STATE OF MICHIGAN

CIVIL SERVICE COMMISSION

COORDINATED COMPENSATION PANEL

COORDINATED COMPENSATION PROPOSAL

FOR

FISCAL YEAR 2011

Recommendations for Nonexclusively Represented Employees of the State of Michigan Classified Service for the Fiscal Year Beginning October 1, 2010

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Summary of Proposal

THE PANEL PROPOSES that the Civil Service Commission approve the following recommendation pertaining to FY 2011:

- A 3% across-the-board general wage increase effective October 1, 2010.

THE PANEL PROPOSES that the Commission deny the following requests:

- Requests by ASEM and Allen Williams to reform the pay-for-performance program for Group 4 employees.
- The request by ASEM to increase the annual-leave-payout cap at separation.

THE PANEL PROPOSES that the Commission direct the State Personnel Director to:

- Undertake a comprehensive review of the pay-for-performance system and propose improvements to the current system.

THE PANEL PROPOSES that the Commission take no action on the following requests because they are outside the proper scope for this process:

- The request by MAGE to allow shift preference based on seniority.
- Requests by Allen Williams to discontinue frozen classification of positions and to credit as concessions the amount of pay increases unavailable to pay-for-performance classes because of recent freezes on performance pay.

Estimate of Known Costs of Proposal: $43,500,000

Introduction

Rule 1-15.4(c) states that the Employment Relations Board shall serve as the coordinated compensation panel. Rule 5-1.3 charges the panel as follows:

> *The coordinated compensation panel shall send a recommended coordinated compensation plan for all nonexclusively represented classified employees to the civil service commission. The panel shall consider negotiated collective bargaining agreements, any impasse panel recommendations, and any recommendations of the employer or employees.*

Regulation 6.06 establishes a process for participants and guidelines for the Panel in making its recommendations. Under the regulation, participants in the Coordinated Compensation Plan (CCP) process include the Office of the State Employer (OSE) and organizations granted limited-recognition rights under Rule 6-8.3. The following three limited-recognition organizations (LROs) participated in this year's CCP.

- Association of State Employees in Management (ASEM)
- Michigan Association of Governmental Employees (MAGE)
- Michigan State Police Command Officers Association (MSPCOA)

Nonexclusively represented employees (NEREs) who are not members of LROs may also participate upon leave granted by the Panel. Employee Allen Williams requested and was granted permission to participate in the CCP process.

The Panel held a hearing on February 5, 2010. All parties were allowed to make presentations and respond to proposals of other parties. Having reviewed the arguments and submissions of the parties, the Board offers the following summary and recommendation to the Commission:

Economic Overview

Consistent with Regulation 6.06, which calls for the Panel to consider "the current and forecasted financial condition of the State" in making its recommendations, the Panel received a briefing on fiscal year (FY) 2011 revenue forecasts and budget projections as part of the OSE's presentation. Testimony and documents were received from State Budget Director Robert Emerson and Chief Deputy Treasurer Mark Haas. The following is a brief summary of the information provided:

The already struggling economy in Michigan has been further weakened by the severe national recession of last year. While the national economy may have begun its turnaround, Michigan is still facing profound challenges due to the restructuring of an economy that was long dependent on a now-weakened automobile industry. The last few decades have seen Michigan tumble from one of the most prosperous states to one of the poorest. Decisions on tax rates and tax breaks have resulted in a structural deficit that should approach $1.7 billion in FY 2011 and exceed $2 billion in 2012. Since 2000, the general fund revenues of the State have dropped by 26%, while all other states have seen increases. While Michigan's real tax revenues have fallen, the amount of discretionary funds within the State's budget has also fallen to less than 25%. Employee wages consume a disproportionate share of the general fund budget, so the burden of any increase is amplified. The extended contraction of Michigan's economy has continued and will increase the demands for limited state tax revenues.

Proposals and Recommendations

I. General Wage Adjustment

The OSE recommends that there be no general wage increase for NEREs for FY 2011. Although a consensus agreement was previously entered with the LROs providing for a 3% general wage adjustment for all NEREs, the OSE believes that the dire budget situation should prevent such an award from being made. The State Budget Office has asked all state agencies to prepare 20% reduction plans for FY 2011; awarding a wage increase to NEREs would further aggravate pending budget shortfalls. The OSE believes that the significant worsening of economic circumstances justifies providing no pay increases.

The three LROs seek to have the consensus agreement previously entered with the OSE honored. The LROs have submitted motions asking the Panel to prevent the OSE from submitting a proposal or argument that varied from the terms of the consensus agreement. The consensus agreement had included a joint recommendation from the parties that "Effective October 1, 2010, employees will receive a three percent (3%) base rate increase." It also provided that "*The Parties further agree that, except as provided in this Consensus Agreement, they will not submit any proposals to the Employment Relations Board for Fiscal Years 2009, 2010, or 2011 without the mutual written agreement of all Parties.*" The LROs protest that they have not consented to the OSE's new position and the OSE's new position is thus unauthorized. At the impasse hearing, the Panel took these motions under advisement, but allowed the OSE to proceed with its presentation.[1]

The LROs argue that equitable considerations and the terms of the 2007 consensus agreement require that NEREs receive a 3% increase. ASEM points to the various other compensation concessions made by NEREs and asks that the terms of the consensus agreement be honored. MAGE notes that exclusively represented employees will receive a 3% increase, MAGE also notes that the consumer price index has increased 10% over the past three years, while even with the 3% increase NERE wages will only increase 4 percent over three years. MAGE describes a history of NERE wages slipping when compared to other Michigan workers, which recent leave and insurance concessions further intensified. MAGE

[1] The LROs have also filed unfair labor practice charges against the OSE over its actions during the CCP process. The OSE declined to answer some inquiries of the Panel due to concerns about the pending charges, which are still pending before Hearings, Employee Relations, and Mediation (HERM).

argues that this problem is even further exacerbated by worsening wage compression where represented employees have received better treatment than NEREs. MAGE also notes the shrinking classified workforce, which has resulted in fewer employees performing more work for continually worsening pay. The need for trust and equity were echoed by MAGE and ASEM in their oral presentations at the CCP hearing.

The MSPCOA petitioned to participate in the CCP hearing after learning that the OSE was to abandon its position in the consensus agreement. At hearing, the MSPCOA shared many arguments also made by MAGE and ASEM and emphasized the need to maintain integrity in the CCP process.

Recommendation

The economic presentation by the OSE paints a stark picture of the State's dire economic situation. The Panel accepts the OSE's contention that awarding a 3% raise to NEREs for FY 2011 would represent an additional burden to the State. Nevertheless, the Board finds that the balance of considerations calls for recommending such an award.

The OSE has entered a voluntary, three-year agreement with the LROs providing that it will support the 3% increase for FY 2011. The OSE is under no obligation to enter any such agreements under the meet-and-confer system of labor relations established by the Commission in its rules for NEREs, but it has. The signed agreement explicitly prevents the OSE from offering other proposals without the written consent of the LROs, who have given up rights to petition the Panel and Commission in previous CCP proceedings as a result of the agreement. Allowing this agreement to be overlooked would place the credibility of the CCP process at risk. While defenses could exist to excuse honoring the agreement, the Panel finds that no such defense has been convincingly demonstrated by the OSE. There was no fraud by the LROs in reaching the consensus agreement, no duress, no mistake, no reserved right to rescission or termination. It is assumed that the OSE is arguing a variety of impossibility of compliance, but the record from the hearing weakens such claims.

The LROs are labor organizations recognized under the civil service rules and regulations. The agreements entered between the OSE and LROs within the CCP process bind the parties in this forum, absent an adequate legal basis for them to be disregarded. The Panel, therefore grants the following relief pursuant to the motions filed by the LROs:

- The December 21, 2009 proposal of the OSE is disregarded as improperly filed in light of the OSE's obligations under the consensus agreement.
- The 3% increase for FY 2011 is treated as the consensus agreement between the OSE and LROs.
- The motions to limit the rights of OSE to present economic and budget data and responses to the LRO and employee proposals are denied.

While a consensus agreement may bind the parties, it does not bind the Civil Service Commission or this Panel. Consensus agreements are but one of many factors that the Panel is instructed to consider. Ultimately, the Panel finds itself weighing the severe budget constraints and the historic primacy of equity in CCP considerations.

One standard that the Panel is instructed to consider is compensation received by exclusively represented civil servants. When the OSE reached its consensus agreement with the LROs, it had just reached collective bargaining agreements providing for the same 3% raise for FY 2011 for represented employees. In recent months the OSE has reached agreements with four bargaining units that not only affirm the 3% raise for FY 2011, but extend the contracts at that higher rate for an additional year. The OSE indicated that in the midst of this unprecedented budget crisis it did not even ask these unions to consider revisiting the 3% raises in FY 2011 or their continuation in FY 2012. While the FY 2011 raise for those four contracts was already approved in a binding contract that the unions would understandably not want to reopen, the extensions were not. If it is impossible to give 15,000 NEREs the same 3% increase for FY 2011, the Panel cannot understand how it is possible to agree to pay those 13,000 represented employees at the higher rate for both FY 2011 and 2012.

In previous rounds of concession negotiations, commissioners and OSE directors have repeatedly stressed the importance of equitable treatment between NEREs and represented employees in compensation determinations.[2] A review of the history of this Panel's

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[2] See, e.g., CSC Minutes of 10/9/03, pp 5, 8 ("[OSE Director David] Fink added that the administration is committed to ensuring equitable participation of all employees at all levels in all departments, across all bargaining units, and to honoring the terms of the existing collective bargaining agreements." "Chairperson Susan Grimes Munsell commented that the Commission is concerned that the sharing of the burden of dealing with the deficit problem be spread equitably across employees, and will look closely at the contracts brought before the commission."); CSC Minutes of 5/2/07, pp 5, 8 ("[OSE

recommendations reveals that, with few exceptions, wage increases for NEREs have tracked those of the represented workforce. Here, the Panel finds that both equitable considerations and the consensus agreement call for the award of a 3% raise.

The Panel recognizes that this recommendation will further exacerbate budget pressures faced by the State. The projected $43.5 million cost for this NERE raise would force difficult choices, including the elimination of up to 500 positions, but granting represented employees the same 3% raise for the next two years will cost the state over $150 million. To only attempt to force this sacrifice from one group of state employees, aggravating longstanding wage diminution and compression problems, strikes this Panel as arbitrary and against the notion in Article 11, § 5 of the Michigan Constitution and prior CCP proceedings that reductions to wages should be handled equitably.

The Panel frankly believes that, given the economic crisis, raises for any classified employees are not justified. The drafters of the Constitution have provided a method for the equitable rescission of pay increases for civil servants by legislative action. The Panel does not envy the difficult budget decisions facing agencies in the coming year. If the burden from these increases is too great, the Panel trusts that the legislature can address that as constitutionally authorized.

THE PANEL RECOMMENDS that the Commission approve a 3% base wage increase for nonexclusively represented employees, effective October 1, 2010, consistent with the wage adjustments negotiated for exclusively represented employees.

Director Scott Bowen] further noted that the proposed rule is patterned after provisions for temporary layoffs found in collective bargaining agreements and it is the intent to be equitable to all state employees." "Chairperson Munsell ... ensured that the Commission takes seriously their role of equitable fair treatment of State of Michigan employees." "[Commissioner Lewand] stated it is a policy decision made by the policymakers in the legislature and Governor's office and if the policymakers make those difficult decisions, the Commission feels very strongly that employees be treated fairly across the board...."

II. Miscellaneous

A. Performance Pay System Reform

ASEM has requested reform of the pay-for-performance (PFP) program by returning to a step-increase system or allowing pay increases to resume. ASEM argues that over 650 employees have been frozen at below the fixed control point since 2007, while other employees have continued to receive step increases. As a result, the current PFP program is no longer a credible incentive system. ASEM protests that a review of this issue was supposed to have occurred with the OSE, but no action has been taken.

Employee Allen Williams offers possible solutions for the Panel's review. In addition to the two proposals offered by ASEM, Mr. Williams also suggests allowing employees to bank wage increases that they might have received but for the ongoing freeze of wage increases.

Recommendation

The Panel believes that the PFP system is no longer functioning effectively and has led to inequitable results. The positions in Group 4 provide essential leadership in directing important state programs. A system that forecloses managers from any pay increases for several years and that can frequently allow subordinates to receive significantly higher base salaries is both demoralizing and puzzling. The Panel feels, however, that there is an insufficient record to recommend any specific LRO proposal's adoption at this time. Partial or full reversion to step increases may be appropriate, but there are varied and complex issues such as pay protection and other tradeoffs that must be weighed.

Therefore, **THE PANEL RECOMMENDS** that the Commission deny the request of ASEM and Mr. Williams to amend the PFP program. The Panel, however, recommends that the Commission direct the State Personnel Director to undertake a comprehensive review of the PFP program and propose improvements to or reform of the current system to the Commission for further consideration.

B. **Annual Leave Payout Cap Increase**

ASEM requests that the cap for annual leave that may be paid out at separation be increased by 40 hours. ASEM argues that this will not accrue additional costs to the State and will increase productivity due to the presence of employees just prior to their retirement.

OSE Response

The OSE argues that the 2003 increase in the accumulation cap was done solely to prevent employees from losing annual leave and was never intended to impact the amount available for payoff at separation. The OSE disagrees that the program will have no additional cost implications. It argues that most employees will see this as an additional 40 hours of severance benefit. The OSE projects a cost of $900,000 for NEREs if extended and a cost of $2.2 million if it was extended to all employees.

Recommendation

The Panel is unsure of the actual fiscal implications of the ASEM proposal if adopted, but finds insufficient evidence of its need or demand at this time.

THE PANEL RECOMMENDS that the Commission deny the ASEM request to increase the annual leave cap.

C. **Seniority Based Shift Preference**

MAGE requests that Corrections Shift Supervisors (CSS) be allowed to use seniority to select shift assignments and also assignments within a given shift, where appropriate. MAGE argues that this would result in no additional cost to the State and would be a small step in addressing serious morale problems in the CSS class due to wage compression and other issues. Alternatively, MAGE suggests a two-year pilot be implemented to evaluate such a program.

OSE Response

The OSE opposes the proposed CSS seniority scheduling program and urges that the Panel take no action on the proposal. The OSE argues that the CCP process is limited by Rule 5-1.2 to compensation issues. Scheduling is not such an issue and is thus not properly before the Panel.

Recommendation

With regard to the Seniority Based Shift Preference request, the Panel does not believe this is an issue under its purview. It falls under the rights of the employer in accordance with Civil Service Rule 6-4.1. Therefore, **THE PANEL RECOMMENDS** that the Commission take no action on this request.

D. Additional Requests of Allen Williams

In addition to the PFP request discussed earlier, employee Allen Williams makes several additional requests. First, he asks that the frozen position concept be abolished, which would lead to savings since employees would be paid at lower classification pay rates. Second, he seeks recognition of foregone PFP base pay increases as concessions. Finally, he essentially requests the Board to conduct fact-finding on the process by which the most recent extension of the freeze on performance pay was reached.

OSE Response

The OSE argues that some of these requests are outside of the proper jurisdiction of the CCP.

Recommendation

With regard to the additional requests of Mr. Williams, the Panel does not believe these are issues under its purview. The frozen classification and position is a classification matter, under chapter four of the civil service rules and regulations. The Panel makes no additional tabulation or classification of concessions, so that request is moot. Finally, the Panel is not properly charged with conducting the sort of investigation requested by Mr. Williams of administrative matters; it exists to make recommendations as to compensation levels. Therefore, **THE PANEL RECOMMENDS** that the Commission take no action on these requests.