



# The Enforcer

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

The Jeff Satz Civil Service Enforcement Quarterly Newsletter

Volume 2, Number 1 – Spring 2003

## **OPPORTUNITY KNOCKS !?!**

**OR: How to Get All the Benefits of a Promotion (Except the Salary and the Title)**



All State employees know that the State's fiscal condition has led to the Early Retirement Incentive (ERI) and the continuation of the hard hiring freeze.

They also know that as a result, there are not enough State employees to perform the necessary work. Essentially, agencies have a fixed number of positions from which they can subtract but to which they cannot add. Unfortunately, because budget waivers are so difficult to obtain, many agencies find it easier to contract out for services or resort to other "novel" approaches to filling the necessary vacancies.

The Dept. of Transportation, for instance, has posted several bulletins seeking applicants for vacant positions. The postings plainly state that these postings are "NOT A PROMOTIONAL OPPORTUNITY" since appointments will be made via reassignment. Reassignments are defined by Civil Service Rules as "... the change, without further examination, of a permanent employee from one position to a position in the same title under the jurisdiction of the same appointing authority."

On the surface, the postings appear to be a good thing, because DOT appears to be seek-

candidates who are interested in a particular assignment, rather than just reassigning someone to perform the duties. The problem, however, is that several of the bulletins indicate that both the Civil Engineer 3 (SG-27) **and** the Civil Engineer 2 (SG-24) titles are eligible. Since these are two distinct titles, they **cannot be eligible** for the same reassignments. Therefore, either the CE 2s or the CE 3s are candidates for a potential out-of-title work situation, depending on which is the truly appropriate title for the duties to be performed.

***PEF members should be aware that some reassignment opportunities may in fact be a solicitation to work out-of-title.***

Frequently, the use of "in-house" titles adds to the confusion surrounding reassignments and out-of-title grievances. In-house titles are not official Civil Service titles, but rather are more descriptive titles used by agencies. One DOT posting, for instance, was for an "Area Supervisor (Construction Group)" position. Since this is not a civil service title, the appropriate salary grade is not immediately clear.

For these reasons, PEF members should try to determine the official Civil Service title that *should* be performing the duties of the in-house title, and be aware that some reassignment opportunities may in fact be a solicitation to work out-of-title. In order to determine whether the assignment is appropriate, employees need to seek answers to the following questions:

- Is the reassignment appropriate for my official civil service title?
- Have the duties historically been performed by a higher level title?
- Did the former incumbent performing these duties take advantage of the ERI? What was his/her title?

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**Opportunity Knocks!?! (Continued from page 1)**

PEF members who become aware of a possible inappropriate reassignment “opportunity” should notify their PEF Field Representative or Executive Board Member with as much detailed information as possible.

**EXTRA BANG FOR YOUR BUCK:  
The Added Value of Civil Servants**

As PEF continues to fight against the loss of jobs to private contractors and various shadow government entities, it is essential to recognize the important differences between State employees and their private sector and shadow agency counterparts. These differences represent “added value” to the services provided by civil servants – value that is often not recognized by the general public.

Typically, efforts to shift state government responsibilities to the private sector or shadow agencies are based on one of two arguments. Some argue that the State needs to shrink the size of its workforce due to budget concerns. Others argue that the work performed by State employees can be done better, cheaper, or more efficiently by the private sector.

However, these arguments are often unsupported by objective analysis. The savings theoretically attributed to privatization of public services rarely occurs. In fact, the State frequently pays private sector professionals significantly more than they pay State employees performing similar work. For example, DOT regularly contracts with more expensive private

engineering firms to provide routine services that could be performed by in-house DOT engineers. As several bi-partisan studies have shown, DOT could actually save millions of dollars by performing more work in-house and hiring fewer consultants. Regrettably, DOT continues to shrink the size of its in-house engineering workforce and instead relies more heavily on costly consulting engineers. The State also pays considerably more for private computing services and nursing contractors.

It is also important to recognize that the value of civil servants extends beyond simple economics associated with doing quality work at a lower cost. For the taxpayer, a public employee adds value to the equation by virtue of the fact that the employee is a civil servant. Civil servant status implies a certain level of accountability to the taxpayer that is nonexistent with private contractors and many shadow agencies. For example, most civil servants are required to demonstrate their abilities or competence through competitive examination. Appointments to permanent competitive positions help shelter the employees from undue political influence. In addition, civil servants are required to comply with a variety of laws, rules, and regulations that ensure that the State’s work activities are open, accessible, and ethical. Private contractors and shadow employers are seldom held to identical standards.

Civil servants are also required to comply with the Public Officers Law, which establishes a standard of ethics designed to ensure a level of integrity and remind public employees that their first responsibility is to the public. The Public Officers Law prohibits or restricts certain business and professional activities and relationships both during and after public employment to prevent conflicts of interest. It requires financial disclosure by certain State officers and employees and sets out the code of ethics by which civil servants are bound.

Additionally, the work performed by civil servants is subject to added scrutiny by virtue of the Freedom of Information Law (FOIL). The FOIL process allows for the public  
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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 your PEF Field Representative or your PEF 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.

**BETTER LATE THAN NEVER:  
Media Weighs in on Shadow Agencies**

Recent controversy regarding the manipulation of funds at the Metropolitan Transportation Authority appears to have awakened the *New York Times* and the *Times Union* to the dangers associated with the limited accountability of shadow agencies. Two separate April editorials by the *Times* editorial board, and one by the *Times Union*, praise NYS Comptroller Alan Hevesi's efforts to shed light on the MTA's manipulation of finances. The *Times* expresses concerns over the lack of public accountability and the secrecy of New York's "expanding shadow government." In addition, the *Times* refers to the shadow government as a "parallel universe" and a "dangerously secret side of state government" requiring more "transparency." The *Times Union* editorial also supports the need for greater transparency of budgeting practices of state authorities.

The MTA case clearly illustrates the secrecy aspects of shadow government as Comptroller Hevesi had to issue subpoenas before receiving 18 boxes of financial records. Shockingly, analysis of these records revealed that the MTA was keeping two separate sets of books: one for public consumption and one kept secret. The public set of books portrayed dire fiscal conditions and was used to justify a substantial fare increase. The secret and more accurate set of books indicated that a fare increase could possibly be postponed. We are encouraged that the media's awareness of shadow agencies has increased. PEF has been

**Jeff Satz Civil Service  
Enforcement Committee**

The Jeff Satz Civil Service Enforcement Committee consists of Committee Chair & PEF Vice President Joe Fox and the following members: Nancy Becker (T&F), George Buldrini (DOH), John Clark (DOT), Edith Cooper (DOL), Jeff Janiszewski (DED), Bernie Kahn (SIF), Ron Manuli (DOCS), and Bill Wurster (DEC).



**Test Your Civil Service IQ**



- ☞ **True** / ☞ **False** 1. If the State accidentally overpays an employee, the State cannot attempt to recover the amount of the overpayment.
- ☞ **True** / ☞ **False** 2. Both the agency *from which* and the agency *to which* an employee wishes to transfer must approve the transfer.
- ☞ **True** / ☞ **False** 3. The State can extend an employee's probationary period under certain circumstances.

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voicing similar concerns since at least 1999, when PEF first introduced the "shadow agency" legislation. This legislation remains the number one priority of the PEF Statewide Civil Service Committee. While the bill does not address the MTA issue directly, it would limit the growth of, and require greater accountability for, the Environmental Facilities Corporation, the Dormitory Authority, the Urban Development Corporation, Health Research Inc (HRI), the Job Development Authority, and the Housing Trust Fund Corporation. In order to further increase awareness, PEF recently printed an open letter/advertisement in the *Legislative Gazette* that called attention to the waste, secrecy, and lack of accountability that is associated with HRI.

**Added Value**

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disclosure of financial information as well as information related to policy decisions. The combination of Civil Service, Public Officers, and FOIL laws ensures that government activities are open and accountable. Unfortunately, as the State increasingly contracts out or assigns work to shadow agencies, the decisions, ethics, and finances of these entities become less accessible and government becomes less accountable.

**Test Your CS IQ – Answers**

1. **False** – Under State Finance Law §200, the State can recover accidental overpayment under certain circumstances such as the overpayment of shift differentials, geographic differentials, inconvenience pay, or location pay. The State may also attempt to recover in circumstances in which “the employee knew, or that a reasonable employee should have known, that the salary paid... was in excess of that which he or she was entitled to receive.”
2. **False** – The agency *from which* an employee is transferring does not have to approve the transfer. Only the agency *to which* the employee is transferring and the Dept. of Civil Service must approve the transaction.
3. **True** – The State can extend probation in lieu of terminating an employee with unsatisfactory performance, or to compensate for an employee’s absences during the original probationary period. Watch future issues of *The Enforcer* for more information about probationary periods!

**Priority Issue Update**

The PEF Statewide Civil Service Committee continues to pursue its priority issues in the legislative arena. The Shadow Agency bill has been reintroduced as S3890/A4973. The Senate version is sponsored by Senator Robach and has been referred to the Committee on Corporations, Authorities, and Commissions. The Assembly version is sponsored by Assemblyman Abbate and has been referred to the Committee on Governmental Employees.

The Transfer bill has been reintroduced as S3885/A4968. The Senate version is sponsored by Senator Robach and has been referred to the Civil Service and Pensions Committee. The Assembly version is sponsored by Assemblyman Abbate and has been referred to the Governmental Employees Committee.

The Reassignment bill has been reintroduced as A4966 and is sponsored by Assemblyman Abbate. This bill has also been referred to the Governmental Employees Committee. The Senate has not yet sponsored this bill. The text of these bills can be found by bill number at <http://assembly.state.ny.us> and <http://www.senate.state.ny.us/>, respectively.



“Henderson, you’re already doing the jobs of three people... how can you possibly have time to join a union.”

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