



# The Enforcer

**A PEF Newsletter Devoted to Civil Service Issues**

The Jeff Satz Civil Service Enforcement Quarterly Newsletter

Volume 1, Number 2 – Summer 2002



## **CIVIL SERVICE ALERT !**

### **PEF FIGHTS & WINS: Canvassing violations and negative interviewing**

#### **Canvassing Violations**

In the Office of Children & Family Services (OCFS), a downstate candidate was called on a Friday and told to report to an interview in Buffalo the following Monday. However, the individual had jury duty and could not attend an interview on that date. The agency concluded that the individual was “not available” for the *position* (as opposed to an interview on a specific date), and consequently appointed a candidate who had already been serving provisionally but who may not have otherwise been reachable on the eligible list.

Also in OCFS, PEF members on a different eligible list received letters stating that the agency could not reach them by telephone, and that they had to respond within five business days to the letter or they would not be considered for a particular position in New York City. These candidates did not have messages on their voice mail or answering machines, so it is not clear that the agency made a reasonable attempt to reach them by telephone. More importantly, Civil Service Rule §4.1(b) states that a candidate who does not respond within ten business days after the mailing of a canvass or offer may be considered ineligible for that particular appointment.

At the State Education Department (SED), agency personnel called a candidate and told her not to report for an interview because the agency was unable to fill the position. A few

days later, the candidate received a letter “confirming” that she had declined interest in the job – even though she was not actually asked, nor did she state that she was unavailable.

In response to these allegations, the PEF Research Department requested that the Department of Civil Service (DCS) investigate immediately. PEF pointed out that these incidents may be related to the hard hiring freeze, because it is easier for agencies to convert a provisional employee to permanent status than it is to get a budget waiver to promote an employee to a higher grade. Therefore, agencies are attempting to “reach” provisional appointees – even if it means interpreting canvass results rather creatively.

After investigating, DCS informed PEF that it would require OCFS to re-canvass for at least one position in NYC and one position in Buffalo. The individuals originally appointed will remain in their positions while the re-canvassing takes place; if they are found not to be reachable, their appointments will be revoked. While this would be unfortunate for these individuals, who are not at fault, such action is necessary to preserve the

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**Civil Service Alert... Canvassing Violations**

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principles of merit and fitness provided under Civil Service Law. OCFS is reportedly appealing DCS's decision regarding the NYC position; we will keep you informed as to the outcome of this situation.

DCS is still investigating the alleged incidents within SED. In the meantime, members who suspect they may have experienced a canvassing violation should contact their PEF Field Representative or Executive Board Member immediately. The Research Department will continue to monitor suspected violations and attempt to demonstrate to DCS that a pattern of violations has emerged.

**Negative Interviewing**

Negative interviewing occurs when management "encourages" or pressures eligible candidates to decline a position. For instance, an agency may say that it has someone specific in mind for the current position, and if the candidate cooperates by declaring him or herself temporarily unavailable, the agency will "reward" him or her with the next available promotion. Naturally, when the agency fails to do so, the candidate has no recourse.

Recently, the Research Department became aware that SED was engaging in a questionable

interviewing practice in addition to the alleged canvassing violations. SED management told candidates for a position that the budget waiver could only be used for the individual serving provisionally, and that SED did not have budget approval to promote any other candidates on the list. Therefore, SED gave the candidates the "opportunity" to declare themselves temporarily unavailable. SED said that if the provisional appointee remained unreachable, the position would not be filled, worsening already severe understaffing conditions.

The Research Department sent an objection letter to DCS. While an agency does need budget approval to promote eligible list candidates, and does not need approval to convert a provisional candidate to permanent status, PEF's position is that individuals should merely be asked whether or not they are interested in a job. When an

agency hints or outright states that it wants an employee to decline, the employee may feel intimidated into doing so. Furthermore, it is not the employee's responsibility to decline a promotion out of sympathy for an agency's staffing concerns, particularly since employees are not responsible for the State's current fiscal situation.

DCS responded by stating that it had instructed SED to cease the practice of "giving candidates the opportunity" to decline. PEF has since requested that DCS investigate additional allegations of negative interviewing in the Dept. of Health and Office of Mental Health.

**Vigilance is the Key**

When faced with clear evidence, DCS has no choice but to take action to correct instances of canvassing violations and negative interviewing. Therefore, PEF members should be vigilant in watching for such violations, and should immediately bring them to the attention of their PEF Field Representative or Executive Board Member. It is also important to keep good documentation, with names, dates, and other pertinent information.

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For general questions, comments, or suggestions, please e-mail [EnforcerNews@pef.org](mailto: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 in this newsletter represents general civil service guidelines; readers should be aware that some exceptions to these guidelines may exist.

**PRIORITY ISSUE UPDATE:  
Reassignments**



PEF's proposed legislation that would provide safeguards against certain reassignments has passed both the NYS Senate and Assembly. This legislation would require that reassignments to other than contiguous counties be made on the basis of seniority. However, the bill has not yet been sent to the Governor. Contact your regional PAC chair for status updates and possible action strategies.

**SEFA Designations**

It is again time to decide about making contributions to the State Employees Federated Appeal (SEFA). While there are many deserving agencies, some may provide services parallel to those provided by State organizations, resulting in the out-sourcing of State jobs. Thus, PEF's Job Security Committee would like to remind PEF members that it is important to make enlightened and informed SEFA designations. Before making a designation, please take the time to think about whether or not the recipient is also the competition.

**New Committee  
Members**

Vice President & Committee Chair Joe Fox welcomes three new members to the Jeff Satz Statewide Civil Service Committee: Nancy Becker (Tax & Finance), Edith Cooper (Labor), and Bernie Kahn (State Insurance Fund). These individuals join the current committee members: George Buldrini (Health), John Clark (Transportation), Casimir Czarkowski (Environmental Conservation), Jeff Janiszewski (Economic Development), Ron Manuli (Correctional Services), and Bill Wurster (Environmental Conservation).



**PRIORITY ISSUE UPDATE:  
Performance Assessment Exams**



In April 2002, the Department of Civil Service (DCS) sent a letter to candidates who had taken the Associate Attorney performance assessment exam for the Division of Housing & Community Renewal. The letter states that after *two years* spent trying to establish an eligible list from this performance assessment exam, DCS is "convinced it is time to end this effort and start anew." In other words, DCS recognized that the assessment process for this exam was so flawed as to be useless. PEF will use this as an example in our continuing efforts to convince the State that performance assessment exams are subjective, cumbersome, inefficient, and otherwise flawed.

**Test Your Civil Service IQ**



- ⚡ **True** / ⚡ **False** 1. Classification standards (official Civil Service duties descriptions) exist for every title in State service.
- ⚡ **True** / ⚡ **False** 2. The Department of Civil Service must ensure that exams do not favor those candidates who have specific work experience within a particular division or agency.
- ⚡ **Transfer** / ⚡ **Reassignment** 3. The Department of Corrections has moved an employee from an Inmate Records Coordinator 1 position in Albany to an Inmate Records Coordinator 1 position in Buffalo. Is this a transfer or a reassignment?

*Answers on page 4*



## Exam Tips...

The Department of Civil Service website has a Promotion Test Battery Guide which members may find useful in preparing for the exam. The guide, which is the same as last year's guide, can be found at: <http://www.cs.state.ny.us/announ/mainpages/testguides.htm>. Individuals without Internet access should call their Personnel office for a copy of the guide.

### Update: CSC Rules in PEF's Favor on Candidate's Right to Appeal Score

In the last issue, we reported that Tom Cetrino, Director of PEF's Civil Service Enforcement/Research Dept., presented an oral argument before the Civil Service Commission (CSC) on a member's right to appeal his final exam score even though he was immediately reachable. On May 6, 2002, PEF was informed that the CSC had ruled in PEF's favor, upholding the member's right to appeal his score.

### Update: CSC Refuses to Hear Appeal on Pre-list Review of the PTB

The Civil Service Commission (CSC) recently informed PEF that it would not entertain our appeal regarding Civil Service's decision not to allow a pre-list review of any part of the Promotion Test Battery (PTB). The CSC stated that matters that have been subject to its "prior approval" process are not appealable. The PEF Legal Department is now reviewing this matter for possible Article 78 litigation.



Visit *The Enforcer* on the Web at <http://www.pef.org>. Click on: "PEF Departments", "Civil Service Enforcement", and "The Enforcer." Both current and back issues will be available. Spread the word!

## Test Your CS IQ – Answers



1. **False.** Although the Division of Classification & Compensation has been mandated to provide classification standards for all classified job titles, currently standards exist for only 30% of the State's approximate 5,000 classified job titles. PEF has noticed an increase in the number of standards issued in the past two years PEF's Research Dept. receives copies of *tentative* standards as they are issued, and forwards them to the PEF Executive Board so that affected PEF members can submit their comments or concerns before the standards are finalized.
2. **False.** The State has no such obligation to "level the playing field." The purpose of a civil service exam is to identify the most qualified candidate(s) for a job. In some cases, the most qualified candidates may be those who have familiarity with a particular program, and the exam questions may reflect this need. Employees already working in that program are likely to have an advantage. While frustrating, this is not discrimination as defined by the Equal Employment Opportunity Commission.
3. This is a **reassignment** because neither the title nor the appointing authority has changed. A **transfer**, which is voluntary, involves a change in title or appointing authority. However, many agencies (such as DOCS) have a single statewide appointing authority, which means that employees can be reassigned all over the State. Only a few agencies, such as OMH and OMRDD, have multiple appointing authorities, which offers employees some protection since reassignments only happen *within* an appointing authority.