

The Enforcer

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The Jeff Satz Civil Service Enforcement Quarterly Newsletter
Volume 1, Number 1 – Spring 2002

PEF VP & Committee Chair
Joe Fox

Introduction

Civil Service law, rules, and regulations can be quite complicated. Sometimes it is difficult to know whether a civil service violation has occurred, or what the proper remedy might be. The purpose of this newsletter is to bring you regular updates on civil service issues, and to educate you about some of the often-misunderstood aspects of civil service enforcement. We welcome your comments and suggestions for future issues.

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ASK THE ENFORCER

Ask the Enforcer will be a regular column in *The Enforcer*. Readers can submit general questions about civil service issues to the address in the box at right. For this issue, we have chosen a question that the PEF Civil Service Enforcement/Research Department encounters regularly.

Question: *What is the difference between a reclassification and a reallocation?*

Answer: A **reclassification** is a change in title that takes place when the former job title is no longer appropriate for the duties of a particular position. Generally, the Department of Civil Service Division of Classification & Compensation (C&C) **reclassifies** a position when there has been a significant change in the position's duties and responsibilities. A reclassification may or may not entail an accompanying change in salary grade.

It should be noted that when positions are upgraded via **reclassification**, the incumbents must be appointed to the "new" positions via an eligible list, transfer, or other appointment mechanism. They may be required to serve a probationary period. In addition, the employees will lose their longevity payments and will not be eligible again until the March 31st after they have been at the job rate of the new salary grade for at least five years.

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For general questions, comments, or suggestions, please e-mail EnforcerNews@pef.org, or write to: The Enforcer, c/o PEF Civil Service Enforcement Dept., P.O. Box 12414, Albany, New York 12212-2414. Questions specific to individuals or particular situations should be referred to the appropriate PEF Field Representative or Executive Board member.

The information contained in this newsletter represents general civil service guidelines; readers should be aware that some exceptions to these guidelines may exist.

Special Feature: The Jeff Satz Statewide Civil Service Committee Priority Issues for 2002

The PEF Statewide Civil Service Committee, with PEF Vice President Joe Fox as Chair, is comprised of the following PEF members: George Buldrini (DOH), John Clark (DOT), Casimir Czarkowski (DEC), Jeff Janiszewski (DED), Ron Manuli (DOCS), and Bill Wurster (DEC). The Committee has identified the following four issues as the top priorities for this year.

Shadow Agencies



Proposed legislation that would increase public oversight and accountability of certain public authorities and public benefit corporations that overlap in function with state agencies and often compete for work with

state employees. A key component of the bill would require that new employees of these agencies be hired through the civil service process.

Transfers in the Face of Eligible Lists



Proposed legislation that would amend Civil Service Law so that transfers pursuant to §70.1 and §52.6 that result in increased salary grades would be prohibited in the face of a valid civil service eligible list.

Reassignments



Proposed legislation that would amend Civil Service Law to provide safeguards in reassignments of employees to locations other than their normal worksite.

Performance Assessment Tests



Continue to review the state's use of performance assessment tests in order to identify flaws in the testing procedures as well as best practices.

Ask the Enforcer (continued from page 1)

A **reallocation** is a change in salary grade that takes place when the former salary grade is no longer appropriate for the duties and responsibilities of the position in question. C&C generally **reallocates** a civil service title when the *level* of job duties has become either significantly more or significantly less complex.

When a title is upgraded via **reallocation**, every position in the title is affected. These employees do not lose *eligibility* for longevity

payments, but it should be noted that if the promotion salary (which is calculated by a percentage formula) is lower than the job rate of the new salary grade, an employee who was receiving longevity payments may become temporarily ineligible. However, they will be eligible again on the March 31st after they reach the job rate – the five-year clock does not start over. In many cases, there is no interruption in the longevity payments, particularly when the upgrade is only one or two salary grades.



CIVIL SERVICE ALERT !

What does the State's current hard hiring freeze mean to you?

Executive Order No. 1

In October 2001, in response to anticipated budget deficits caused by a downturn in the economy, tax cuts, and the aftermath of 9/11, the Governor announced a statewide hard hiring freeze. Regrettably, most veteran state employees are well versed in the implications of hiring freezes. However, since many agencies already suffer chronic short-staffing, a situation sure to be exacerbated by the hard hiring freeze and the possibility of early retirement incentives, now is a good time to review what a hiring freeze is and how it affects NYS employees.

The current hiring freeze essentially prohibits the filling of any position through promotion, transfer or new hire *unless* specifically authorized by the Division of the Budget. In addition, reallocation and reclassification actions that result in upgrades are also prohibited.

Naturally, there will be limited exceptions to the freeze. Currently, reallocations, reclassifications, waivers, or exemptions will only be approved when it has been demonstrated that the action **is essential and directly related to protecting public health or public safety, or ensuring the generation of State revenue**. Exceptions for positions funded by federal monies may also be possible.

When requesting waivers or upward reclassifications/reallocations, agencies must also demonstrate that the personnel need cannot otherwise be accommodated through the reassignment or redeployment of existing staff. In fact, whenever possible, agencies have been instructed to fill positions in essential areas by reassigning existing, qualified employees from less critical assignments.

There are several other basic exemptions to the hiring freeze. The two most notable ex-

ceptions are for a position that is filled via transfer to lateral or lower-level positions within the same appointing authority, unless such appointments are from non-general fund to general fund items, and for a change in the status of incumbents from non-permanent to permanent, such as list appointments of provisional or temporary incumbents.

The effects of this hard hiring freeze on NYS employees are essentially three-fold. First, promotions may become more limited and more difficult to obtain. Second, the short-staffing at agencies may be exacerbated, particularly if the freeze is combined with a retirement incentive. Third, there may be an increase in the assignment of out-of-title work.

The potential for out-of-title work assignments makes it especially important for employees to be cognizant of their title's duties and responsibilities. A simple rule of thumb is this: If "Acting" appears before your in-house title, you have not just joined the Screen Actors Guild, but are in fact working out-of-title. Other out-of-title assignments may not be so obvious, but if you are now performing the functions of your recently departed supervisor, you may wish to file an out-of-title grievance. A successful grievance will allow for payment at the higher rate and will help document the essential need to fill the vacant position.

Test Your Civil Service IQ

True / False 1. A person who has taken the Promotion Test Battery (PTB) must still apply separately for all promotion exams for specific titles that use the PTB.

True / False 2. The State cannot make a provisional appointment unless there are no names remaining on the eligible list.

True / False 3. An eligible list can be replaced with a new eligible list after one year.

Answers on page 4

Civil Service Updates

Judge Tells Roswell to Keep Titles Competitive

Roswell Park Cancer Institute's unprecedented assault on the merit and fitness system has met with failure. Roswell Park, formerly part of the NYS Health Department, became a public-benefit corporation pursuant to legislation in 1997. This legislation allowed Roswell Park to create its own civil service system and Merit Board similar to the NYS Civil Service Commission. Roswell Park took its new-found freedom and attempted to undermine the principles of merit and fitness by reclassifying many competitive titles as non-competitive. PEF's challenge to this change in jurisdictional classification was successful when an Erie County Supreme Court judge found that seven of the titles, including most nursing titles, were misclassified and three were returned to the Roswell Park Merit Board for another review. While Roswell Park is appealing the decision, PEF's efforts have helped preserve the merit and fitness system for employees of Roswell Park.

Zone-Scoring Challenge Continues

PEF's fight against zone-scoring is not over despite losing round one in the New York State Supreme Court; the PEF Legal Department has recently appealed this decision to the Appellate Division 3rd Department. Oral arguments will be presented to the Appellate Division on multiple dates in late May and early June.

CSC Deliberates on Candidate's Right to Appeal Score

The Director of PEF's Civil Service Enforcement Department, Tom Cetrino, recently presented formal oral arguments before the Civil Service Commission on a member's right to appeal his final exam score even though he was immediately reachable. The member had been told that he could not appeal his exam score because, while it was not a perfect score,

he was immediately reachable for appointment and a successful appeal would not change his standing on the eligible list. PEF argued that Civil Service Law allows for exam appeals when there is a manifest material error, which there appeared to be in this case. Moreover, PEF argued that if the member was successful in raising his score, it may enhance his chances for promotion. Finally, PEF pointed out that the State could not guarantee that *other* candidates would not successfully appeal their scores, in which case this member would not necessarily remain immediately reachable. The CSC has not yet rendered a decision on this issue.

Test Your CS IQ – Answers

1. **True.** Even though candidates receive scores for the Promotion Test Battery, the PTB *never actually generates an eligible list*. Instead, exams for specific titles include the PTB as a test component. Sometimes the PTB is the *only* component, but even in those cases, the candidate *must* apply for the promotion exam specific to the title.
2. **False.** The State can make provisional appointments when there is no mandatory eligible list for the specific geographic area. An eligible list is no longer mandatory when there are fewer than three willing acceptors remaining on the list. In other words, as soon the list gets down to two people, it is no longer mandatory. The State *can* permanently appoint the two remaining candidates from the eligible list, but is not required to do so.
3. **True.** Typically, an eligible list has an expiration date four years from the date the list was established. However, an eligible list can be replaced with a new list any time after one year has passed. In addition, the Department of Civil Service (DCS) sometimes exercises its discretion to extend eligible lists beyond the original four years when a hiring freeze has resulted in very few appointments being made from the list.