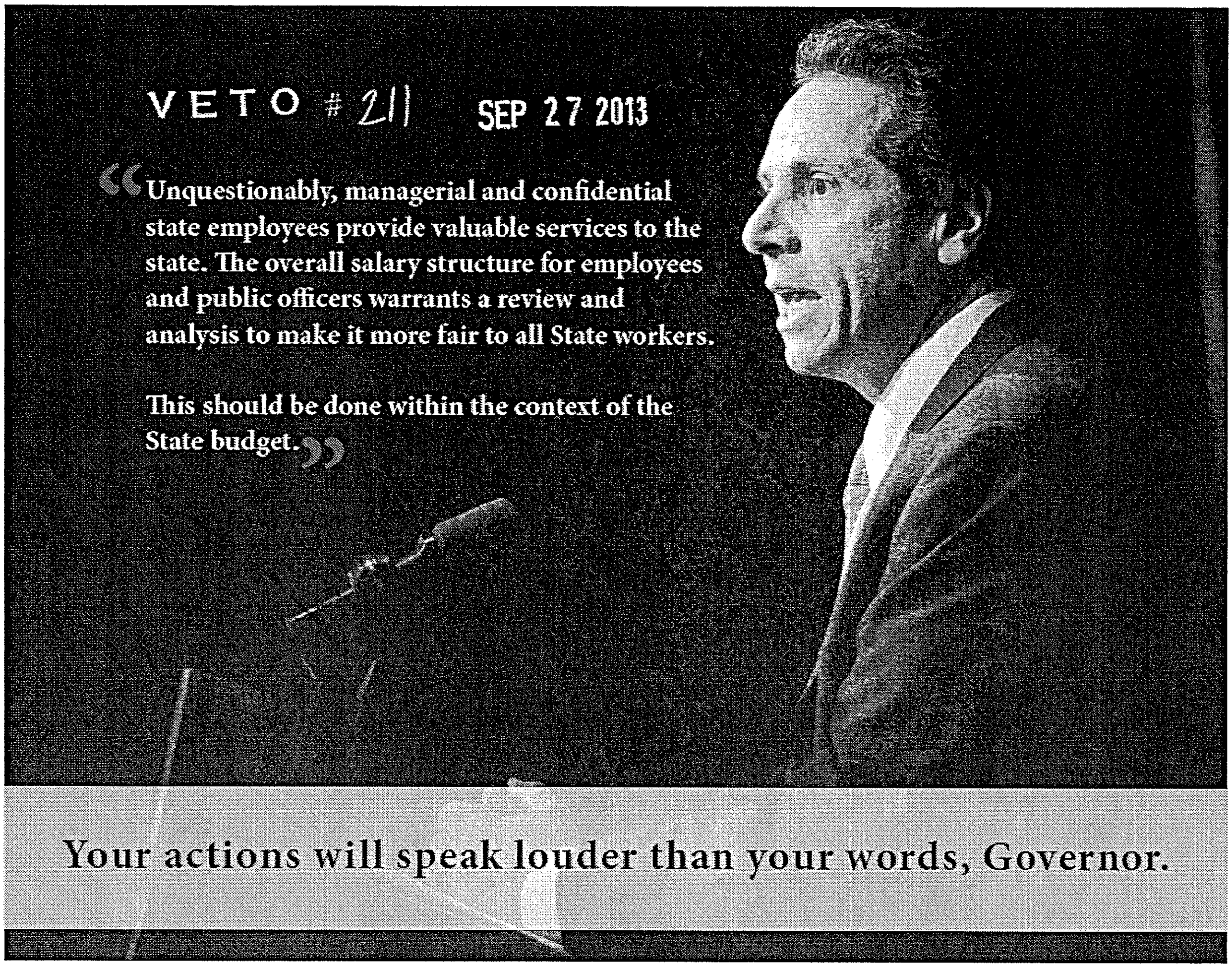
When the Legislature voted overwhelmingly to ensure that Management/Confidential employees – less than 6 percent of the State workforce – are treated fairly, Governor Cuomo vetoed the proposal.



OMCE Testimony
Joint Legislative Budget Hearing on the Workforce
February 11, 2014

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THE ORGANIZATION OF NYS
MANAGEMENT CONFIDENTIAL EMPLOYEES

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JOINT LEGISLATIVE BUDGET HEARING on the WORKFORCE

February 11, 2014

Remarks by Barbara Zaron, President and Joe Sano, Executive Director, OMCE

M/C Salary Fairness---The problem hasn't gone away, it still needs to be fixed!

Senator DeFrancisco, Assemblyman Farrell and members of the Committee, thank you so much for your leadership in shepherding the M/C Salary Commission bill to passage last year. As you know the Governor vetoed the bill and said in his veto message, "Unquestionably, managerial and confidential state employees provide valuable services to the state. The overall salary structure for employees and public officers warrants a review and analysis to make it more fair for all state workers. This should be done within the context of the state budget. Since taking office, this administration has implemented for various grades of management or confidential employees performance advances, longevity and merit payments and has planned for other increases in the near future. But given the state's traditional role, I am compelled to veto this bill." What the Governor fails to acknowledge is that these performance, longevity and merit payments are authorized in statute (Chapter 10, L2008 and Chapter 491, L2011) and not a gift from the Governor; that they have been paid late (April 2011 payments made in December 2011, April 2012 Payments were paid in May 2013, and April 2013 payments have not yet been paid or announced) and that Chapter 491 provides a 2% general salary increase and performance, longevity and merit payments effective April 1, 2014 for all M/C employees. To date, there is no indication from the Administration that the April 2014 payments will be made. At a labor briefing on January 21, Division of Budget staff told us the 2014 scheduled increases are in the budget but are not separately identified; they would give no indication whether these scheduled increases will actually be paid to M/C employees.

For the past five years we have worked to get the M/C employees salary debacle fixed, and appreciate the assistance and support of the legislature in these efforts. We especially appreciate the almost unanimous passage of the M/C Salary Commission bill last year. For these five years, Governor Paterson and Governor Cuomo told M/C employees there was no money to pay them the salary increases that had been statutorily set, despite salary increases being paid to the rest of the workforce. M/Cs comprise less than 6% of the workforce so that argument makes no sense. In any event, this year the Governor has talked about having a surplus and $2 billion dollars in tax cuts he is proposing. While we would all like our taxes reduced, the state has an outstanding, unpaid debt that is owed to M/C employees, and retirees since April 2009, which must be paid now.

As you know, OMCE is the labor organization that represents the interests of the state Management/Confidential (M/C) employees, who are described as "unrepresented" due to the 1972 amendment to the original Taylor Law to prohibit M/Cs from collective bargaining. OMCE is affiliated with the Office and Professional Employees International Union (OPEIU), Local 153, AFL-CIO.

Despite the Governor's statement that the M/C Salary issues should be addressed in the context of the budget we see nothing in the budget nor have we received any other indication that this inequitable treatment of M/Cs is being addressed in the 21 day or 30 day amendments. We need your help and that of all of your colleagues once again to resolve this disgraceful lack of fair treatment of M/C employees. Very simply, every dollar that was withheld from M/C employees' compensation since 2009 must be paid to each and every M/C employee and retiree who was affected by the withholdings. M/Cs must be recognized and recompensed for the critical role they play in ensuring state government fulfills its responsibilities to the people of the state. M/C employees are asking only for what they were statutorily promised in M/C Pay Bills and parity with other state employees.

For five years we've had to tell you that M/C employees have fallen further behind their colleagues in compensation. The M/C salary schedule has been trashed. This lack of pay equity has a serious, deleterious effect on ensuring a cadre of qualified, experienced, competent and dedicated managers to carry out the programmatic, financial, and services provision responsibilities of the state as well as providing supervision and support to the staff working with them and those they supervise. The conscious and deliberate downsizing of the career workforce; significant reorganizations and restructurings of agencies, functions and staff; lack of adequate resources, training and support for all employees; and an increasingly hostile work environment make the M/C s jobs increasingly difficult. To pay these career M/Cs less than the staff they supervise, or staff doing comparable work adds insult to injury. As a matter of fact, we hear almost every day from M/C employees about how nearly impossible it is for them to ensure that the work is done in a professional and cost effective manner because of all the constraints placed on them.

The result of the ongoing pay inequity includes significant difficulty in recruiting and retaining experienced, qualified management and other M/C staff. We all have heard the Governor talk about the difficulty in recruiting for commissioner and other high-level positions because the salaries are not competitive. Yet, he continues to hire high paid appointees, fellows, etc. while demeaning and diminishing the value of the career employees. We agree that M/C salaries are not competitive, but we are confounded by the Governor's lack of action to fix the problem. Actually, the situation continues to get worse--- the 2012 Performance advances that were due on April 1, 2012 were not paid until May 2013. The performance advances, longevity and merit payments due on April 1, 2013 have not yet been paid. Keep in mind that many of the affected M/Cs are in administrative support positions, e.g., secretaries, payroll and personnel clerks who

work with confidential information and who are in positions at grade 17 and below (only M/Cs in grades 17 and below are eligible for longevity payments). In many cases they are single moms and others struggling to keep their families afloat. There is a direct connection between downgrading the value of M/C employees and their salaries and the ability to attract people to take M/C positions and work for New York State.

The Governor has supported a new Womens' Equality Agenda which includes pay equity and other non-discrimination provisions. State employees already have a statutory requirement for pay equity, found in Çivil Service Law S115 which espouses the policy of the state as equal pay for equal work. M/Cs are certainly not receiving equal pay for equal work; how can this be allowed to continue? Where is the oversight to ensure that the laws are fairly and equitably enforced?

While it is clear that legislators understand the unfairness of not paying M/C employees, several examples of the salary disparities will illuminate the extent of the problem: An M/C Secretary II (grade 15) at Job Rate (top of the salary scale for 10 years or more) makes $53,366 while the comparable CSEA represented Secretary II at Job Rate makes $55,455, a difference of $2,089. The gap increases as one climbs the ladder of salary grades and responsibility. At the Grade 25/M1 level (e.g., Psychologists/Treatment Team Leaders) the M/C Team Leader, who directs the PEF represented team members' activities, earns $8,400 to $10,900 less than the PEF represented staff. Looked at in a different way, the Secretary who has been at Job Rate since 2008 has lost $16,800 in compensation, while the Treatment Team Leader also at Job Rate since 2008 has lost $26, 625 in compensation. The same Secretary II who was not at Job Rate and has not been paid the 3%, 4% and two steps has lost $28,236, and the Treatment Team Leader not at Job Rate who was not paid the 3%, 4%, and two steps has lost $45,532 in compensation. These examples and the charts attached to this testimony clearly delineate the depth of the problem and the severe financial harm that has been done to M/C employees for the past five years, which will continue for the rest of their lives unless salaries are corrected. Since pension benefits are calculated typically on the highest consecutive 36 months of salary, M/C s are doomed to have significantly reduced pension benefits based on the artificial downgrading of their salary. (See attachmenta). In addition, social security benefits, also calculated based on earnings, will be diminished.

To the Administration, it has become accepted practice that M/C managers are making less money than their subordinates and other M/C employees are making less money than their peers. This is being accomplished not through the statutory process of grade assignment by Civil Services' Classification and Compensation Division but through the withholding actions of the Division of the Budget. M/C Pay Bills include language permitting withholding, but there are no criteria; it can be done for any reason or no reason and the Courts have ruled it's ok because of the language. Note that the union pay bills also include withholding language, but it has never been used. This withholding provision must be removed from all M/C Pay Bills.

A "green ceiling" which is the artificial salary limitation placed on M/C positions by the Division of the Budget has been created. This ceiling stifles recruitment, hiring and retention for M/C positions and certainly does nothing to promote diversity of the workforce since a promotion to an M/C position ultimately results in a cut in pay.

M/Cs lost more than any other unit of employees. M/Cs have had five "0" salary increases, rather than the three "0" increases the unions representing other units agreed to. M/Cs had the Deficit Reduction Program and the health insurance premium increases imposed on them. M/C performance advances (steps) for all eligible M/Cs, and longevity pay for Grade17 and below M/Cs, were unpaid in 2009 and are still unpaid for FY 2013-2014 although the latter should have been paid April 1, 2013. In addition, M/Cs were scheduled to receive a $775 retention payment effective April 1, 2013 and a $225 retention payment April 1, 2014. Division of Budget staff tell us this was a " mistake" even though it is a statutory provision included in the M/C Pay Bill, Chapter 491 L.2011. The financial and economic impact of this reduced compensation extends beyond the individual and the family to the local community and the state. This public policy issue can no longer be ignored; it needs to be addressed now and we need your assistance and support in this effort.

The practical result of underpaying M/C employees is that M/Cs are retiring, leaving their positions to retreat to PEF and CSEA represented positions they once held to be paid the higher salaries that M/Cs are denied. Replacements for these M/Cs are often "acting" so they can assume the duties and responsibilities of the M/C position but keep their higher salary PEF or CSEA represented position. Essentially these employees are doing out of title work. The underpayment of M/C positions combined with the significant reduction in the number of M/C positions, especially in the competitive class, reduces promotional opportunities for career public service employees who are the backbone of state government. This is lousy public policy and mocks and circumvents Civil Service Law.

The Governor's Executive Budget does not address this M/C pay inequity issue. We note that M/Cs in other jurisdictions who had their salary increases withheld subsequently had them restored, most notably former NYC Mayor Bloomberg restored withheld salary increases to

M/Cs in 2009 and Massachusetts Governor Deval Patrick did the same in 2011. Last year the NYS Office of Court Administration restored to its M/C employees salary increases that had been withheld. And some local governments planned to increase M/C salaries in a manner comparable to salaries for their union-represented employees. Again, last year the Thruway Authority said it would not include M/C employees in its proposed layoff plan because they had not gotten a salary increase in four years.

What a crazy way to run a government. Give M/Cs more and more work and responsibility with fewer resources and pay them less than the people they work with and supervise. Does this remind anyone of the book Animal Farm where "all animals are equal but some are more equal than others?"

In an effort to positively resolve this problem with the Administration, OMCE has proposed a variety of options for repayment of the withheld compensation and is prepared to continue to pursue positive resolution of this issue until it is accomplished. But, the time is NOW!! We cannot wait any longer and as the Governor said when he vetoed the M/C Salary Commission bill "it should be done in the context of the budget." Help us to get it done in this budget. The most effective and expeditious way to accomplish this is through a legislative add to the budget to provide restoration of the 2009 and 2010 M/C salary withholdings, and to ensure the payment of the 2014 scheduled 2% general salary increase provided through Chapter 491 L.2011. This would increase the M/C salary schedule by 9.12% which includes the 3% from 2009, 4% from 2010 and 2% due to be paid April 1, 2014. This restoration coupled with payment of the outstanding performance advances, longevity and merit payments would bring M/C employees up to the salary levels that they would have achieved had these increases been paid when they were due in 2009, 2010 and in April 2014. During this period of time the state has saved approximately $500,000,000 from withholding the M/C increases. Since the withholdings were done in 2009 and 2010 ostensibly because of large state deficits it is only fair that these withheld monies be restored in this year when a surplus is anticipated by the end of this fiscal year, and surpluses are projected for the following several years. During these past five years we have developed a variety of proposals to provide for restoring the withheld salary increases. Last year a bill to recalculate pensions as if the increases were paid was introduced. This year we are proposing a bill to provide additional service credit (up to 24 months) and a succession planning/phased retirement bill which are currently on hold pending action on the Legislative Add and M/C Salary Commission bills.

We also believe very strongly that even if this salary issue is resolved through the budget process there is a need for the M/C Salary Commission bill sponsored by Assemblyman Farrell and Senator De Francisco last year (A246/S2953) to be re-passed and enacted. And we have had discussions with Senator DeFrancisco and Assemblyman Farrell to do just that this year.

The classification and compensation system is so completely broken with regard to M/C compensation that an objective, non-partisan, neutral commission is necessary to look at it and propose fair, equitable and far-reaching change in the M/C compensation schedules. Passage of these bills (legislative add to restore withheld salaries and Salary Commission bill) is essential and we ask your early action on them.

Elimination of Reimbursement for Supplemental Medicare Part B for Higher Income State Retirees

The Governor's proposed budget would amend Section 167-1 of the Civil Service Law to eliminate reimbursement of additional monthly federal Medicare Part B premiums, also known as Income Related Medicare Adjustment Amount (IRMAA).

To minimize the cost of retiree health benefit plans, the State requires all retirees participating in the NYS Health Insurance Plan (NYSHIP) to enroll in Medicare Part B upon reaching age 65. Requiring Medicare to be the primary health insurance provider has saved the State billions of dollars over the years. After enrolling in Medicare Part B, the federal government requires enrollees to pay a monthly premium, currently $104.90. State retirees pay this monthly premium to the federal government, typically as a Social Security check deduction, but are later reimbursed the full amount by the State as a credit in their monthly pension benefit.

In 2007, the federal government implemented an additional income related Part B premium requiring higher income enrollees to pay higher monthly premiums, known as IRMAA. The proposed budget would eliminate State reimbursement of IRMAA for single retirees earning more than $85,000 and married retirees who earn more than $170,000, thus imposing these additional premium payments on the retirees.

For current and retired State M/C employees who have suffered significant loss of income , both as a result of their salaries having been arbitrarily capped in April 2008 and their share of health insurance premium payments having been increased in January 2012, this additional assault on their already reduced anticipated compensation in retirement is unconscionable.

The proposed FY 2014-2015 budget projects a $1.7 million saving by eliminating reimbursement for the additional Medicare Part B premium paid by State retirees. You rejected this same proposal last year, we urge you to reject it this year.

Civil Service Workforce Issues

Although this year's Executive Budget had very little about the state workforce there are several issues related to administration of the civil service system and management of the workforce that are of particular concern to OMCE that we note here:

The `merit based civil service system' that is constitutionally required is under increasing attack particularly with regard to M/C positions. Many requests from agencies to Civil Service for placement of M/C positions in the exempt jurisdictional class are routinely approved by the CS Commission despite protests from OMCE and employee organizations and the recommendations of the professional staff at Civil Service that the exempt classification is not appropriate or justified.

As stated in the SAGE Commission final report, "The civil service system is constitutionally protected by the New York State Constitution and embodies important values such as the professionalism of the workforce and protection against cronyism and political patronage." As such the Department of Civil Service is charged with carrying out and ensuring compliance with the constitutional and statutory requirements for a civil service based on merit and fitness. Unfortunately the department is so under resourced and compliant with Executive requests that the constitutional requirements seem to take second place to political expediency.

Giving the Governor control of additional reorganization and restructuring of agencies through appropriation transfer and interchange language should not be permitted without specific detailed plans shared in advance with the legislature and all employee organizations for their input. Absolute, unfettered Executive control without any checks and balances is dangerous and not in the best interest of the people who depend on state agencies for services and fair and equitable treatment. Increased legislative oversight might be appropriate. The restoration of $90,000,000 cut from the OPWDD budget last year and the modifications during the past year to the OMH facility closing proposals included in last year's budget are good examples of the power of legislative oversight and action.

We need the right solutions to the problems or issues identified; training or retraining managers and staff, providing sufficient staff resources to really do the job. The right solutions will only be developed if the state seriously engages stakeholders, including OMCE, in developing and designing such programs.

We must not allow abandonment of the merit system. We need to embrace it, expand it, nurture it and celebrate it. As we integrate sound proven technology into the merit system as a means of keeping our human resource selection system vibrant, the Civil Service Department is a shell of what it once was. If we are going to be serious about staffing and workforce development so that the work of state government can actually be accomplished in an effective manner we need to start with a revitalized fully staffed and trained Civil Service Department that is empowered and allowed to function without political interference.

In his January 1988 Message to the Legislature, Governor Mario M. Cuomo said, "As an employer, the state must ensure that its agencies have an adequate supply of workers and managers with the proper skills to provide high quality services. A long-term comprehensive work force planning strategy is necessary for the effective recruitment, retention and deployment of our employees."

We agree with that sentiment. The experience has been disappointing. As the Fiscal Policy Institute points out in its NYS Economic and Fiscal Outlook 2014-2015 report, "The modest overall reduction in state government staffing reported in the 2014-2015 Executive Budget masks substantial cuts and dislocations and comes on the heels of a 30 percent reduction in staffing between the late 1980s and 2013." We need to reverse the downsizing and downgrading of the workforce and invest in a reinvigorated career civil service workforce that will provide high quality services to the public.

Effects of M/C Pay Withholding on M/Cs vs CSEA and PEF represented employees in comparable grades

The Organization of NYS Management/Confidential Employees, Inc. (OMCE)

(1) Grade	(2) MC 2009-10 (JR)	(3) - 3% W/H (Col 2-6)	(4) MC 2010-11 (JR)	(5) - 7% W/H (Col 4-6)	(6) MC 2008-09 (JR)	(7) 2010-11 (JR) CSEA	PEF	(8) *Difference** (Col 7-6)
6	34,211	996	35,579	2,364	33,215	34,317	34,317	***1,102***
9	39,939	1,163	41,537	2,761	38,776	40,136	40,136	***1,360***
11	44,496	1,296	46,276	3,076	43,200	44,762	44,762	***1,562***
15	54,967	1,601	57,166	3,800	53,366	55,455	55,455	***2,089***
18	61,289	1,785	63,741	4,237	59,504	65,190	65,190	***5,686 - 8,186****
19	64,475	1,878	67,054	4,457	62,597	68,637	68,637	***6,040 - 8,540****
20	67,709	1,972	70,417	4,680	65,737	72,076	72,076	***6,339 - 8,839****
21	71,206	2,074	74,054	4,922	69,132	75,862	75,862	***6,730 - 9,230****
22	74,948	2,183	77,946	5,181	72,765	79,819	79,819	***7,054 - 9,554****
23	79,778	2,324	82,969	5,515	77,454	83,954	83,954	***6,500 - 9,000****
25/M1	87,118	2,537	90,603	6,022	84,581	92,974	92,974	***8,393 - 10,893****
27/M2	96,617	2,814	100,482	6,679	93,803		100,822	***7,019 - 9,519****
29/M3	107,202	3,122	111,490	7,410	104,080		111,064	***6,984 - 9,484****
31/M4	118,410	3,449	123,146	8,185	114,961		122,354	***7,393 - 9,893****
33/M5	131,628	3,834	136,893	9,099	127,794		134,868	***7,074 - 9,574****
35/M6	145,090	4,226	150,894	10,030	140,864		148,421	***7,557 - 10,057****
37/M7	157,473	4,587	163,772	10,886	152,886		163,033	***10,147 - 12,647****

Note: A further disincentive for PEF/CSEA employees to take management positions in 2009-10 and 2010-11 was that, upon transfer or promotion to an M/C position, they would lose the 3% or 4% raise they gained on April 1 of that year in their PEF or CSEA position (OSC payroll bulletin 702).

*PEF and CSEA represented employees in all grades and M/C employees in grades 6 through 17, who are at the job rate of their grade 5+ years, get a $1,250 performance award (longevity payment), and those who are at the job rate of their grade 10+ years, get a $2,500 performance award (longevity payment). This exacerbates the salary discrepancy with M/C employees in grades 18 and above, since the latter do not receive longevity payments.