

TESTIMONY OF THE PROFESSIONAL STAFF CONGRESS/CUNY:

**JOINT SENATE FINANCE AND ASSEMBLY WAYS AND MEANS COMMITTEE
NYS EXECUTIVE BUDGET, FY 2009-2010: STATE WORKFORCE PROPOSALS**

*Delivered by Dr. Barbara Bowen, President, PSC
February 4, 2009*

Good afternoon, Chairpersons Kruger and Farrell, distinguished committee members, fellow unionists, colleagues and friends. Thank you for giving me the opportunity to testify today on our grave concerns about the Executive Budget State Workforce proposals. As president of the Professional Staff Congress/CUNY, I represent the 22,000 women and men who provide college education to more than 250,000 students a year. We speak in one voice in calling on you to reject the Executive's proposals.

The PSC strongly opposes the Executive Budget proposals for give-backs by State employees. As far as we are concerned, the proposals should not even be part of the budget discussion—and we call on you to take that position. The Executive Budget states that “Governor Paterson will seek to partner with the employee unions to help reduce salary costs”; unfortunately, what the governor has proposed is not a partnership. Proposals to take back collectively bargained salary increases, defer salary, reduce pension benefits and increase healthcare costs are an attack on the thousands of people who have dedicated their lives to public service in this state.

But the real danger of these proposals extends beyond the workforce you see represented here today. The workforce proposals in the Executive Budget are an attack on the millions of ordinary New Yorkers who depend on our professionalism, training and dedication for their healthcare, their safety and their education. Undermining the people who make New York a safe place to live, who protect public health and ensure an educated workforce will undermine all New Yorkers—especially during an economic downturn, when the demand for public services increases. The Executive proposals, if enacted, would be devastating to the workforce, but also devastating to the people we serve; it just does not make economic sense, especially during a recession, to harm the middle class and the public institutions on which they rely. The direction coming from Washington is explicitly to support the middle class and working people, recognizing how crucial that is to the country's economic recovery. The public employees we represent *are* the middle class; it makes no sense to weaken their living conditions.

The PSC is aware of the magnitude of the budget deficit for fiscal year 2010 and conscious of the pressure to close the gap. But the only reasonable way for New York to address the deficit is to address its source—a lack of revenue. The legislature can solve the problem and protect the people of this state by enacting progressive tax reform. New Yorkers from Buffalo to Montauk are looking to the legislature for leadership in this moment of economic crisis; you can assert that leadership by enacting progressive tax reform and generating the income to protect public institutions.

The Executive Budget workforce proposals treat public employees as a cost, not an investment. When a CUNY English professor learns that his student has just been accepted into a prestigious doctoral program in Wisconsin but cannot afford the airfare to get there—and then, as one of my colleagues did, drives the student to Wisconsin himself—that professor is part of the solution for New York State, not the problem. When a chemistry professor at CUNY devotes every weekend to setting up a lab to offer extra science experience to students of color or from low-wage communities—that professor is an asset for New York, not a cost. When a professor at another CUNY campus takes a student into her home when she learns that the student is homeless—that public employee is an investment for the State, not a cost. And when a staff member at CUNY runs a support groups for students of color seeking to become doctors, spending every evening, unpaid, coaching those young people in math and science—that public employee is protecting the future of New York State, not draining the public purse. These are not extraordinary stories at CUNY; these are typical. CUNY faculty and staff, like public employees throughout the state, are the solution, not the problem.

The economic argument against the Executive’s workforce proposals is strong, but the PSC also challenges the legal basis of several of the proposals, both as they relate to abrogating collective bargaining agreements and as they treat the CUNY senior college employees we represent as State employees. We stand together with our union colleagues in opposing the State workforce proposals in their entirety, but we also point out that the employees represented by the PSC are not State employees. Our collective bargaining agreement is with CUNY, not with the State. It is our position that the PSC should not be included at all in the discussion of wage freezes and salary deferral.

Abrogation of the Collective Bargaining Agreement

The Executive Budget calls for elimination of the scheduled 2009-10 salary increases, and the proposed Article VII language makes an attempt to address the complex application of the 2009-10 salary increase in the PSC contract. Leaving aside the incompleteness of this representation, the PSC is not interested in voluntarily reopening our contract negotiations to eliminate salary increases for next year.

The Executive Budget calls for partnership rather than unilateral abrogation of collective bargaining agreements, and we take the position that such an abrogation would be in violation of the law. It would not be permitted under the circumstances presented. The Contracts Clause of the U.S. Constitution, (Article I, Section 10), which provides that “[n]o state shall . . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts...” bars the State from abrogating public employee collective bargaining agreements.

The Taylor Law also contains a prohibition. Under the Taylor Law, once a paybill on which a collective bargaining agreement has been conditioned is approved, the legislature cannot subsequently revoke or modify that approval, or rescind authorization of payments required under the collective bargaining agreement. Any such post-hoc revocation or modification violates the law.

PSC-represented Employees are not State Employees

Employees represented by the PSC, however, are not appropriately included in the discussion of a give-back on negotiated salary and a pay lag because we are not employees of the State. We are employees of CUNY, which is, under the law, a separate and distinct corporate body.

When CUNY was reorganized in 1979, the legislature specifically recognized it in this way. The State Education Law Section 6203 creates “the separate and distinct body corporate designated as the board of higher education in the city of New York . . . known as the city university of New York,” designed to maintain CUNY as “an independent system of higher education governed by its own board of trustees” (Education Law Section 6201[2]).

Education Law Section 6208 provides that, “[f]or purposes of article fourteen of the civil service law, the city university of New York shall be deemed to be the public employer and as such shall negotiate and enter into written agreements with employee organizations representing the instructional staff and on instructional staff of the senior colleges and community colleges of such university.” Finally, Education Law Section 6207 provides that “the city university for the purposes of administering the state civil service law, shall be deemed to be a municipal employer.” This is a position that has been upheld by Courts.

The PSC’s collective bargaining agreement, consistent with the Education Law, and in particular with Education Law Section 6208, is with CUNY, not the State. In that, we are different from other unions referenced in the Executive’s proposal for the elimination of a negotiated salary increase and a deferral of negotiated pay. It is our position that the Executive’s proposals for these two concessions are inappropriately applied to the employees we represent, whether they are employed at a community college or a senior college.

Additional Workforce Proposals

The PSC also calls on the legislature to reject the proposals to create a lower pension tier, to rescind the pension equity legislation for optional retirement plan participants, and to increase retiree health premiums.

The 22,000 professors and academic staff I represent are hard-working public servants who have already made economic and professional sacrifices to work at CUNY. We are people who spent eight, nine, ten years in postgraduate education to earn the doctoral degrees that qualify us to teach. We have chosen jobs in a *public* university, not a private one—where salaries are usually higher and workload is lower—because we believe in CUNY’s public mission. We have already sacrificed for the public good; it’s time for the wealthiest New Yorkers to pay their share.

Pensions, as you know, are deferred salary; the employees I represent have agreed to decent pensions in lieu of the high salaries they could earn in the private sector. An appropriate pension creates exactly the kind of economic security we should ensure for the whole population. Instituting a lower pension tier now would have an immediate chilling effect on potential CUNY employees and would produce very little in immediate savings for the State.

The relief from the 3 percent employee contribution after ten years of service and the reduction of the minimum retirement age from 62 to 55 were critical changes, wisely enacted by the

legislature in order to increase the competitiveness of public employee positions. To undo these provisions now would be to turn our backs on the next generation of public servants, sending the message that they are not entitled to a secure retirement.

Such a message would be disaster for CUNY. From 1847 until now, what has distinguished CUNY is that it combined an elite faculty and staff with a truly democratic student body. That dynamite combination has produced a history of Nobel Prize winners, brilliant scholars and leaders. For generations, our faculty was filled with graduates of Berkeley, Harvard and Yale—scholars who could have taught anywhere. Instead, they chose to be part of what was called in 1847 “the experiment” of educating “the children of the people, the children of the whole people.” That is the history these proposals put at risk. You cannot continually erode the salaries and working conditions of the job and still expect to attract top-quality faculty and staff. During the last few years, supported by modest increases proposed by the legislature, CUNY has begun to be able to hire new full-time faculty after years of hiring droughts. Enacting the proposal for a Tier V pension would pull the rug out from under that recruiting. It would ensure that the best of the current generation of scholars no longer even considers a CUNY job.

That’s why the PSC also calls on you to reject any proposal to undo the pension equity legislation you passed two years ago, finally granting to participants in the optional retirement plans the same relief from the 3 percent contribution afforded to TRS and ERS participants in 2000. The vast majority of CUNY and SUNY faculty and staff are participants in the optional retirement plans, and the pension equity legislation has made a real difference in the competitiveness of CUNY and SUNY jobs. Just at the moment when the state most needs high-quality public universities, it would make no sense to decrease the competitiveness of our public university faculty positions.

For a similar reason, we call on you not to increase retirement healthcare costs. The State seeks to save the relatively modest amount of \$8 million next year by enacting a change that would have seriously detrimental effects on a vulnerable population.

On behalf of the faculty and staff of CUNY, and of the 250,000 students who rely on us for a college education, I call on you to reject the Executive Budget proposals to degrade the quality of CUNY jobs. No one wins—least of all, the people of New York State—when faculty and staff positions at the City University of New York become unattractive and non-competitive. I guarantee you that the immediate effect of enacting the Executive Budget workforce proposals would be a mass exodus of faculty and staff from CUNY. Young scholars are already leaving because of the huge class sizes and poor research support; they would leave in droves if these provisions were enacted. That would be an intolerable outcome for the state at a time when enrollment in CUNY is soaring.

Fortunately, there is a better way—enact progressive, far-sighted tax reform to generate the revenue New York needs. As a faculty member and public servant myself—and as a New Yorker—I call on you to recognize that public servants are not the problem; we are the solution. Invest in public employees and the institutions we sustain; protect the real future of New York.