

# Legislative Joint Budget Hearings on the State Workforce

March 2, 2011

Testimony submitted by OMCE  
Joseph B. Sano Executive Director

Good Morning Senators and Members of the Assembly. I'm Joe Sano, Executive Director of OMCE. Thank you for the opportunity to appear before you, on behalf of OMCE and the management/confidential employees, to discuss our concerns with Governor Cuomo's Executive Budget proposals related to the state workforce and state government reorganization.

OMCE, the Organization of NYS Management/Confidential Employees, Inc. is an AFL-CIO-affiliated labor organization that represents the interests of the state's management and confidential (M/C) employees, who are prohibited by the Taylor Law from collective bargaining. OMCE represents the collective point of view of M/C employees and offers specific support and assistance to meet the employment-related needs of individual member M/C employees. Over 80% of M/C employees are career civil servants who obtained their position through competitive examination, not the "governor's people." They are a racially diverse group of former PEF and CSEA represented employees who have competitively earned the right to a M/C position.

Approximately 94% of the state workforce is unionized. There are approximately 12000 all funds M/C employees and of that approximately 10600 in the executive agencies, Comptroller's Office and the Law Department (6% of the workforce) who are not represented by a union. When M/Cs were removed from the original Taylor Law by Chapter 503 of the Laws of 1971, Governor Rockefeller stated that M/C employees would be treated "no less well" than other state workers.

Since then no administration has kept that promise. M/C employees, under every governor have borne the brunt of budget reductions, salary and benefit withholdings. M/Cs are told they need to share the sacrifice, which they are willing to do. M/Cs are not willing to bear the full cost of the "required workforce savings." Nor should they be expected to do so. Every day, M/Cs tell us they want to be treated fairly and equitably, and not earn significantly less, often \$6000 to \$8700 less, than the employees they supervise. M/C employees have already had a two-year salary freeze due to the withholding actions taken by Governor Paterson. Yes, this issue is being litigated.

However M/C employees were the only state employees so affected. WE HAVE GIVEN! WE'VE MADE SACRIFICES We are tired of being the low hanging fruit plucked by those who seek to use the M/Cs as examples of sacrifice for others to emulate. Imposing a third year, and possibly a fourth of salary freeze on M/C

employees is unfair and counterproductive. Why would anyone allow this to be done to the managers and their administrative staff who actually run the day to day operations of state government? Facing a loss of \$6,000-\$15000 over the last 2 years in salary; results in the reduction in final average salary for pension calculations; will result in lower average salary for retiree health insurance calculations and will result in a reduction in purchasing power—loss of tax revenue to the state; difficulty/inability to fulfill financial commitments-enough already--M/C employees need to be made whole for the past two years before any new salary freeze is applied to them, They need an exemption from Governor Cuomo's proposed freeze and a restoration to the levels of compensation deemed by the legislature to be modest and fair back in 2008. Last week Onondaga County reinstated withheld increases for their M/C employees to address the wage disparity with the other employees of the county. In 2009 Mayor Bloomberg reinstated raises for the city's M/Cs. Obviously some elected leaders get the point!

And yes we acknowledge that legislators and judges have not had salary increases in 12 years although many judges have benefited by different adjustments. These inequities are also wrong. We should work together to fix the system. There is now a Commission on Judicial Salaries; maybe we also need a Commission on Management/Confidential salaries. We will seek the introduction of legislation to accomplish that goal.

Before I address the workforce reduction proposals, I want to say we support the continuation of the Personal Income Tax surcharges, and modification to the Stock Transfer Tax Rebate. DOB's own figures and projections show that there has been no mass exodus of those taxpayers who pay a fair share of their incomes in those 2 high earning additions to the tax rate tables. Let's think about generating some revenue from the now fully rebated Stock Transfer Tax. Generating in excess of \$16B annually this 100% fully refunded tax needs a brand new approach. A new option may be for the State to retain the funds and rebate them 1 year after the funds were received rather than the current quarterly rebates. Thus the State could invest those funds and get a full year of "interest arbitrage" on the retained funds (interest in the 100s of millions) for 12 months prior to any rebate. Perhaps Wall Street might even be willing to voluntarily refuse all or part of those rebated funds. Hmmm.... Wall St. Helps out Main St. WOW—what a concept!

So here we are in 2011, the fiscal climate improves at a glacial pace and Governor Cuomo threatens to layoff 9800 employees if the labor organizations representing the workforce don't agree to \$450,000,000 in savings (and yes the M/C employees are included for purposes of providing savings). And this is in addition to the projected \$100,000,000 in savings from "rightsizing" government. These numbers are indeed "placeholders" as Comptroller DiNapoli aptly states. The specificity as to how that savings is obtained will be left to the "labor-management partnership" agreements reached with the state employees' representatives".

Let me attempt to place some probable flesh on those place holding bones.

The Division of the Budget figures that an average state employee costs \$100000 per year with fringes. So if layoff becomes the human resources tool of choice then 9800 employees will be laid off in July (1/2 of a year) if that monetary target of \$450M is to be reached.

In the past we have faced similar ultimatums and have always found a way to reach common ground and avoid catastrophe. Resolution is within our reach once again but only if the Governor and the Legislature are serious about treating M.C employees as essential partners in running state government.

It is quite probable that some form of “mandated, broad, full and open” offering of a retirement incentive program could move as many as 4-6000 off the payroll. Such voluntary attrition obtained through broad employee participation makes budgetary sense in that it voluntarily removes senior state employees with higher salaries from the state payroll and helps curtail the threat of layoffs which would disproportionately affect younger state employees. Yet agencies can not be allowed to feign participation or to mute their participation as they have in the past. Agencies dipping below their critical fill level would be authorized to fill such critical positions with DOB approval, (using reassignment, retraining, rehiring of those affected by agency consolidations /reductions before open recruitment). WE have the fiscal controls.

Give the agencies a personal services target and let them manage. Let the people go who want to go and under the watchful eyes of DOB, let the agencies fill their critical operations by hiring or transferring in employees from other agencies. If managed properly an incentive could yield over \$300M in immediate savings and future decreasing savings as remaining employees’ progress through the salary schedule.

Let’s not forget that the issue of lagged pay or some concept of mandated work- year reductions will undoubtedly be revisited and can be devised so that new hires are not payless for months. Simply stated a day of lag or furlough will save approximately \$333. Per employee (\$66600 avg annual salary and fringe rate of 30% for fringes that must be paid) when applied to the applicable workforce a maximum savings of \$63M per day could be realized. Do the math and one can see how this could provide immediate savings if such days were banked for payment upon service separation or taken as days off without pay.

Let’s continue. Health insurance will be on the table. It always is. No NYS employee has free health insurance. Every participating employee pays a share. Employees’ representatives will push for cost containment and the State will cry out for cost shifting and the result will be a compromise yielding savings of approximately \$100M which we all share. I don’t know where health insurance will end up but look to other states that

have adopted “life-style surcharges” (smokers or those with elevated body mass index ratios above normal) as well as the implementation of wellness initiatives, all designed to decrease costs. We are very skeptical of those plans as well as those that have piloted the concept of using one’s adjusted gross income as part of the formula that determines what an employee or retiree pays. The legislature must give serious consideration to reducing the estimated \$500M reserve kept by NYSHIP. A more prudent reserve of \$250M could free needed funds for stabilizing costs and benefits for all participating employers, employees, retirees and yes, the taxpayers.

Last year legislation was passed in an eleventh hour budget extender to require employees and retirees to pay a portion of the Medicare Part B premium—10% for individual and 25% for dependent coverage. Manipulations of life expectancy tables and new concepts for cost shifting will be threatened. Change must be a product of discussion and deliberation with all stakeholders and not made as part of any budget extender. Many employees and retirees simply cannot afford any increased cost.

I would be remiss if I did not address the “Pipeline Problem”. Relax I’m not going to be addressing any fossil fuel supply issues but I am addressing the age compression problem in the M/C portion of the workforce. The bulk of the State’s managers are centered in the M1, M2 and M3 graded titles. The 2010 State Workforce Management Report issued by the Civil Service Department clearly states that at current levels these levels of management are about equivalent in age and years of service and could be expected to retire at about the same time. Staff in lower level titles represented by PEF constitutes the pipeline to fill these vacated managerial positions. But why would any sane person take a promotion where increased responsibility and workload are met with a pay scale averaging \$7500 less than you were already earning and quite often making less than those you supervise. It’s just stupid to think that anyone in this economy would put their family’s fiscal well being at risk to take an M/C job.

Those nice titles and the chevrons on the sleeves don’t translate into people wanting or taking promotions. It’s about the pay and this state continues to denigrate and devalue those that it would entrust to run the State’s assets and programs.

Succession planning in this state is a cruel joke perpetrated by administration after administration that refuses to accept the fact that when these folks are gone they are gone and nothing has been done to share that institutional knowledge or to prepare for their succession. The loss of knowledge this represents has immediate and long-term impact on agency operations as inexperienced workers if somehow enticed to replace experienced managerial employees try to cope with the demands and pressures of keeping this State’s services, facilities and responsibilities functioning. So M/Cs are requesting demotion/assignment to PEF and/or CSEA represented positions to earn higher salaries; PEF and CSEA represented employees continue to refuse promotions/assignment to M/C positions (confirmed in confidential conversations with

agency heads); critical M/C vacancies are not approved for filling; agencies such as OPWDD and OMH and Health facilities and hospitals face possible loss of accreditation—which translates into reduced funding. The state’s classification and compensation system has been so skewed that it has become a sham and will take a major comprehensive overhaul to make it once again viable.

Truly this should be a time of discussion and negotiations. Most employee organizations will be working on attaining successor agreements with the State. The fears of abrogating a current contract or pay bill are quieted. This is not last year’s rodeo.

When one talks about rightsizing government, it is not nor should it be a euphemism for layoffs. We need to stop using words that incite chaos rather than employing a well thought out plan for change which begins with identifying changing missions, the needs for specific staff, identifying where in the current workforce the people to fill those needs are, assigning or reassigning them, providing the needed orientation, training and support to do the job or new job. If there are employees who, unfortunately, may not be placed, the process for workforce reduction needs to use the broad spectrum of employment continuity options available, not just layoff. Layoff should not be the first action; it should be the last option used in any well designed reinvention of state services. Such reinvention needs a well designed timetable that recognizes the value of human resources and the services provided.

The Governor’s budget proposes a variety of agency mergers, consolidations and restructurings. Last year we testified that consolidation should be considered where it makes sense, so we recognize that savings and efficiencies can be accomplished this way. However, the devil is in the details and there are precious few details available. We are also concerned that the budget allows agency heads unfettered authority to decide what to do in an agency and to proceed with some program restructuring where the Commission/task force recommendations have not been accepted. Legislative input and oversight is woefully lacking in anything I’ve seen to date. We believe in checks and balances and transparency. We don’t see it in the proposals made to date.

Since savings can come from non-personnel as well as personnel costs, we should also look to non-personnel savings. We propose as possible revenue generators and savings—

- Increase inspections of sea and land transportation of petroleum products, the illicit transport of these un taxed products continues
- Increase inspections of over the road commercial vehicles for compliance with weight restrictions (to ensure safety, less road damage and possible revenue)
- Revise (through collective bargaining agreements) the ability for employee’s to accrue leave time while on workers compensation

- Establish Medicare Retiree Trust, enabling workers to set aside pre tax money to be used to offset retiree health insurance and out of pocket medical costs in retirement
- Allowing all OMH state Psych Center outpatient service centers to become participating providers with those companies contracted to provide Managed Medicaid Health Insurance services
- Renegotiate contracts and leases for goods, services and real estate
- Restrict leasing of products which are not allowed to be purchased
- Reduce contracting out and use of temporary service agencies
- Eliminate 300-500 exempt class political appointee patronage positions and do not appoint new patronage positions—to save \$30-50 million, which could fund the restoration of the withheld M/C salary increases, and would be consistent with the rightsizing government initiatives
- Ensure that M/Cs are treated fairly and equitably. This would require change in pay bill statutory language that allows the Budget Director to withhold salary increases. Withholding has only been applied to M/Cs although withholding authority also exists in union pay bills.
- Tie the Budget Director's ability to withhold any increase in compensation to some form of defined fiscal reality, for example, when actual revenue benchmarks are not met (actual revenues are less than 90% of projected revenues), then and only then should such actions by a budget director be permitted—and then only if it is applied across the board to the entire workforce.

We have three additional legislative proposals drafted to address this problem:

- Amending Civil Service Law to allow an individual M/C employee to seek financial redress through an expedited review and determination (180 days) for an Occupational Pay Differential (OPD) whenever the difference, in actual base salary, between those supervised and their M/C supervisor is greater than 10%.
- Amending the Retirement and Social Security Law to provide 2 years of retirement service credit for M/C employees for each year they were not paid their statutorily provided salary increases, performance advances, longevity and merit payments, so they are not doubly disadvantaged.
- Modifying the 2011-12 state budget to include sufficient funds to pay the M/C 2009-10 and 2010-11 salary increases, performance advances, longevity and merit payments and requiring through statutory language that they be paid.

As representatives of the M/C employees we understand full well the financial challenges facing the state and the importance of appropriately and effectively meeting those challenges. M/Cs have consistently expressed their willingness to share in fixing the State's financial problems but insist every employee be treated equally.

We have discussed these issues with legislators as well as representatives of several gubernatorial administrations.

You can't buy loyalty with just a paycheck. Building long-term commitment depends on four things: the nature of the work itself, the opportunity to grow, respect (i.e. **THE CHANCE TO SPEAK UP AND BE LISTENED TO**) and the feeling of making a difference. Our members want to do meaningful work that has redeeming social value without sacrificing the chance to have a life. Continuing the beatings is not going to improve anyone's morale. We need your support to ensure that the state's programs and agencies are run by competent, career management and confidential public servants and that they are fairly and adequately compensated. These are your constituents and taxpayers. They deserve your full support. They deserve nothing less!