionized workers.

41. Such Legislative intent is demonstrated by the fact that, since the 1971 amendment to the Taylor Law, the Legislature has routinely enacted the contractual terms and conditions of employment of Management or Confidential employees in its Legislation approving the contractual terms and conditions of employment negotiated in the collective bargaining agreements of the State's unionized employees.

42. Such Legislation, containing both the contractual terms and conditions for Management or Confidential employees and approval of the contractual terms and conditions for the State's unionized employees includes, but is not limited to, Chapter 10 of the Laws of 2008,

Chapter 103 of the Laws of 2004, Chapter 68 of the Laws of 2000, Chapter 314 of the Laws of 1995, Chapter 497 of the Laws of 1992, Chapter 732 of the Laws of 1988, and Chapter 306 of the Laws of 1985.

**2009 Management or Confidential Employee 3% General Salary Increase, Performance Advances, Longevity and Other Payments**

43. Upon information and belief, Governor David Paterson's Executive Budget recommendations, submitted on December 16, 2008, for fiscal years 2009-10, included funding for the Management/Confidential employees (hereinafter referred to as "M/Cs") 3% general salary increase, performance advances, longevity and other payments.

44. On January 28, 2008, the New York State Senate and Assembly passed Legislative Bill S.6773 (Robach) / A.9816 (Abbate) (hereinafter referred to as "PayBill"). (Attached as Exhibit "35").

45. The PayBill provided Legislative approval for salary increases, performance advances, longevity and other payments to the Institutional Services Unit ("ISU"), the Operational Services Unit ("OSU"), the Administrative Services Unit ("ASU") and the Division of Military and Naval Affairs Unit ("DMNA") as required by Article 14 of the Civil Service Law, and identical approvals for salary increases, performance advances, longevity and other payments to M/C employees.

46. Among other provisions affecting M/C employees, the PayBill:

- i) Amended the Civil Service Law § 130(8)(b) to provide longevity payments to M/Cs with five or more years at or above the job rate of their salary grade in the amounts of \$875, \$1,000, and \$1,125 during fiscal years 2007-08, 2008-09, and 2009-10 respectively, and with ten or more years at or above the job rate of their salary grade in the amounts of

- \$1,750, \$2,000, and \$2,250 during fiscal years 2007-08, 2008-09, and 2009-10 respectively;
- ii) Provided that such longevity payments made on or after April 1, 2010 be made as lump sum payments (excluded from base salary) in the amount of \$1,250 to M/Cs with five or more years at or above the job rate of their salary grade, and in the amount of \$2,500 to M/Cs with ten or more years at or above the job rate of their salary grade;
  - iii) Authorized an increase in basic annual salary for M/Cs of 3 percent effective April 2, 2007; 3 percent effective April 1, 2008; 3 percent effective April 1, 2009; and 4 percent effective April 1, 2010, as well as the provision of performance advances, merit awards and longevity payments;
  - iv) Provided for the availability of a vacation exchange option to M/C employees, subject to the annual approval of the Director of the Budget, in State fiscal years 2008-09, 2009-10 and 2010-11 and significant increases in downstate location pay.
  - v) Authorized the State Comptroller to make payments required during the fiscal years commencing April 1, 2007 and April 1, 2008.
  - vi) Provided that salary increases, pursuant to this PayBill, shall be effective on the first day of the first pay period nearest to the effective date of any such salary increase.

47. When passed, the PayBill's "Sponsors Memorandum" (attached as Exhibit "36"), submitted to both the Senate and Assembly, clearly stated the Legislative intent that the provisions of the bill concerning salary increases, longevity payments, merit payments etc...

“establishes terms and conditions of employment for M/C and other unrepresented employees” and that the bill provides M/C and other unrepresented employees with compensation increases and payments that are comparable to recently negotiated increases and payments for certain represented employees. In addition, the Sponsors Memoranda stated “such parity is essential to provide for appropriate salary administration (by maintaining proper salary relationships and mitigating salary compression), assure productivity, maintain good morale, and to allow for the recruitment and retention of competent staff.”

48. On January 28, 2008, Governor Spitzer signed the PayBill into law as Chapter 10 of the Laws of 2008. (Attached as Exhibit “37”).

49. Upon information and belief, when enacted, Chapter 10 of the Laws of 2008 created a contract between the State of New York and the M/C employees as the language and circumstances of the PayBill evinced a Legislative intent to create private rights of a contractual nature against the State with regard to M/C employee terms and conditions of employment.

50. Upon information and belief, through the PayBill, as evinced from the Sponsors Memoranda, the Legislature intended to maintain proper salary relationships between M/C and unionized State employees and set M/C employee terms and conditions of employment.

51. On February 1, 2008, the defendant Division of the Budget (hereinafter referred to as “DOB”), issued bulletin D-1120 (attached as Exhibit “38”), authorizing retroactive payment of the April 1, 2007 3% general salary increase and longevity pay increases provided for M/C employees guaranteed by the PayBill.

52. On March 20, 2008, the defendant DOB issued bulletin D-1122 (attached as Exhibit “39”), authorizing payment of the April 1, 2008 3% General Increase, 2008-09 Performance Advances, Merit Awards and Longevity Payments for Managerial and Confidential (M/C) Employees guaranteed by the PayBill.

53. On March 24, 2009, the defendant Office of State Comptroller (hereinafter referred to as “OSC”) issued Payroll Bulletin #898 (attached as Exhibit “40”), with instructions for payment of the “April 1, 2009 3% general salary increase and longevity increases for employees designated Management or Confidential (M/C),” and Payroll Bulletin #899 (attached as Exhibit “41”), with instructions for payment of the “April, 2009 performance advances and longevity payments for graded and NS equated to grade employees designated Management or Confidential (M/C).”

54. On March 25, 2009, the DOB issued Budget Bulletin D-1123 (April 1, 2009 3% General Increase, 2009-10 Performance Advances, Merit Awards and Longevity Payments for Managerial and Confidential [M/C] Employees) (attached as Exhibit “42”), authorizing the M/C payroll actions—to be effective March 26 for employees on the Institution payroll and April 2 for Administration payroll employees.

55. On or about April 1, 2009, the 3 percent general salary increases and the 2009-10 performance advances, merit awards and longevity payments were implemented, in accordance with the PayBill, for employees of the Institutional Services Unit (“ISU”), the Operational Services Unit (“OSU”), the Administrative Services Unit (“ASU”) and the Division of Military and Naval Affairs Unit (“DMNA”) (hereinafter referred to as “unionized employees”).

56. On April 2, 2009—one week after the 2009-10 pay increases were announced—the Director of State Operations, Dennis Whalen, announced that the April 1, 2009 3 percent general salary increases and the 2009-10 performance advances, merit awards and longevity payments would be “administratively withheld” from M/C employees. (Whalen 4/2/09 Memorandum to Heads of State Agencies and Public Authorities). (Attached as Exhibit “43”).

57. Upon information and belief, the defendants did not seek any form of Legislative approval to validate the administrative withholding of the April 1, 2009 3 percent general salary

increases and the 2009-10 performance advances, merit awards and longevity payments from M/C employees.

58. On or about April 2, 2009 to the present, the Governor continues to “administratively withhold” the 3% general salary increase and the 2009-10 performance advances, merit awards and longevity payments contractually required by the PayBill.

59. The Governor’s “administrative withholding” was contrary to the Legislative intent of the PayBill as it destroyed the proper salary relationships between M/C and unionized employees as detailed in “Effects of M/C Pay Withholding on M/Cs v. CSEA and PEF Represented Employees in Comparable Salary Grades.” (Attached as Exhibit “44”).

60. Upon information and belief, on or about February 19, 2009, Governor Paterson granted the following pay increases ranging from 5% to 46% to certain M/C employees, but not the plaintiffs:

- i) William Cunningham, received a 5% increase in salary when he was “promoted” from acting secretary to secretary, bumping his salary from \$170,000 to \$178,500.
- ii) Charlotte Hitchcock, was promoted from deputy secretary to chief of staff and was given an 11.25% increase bumping her salary from \$160,000 to \$178,000.
- iii) Assistant counsel, Gaurav Vasisht, received a 6% pay hike, to \$130,279.
- iv) Cassie Prugh, a confidential assistant, received a 46% pay hike, increasing her salary from \$85,721 to \$125,000.
- v) Press aide Erin Duggan received a 5% pay hike to \$105,786.
- vi) Special Office Assistant, Brendan Fitzgerald, received a 21% raise, to \$90,000.

- vii) Confidential Assistant, Michael Deloach, received a 29% raise, to \$80,000.
- viii) Press Aide, Morgan Hook received a 13% pay hike to \$79,568.
- ix) Legal Assistant, Ryan Dalton received a 17% increase to \$52,000.
- x) Confidential Secretary Lauren Passalacqua received a 32% pay raise to \$50,000.
- xi) Confidential Aide, Chardee Mendoza, received a 28% raise to \$45,000.
- xii) Confidential Stenographer, Erin Donohue, received a 10% raise to \$43,000.

**2010 Management or Confidential Employee and  
Unionized Employee 4% General Salary Increase, Performance Advances and 2010 Merit  
Payments**

61. The PayBill required that M/C employees receive a 4% general salary increase Performance Advances, Longevity and Merit Payments on April 1, 2010.

62. On January 19, 2010, defendant Governor David A. Paterson submitted his proposed budget for the 2010-2011 fiscal year (which began on April 1, 2010).

63. The Governor's proposed budget included an "administrative withholding" of the April 1, 2010 Four Percent General Salary Increase for Management/Confidential Employees for the State's Non-Unionized Management/Confidential employees at an estimated savings of \$28 million dollars.

64. On or about April 1, 2010 to the present, the Governor continues to "administratively withhold" the 4% general salary increase and merit payments contractually required by the PayBill.

65. On or about April 8, 2010, the Governor announced that the State would withhold unionized State employees' collectively negotiated 4% general salary increases authorized by the PayBill.

66. On or about May 6, 2010, M/C employees receiving Performance Advances, received such advances without consideration of the 3% salary increase and 4% salary increase required by the PayBill in both 2009 and 2010 respectively.

67. On or about May 28, 2010, the State's unionized employees were granted a preliminary injunction which resulted in the payment of the 4% general salary increases. (Attached as Exhibit "45").

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Equal Protection Clause of the Fourteenth Amendment to the**  
**Constitution of the United States)**

68. Plaintiffs repeat and reallege the allegations contained in paragraphs "1" through "67" above, as though the same were set forth herein at length.

69. The equal protection clause of the Fourteenth Amendment to the United States Constitution provides that "no state shall deny to any person within its jurisdiction the equal protection of the laws." Similarly, the equal protection clause of the New York Constitution contained in Article I, Section 11, provides "no person shall be deprived equal protection of the laws of this state or any subdivision thereof."

70. The PayBill is a duly enacted law of the State of New York pursuant to Chapter 10 of the Laws of 2008, which authorized certain benefits for both unionized and non-unionized State employees.

71. For all relevant purposes under the PayBill, New York State Civil Service Law and in the performance of their duties as public employees, the plaintiffs are similarly situated to unionized State employees.

72. Such similarity is demonstrated by the affidavits of plaintiffs and the identical job descriptions detailed in paragraphs “4” through “30” *supra*.

73. There was no rational or legitimate basis for the defendants to “administratively withhold” the 2010 4% general salary increase and 2010 merit payments as required by the PayBill or administratively reduce the amount of 2010 performance advance payments due to M/C employees as required by the PayBill. In addition, there was no rational or legitimate basis for the defendants to “administratively withhold” the 2009-10 salary increase, performance advances, merit awards and longevity payments from certain non-unionized employees (M/Cs) while granting such benefits to certain employees who are represented by unions for the purpose of collective bargaining.

74. The defendants’ “administrative withholding”, under the color of law, of M/C general salary increases in 2009 and 2010, merit payments in 2010 as well as the 2009-10 performance advances, merit awards and longevity payments, was completely arbitrary and irrational, and in no way furthers a legitimate governmental purpose.

75. The defendants’ “administrative withholding” of M/C general salary increases in 2009 and 2010, as well as the 2009-10 performance advances, merit awards and longevity payments, while granting such increases for unionized State employees, is intentional discrimination and violates the plaintiffs’ rights to equal protection of law pursuant to the Fourteenth Amendment to the United States Constitution and Article I, §11 of the New York State Constitution.

76. By virtue of the foregoing, defendants violated plaintiffs rights under 42 U.S.C. §1983.

77. The aforementioned conduct represented the official custom, policy or practice of the defendants.

78. Plaintiffs seek relief, pursuant to 42 U.S.C. §1983, providing for the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments, as well as all other provisions contained in the PayBill.

79. Pursuant to 42 U.S.C. §1983, plaintiffs seek appropriate damages, actual and exemplary, from all defendants for the violation of their federal Constitutional rights under the Fourteenth Amendment.

80. Pursuant to 42 U.S.C. §1988, plaintiffs seek and are entitled to reasonable attorneys' fees pursuant to successful prosecution of their Constitutional claims under 42 U.S.C. §1983.

81. Plaintiffs demand a jury trial.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Due Process Clause of the Fourteenth Amendment to the**  
**Constitution of the United States)**

82. Plaintiffs repeat and reallege the allegations contained in paragraphs "1" through "81" above, as though the same were set forth herein at length.

83. The due process clause of the U.S. Constitution, applicable to the states through the Fourteenth Amendment, prohibits the government from depriving any person "of life, liberty or property without due process of law." Similarly, the due process clause of the New York State Constitution, Art. I, §6, provides, in pertinent part, "No person shall be deprived of life, liberty or property without due process of law."

84. For all relevant purposes, under the PayBill, the plaintiffs' contractual guarantee of general salary increases in 2009 and 2010, level of 2010-11 merit payments as well as the 2009-10 performance advances, merit awards and longevity payments, are a protected property interest within the meaning of the Fourteenth Amendment to the United States Constitution and Article 1, §6 of the New York Constitution.

85. The defendants “administratively withheld” or “administratively reduced” such property interests guaranteed by the PayBill from the plaintiffs without Legislative approval.

86. The defendants’ “administrative withholding” or “administrative reduction”, under the color of law, of M/C general salary increases in 2009 and 2010, as well as the 2009-10 performance advances, merit awards and longevity payments, was completely arbitrary and irrational, and in no way furthers a legitimate governmental purpose.

87. The defendants’ “administrative withholding” of M/C general salary increases in 2009 and 2010, as well as the 2009-10 performance advances, merit awards and longevity is intentional discrimination and violates the plaintiffs’ rights to due process of law pursuant to the Fourteenth Amendment to the United States Constitution and Article I, §11 of the New York State Constitution.

88. By virtue of the foregoing, defendants violated plaintiffs’ rights under 42 U.S.C. §1983.

89. The aforementioned conduct represented the official custom, policy or practice of the defendants.

90. Plaintiffs seek relief, pursuant to 42 U.S.C. §1983, providing for the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments as well as all other provisions contained in the PayBill.

91. Pursuant to 42 U.S.C. §1983, plaintiff seeks appropriate damages, actual and exemplary, from all defendants for the violation of their federal Constitutional rights under the Fourteenth Amendment.

92. Pursuant to 42 U.S.C. §1988, plaintiffs seek and are entitled to reasonable attorneys’ fees pursuant to successful prosecution of their Constitutional claims under 42 U.S.C. §1983.

93. Plaintiffs demand a jury trial.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Article I, §10 of the United States Constitution and**  
**Article I, § 6 of the New York State Constitution)**

94. Plaintiffs repeat and reallege the allegations contained in paragraphs “1” through “93” above, as though the same were set forth herein at length.

95. Article I, §10 of the United States Constitution and Article I, §6 of the New York State Constitution, prohibit the passage of state laws that impair contractual rights.

96. The defendant State of New York entered into a valid and binding contract with the plaintiffs through the enactment of PayBill (Chapter 10 of the Laws of 2008).

97. The Governor was required by this contract to provide for the 2009 3% general salary increase, 2010 4% salary increase, a certain level of merit payment in 2010 and the 2009-10 performance advances, merit awards and longevity payments as well as all other provisions contained in the PayBill for the plaintiffs.

98. On or about June 22, 2010, the Governor signed Chapter 50 of the Laws of 2010 (Public Protection and General Government Appropriation Bill), which failed to provide for the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments, as well as all other provisions contained in the PayBill for the plaintiffs or seek Legislative approval for such failure through an amendment of such provisions of the PayBill.

99. The passage of such legislation failing to provide for the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments, as well as all other provisions contained in the PayBill, constitute an impairment of the contract created by the Legislature and defendant New York State upon

enactment of the PayBill in violation of the impairment clause of the United States Constitution and New York State Constitution.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Separation of Powers pursuant to Articles III, IV, and VI of the New York State Constitution)**

100. Plaintiffs repeat and reallege the allegations contained in paragraphs “1” through “99” above, as though the same were set forth herein at length.

101. The New York Constitution establishes that governmental powers are distributed among three co-equal branches of government (New York Constitution, Art. III, §1; Art. IV §1; and Art. VI.)

102. The legislative power of New York State is vested in the Senate and Assembly. (New York Constitution, Art. III, §1).

103. The Governor is the Executive Officer of the State (New York Constitution, Art. IV).

104. The Legislature makes the critical policy choices and the Governor implements those policy choices.

105. The separation of powers doctrine requires that the Executive Branch, which includes the Governor and the Division of the Budget, not impair the Legislature in the performance of its constitutional duties, or, usurp the Legislature’s constitutional powers.

106. The Governor is duty bound to ensure that appropriations made pursuant to enacted Chapters of Law are faithfully executed.

107. The Executive Branch, which includes the Governor and the Division of the Budget, has no inherent, express or discretionary power to impound funds that have been appropriated by the Legislature or administratively alter duly enacted Chapters of Law.

108. As such, the Governor's and Division of Budget's actions "administratively withholding" the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments which were appropriated by the Legislature pursuant to duly enacted Chapter 10 of the Laws of 2008, are an unconstitutional usurpation of legislative authority in direct violation of the New York Constitution, Articles III and IV.

109. Plaintiffs were employees within the meaning of Section 75(1)(a) of the New York State Civil Service Law.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**(Violation of §115 of the New York State Civil Service Law)**

110. Plaintiffs repeat and reallege the allegations contained in paragraphs "1" through "109" above, as though the same were set forth herein at length.

111. Section 115 of the New York State Civil Service Law states that "it is hereby declared to be the policy of the state to provide equal pay for equal work, and regular increases in pay in proper proportion to increase of ability, increase of output and increase of quality of work demonstrated in service." (Hereinafter referred to as the "Equal Pay Provision").

112. The plaintiffs are "Employees" within the meaning of Section 115 of the Civil Service Law.

113. Upon information and belief, as detailed in paragraphs "4" through "30" *supra*, the plaintiffs conduct substantially similar work in comparison to their counterparts represented by bargaining units.

114. The plaintiffs have not received the same regular pay increases in proper proportion as have been received by certain State employees represented by a bargaining unit.

115. Upon information and belief, the Governor's action of "administratively withholding" the plaintiffs' 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments and "administratively reducing" the 2010 performance advances have fundamentally altered the proper proportion of salary levels among State employees. (See Exhibit "44").

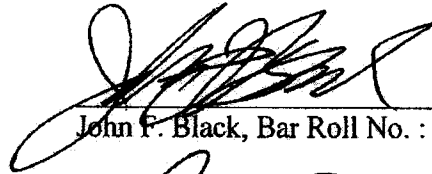
**WHEREFORE**, plaintiffs demand judgment be entered:

1. Declaring that the defendants' administrative withholding of the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments to the plaintiffs, violated their rights to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution;
2. Declaring that the defendants' administrative withholding of the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments to the plaintiffs, violated their rights to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution;
3. Declaring that the defendants' administrative withholding of the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments to the plaintiffs, constitute an improper deprivation of property in violation of the Fourteenth Amendment to the United States Constitution and Article I, §6 of the New York State Constitution;
4. Declaring that Chapter 10 of the Laws of 2008 created a contract between the plaintiffs and defendant New York State;

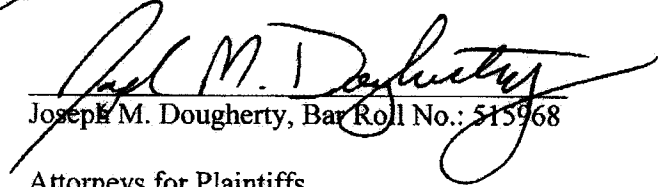
5. Declaring that the defendants' administrative withholding of the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments to the plaintiffs, constitute a substantial impairment of the contract created by Chapter 10 of the Laws of 2008 between the plaintiffs and New York State, and was not a reasonable or necessary means to a legitimate government purpose, and therefore in violation of Article I, §10 of the Constitution of the United States and Article I, §§6 and 11 of the New York State Constitution;
6. Declaring that the defendants' administrative withholding of the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments to the plaintiffs are unconstitutional and, as such, a violation of the New York State Constitution's doctrine of the separation of powers;
7. Declaring that the defendants' administrative withholding of the 2009 3% general salary increase, 2010 4% salary increase and the 2009-10 performance advances, merit awards and longevity payments to the plaintiffs are a violation of Section 115 of the New York State Civil Service Law's Equal Pay Provision;
8. For an award of attorneys' fees pursuant to 42 U.S.C. §1983 and §1988; and

9. For the costs and disbursements of this action, together with whatever other or further relief which to the Court seems just and proper.

Dated: Albany, New York  
August 20, 2010



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