



The Enforcer

A PEF Newsletter Devoted to Civil Service Issues

The Jeff Satz Civil Service Enforcement Quarterly Newsletter

Volume 2, Number 3 - Convention Issue (Fall 2003)

Aggrieved or Not Aggrieved? That is the Question!

Previous issues of *The Enforcer* have reported PEF’s ongoing efforts to fight against negative interviewing and canvassing violation incidents, which seem to have multiplied in many State agencies since the current hard hiring freeze went into effect.

In one case, PEF has been pursuing an alleged canvassing violation in which the New York City branch of the Office of Children and Family Services (OCFS) claimed it had tried to reach a candidate by telephone and letter, and then declared the candidate nonresponsive, thus allowing the agency to reach the otherwise unreachable provisional candidate. Whether the agency made reasonable attempts to contact the candidate is questionable, particularly since the Albany branch of OCFS was able to contact the candidate – who lives and works in NYC – with no problem during the exact same time period.

While PEF was in the process of collecting evidence in the case, the candidate in question retired from State service. The Department of Civil Service (DCS) informed PEF that the case had become moot, unless PEF could identify

PEF argues that each of the original three reachable candidates had the right to be considered in a legitimate canvassing process.

other “aggrieved” individuals on whose behalf PEF wished to continue the appeal. PEF immediately obtained permission from the two other PEF members who were reachable on the original list and who had been passed over in favor of the provisional candidate.

Now, however, DCS is attempting to claim that the other two reachable candidates from the original list are not aggrieved in this matter. Their only right, DCS asserts, was to be considered for the position. Since they were interviewed and not selected, DCS says that their civil service rights have been satisfied.

PEF strenuously disagrees with this assessment and is continuing to pursue the case. PEF argues that each of the original three reachable candidates had the right to be considered in a *legitimate canvassing process*. If that process is violated, each of the reachable candidates has been aggrieved. The Rule of Three requires that an agency appoint one of the top three willing acceptors on the eligible list or leave the position vacant. Therefore, the agency must weigh the option of using one of the *legitimately reachable candidates* against the option of leaving the position empty. Once the canvassing process has been violated, thus “allowing” the agency to “reach” an otherwise unreachable candidate, the original candidates have clearly lost their right to be considered in the proper light.

The outcome of this case may have lasting implications for all PEF members. If Civil Service takes the view that only the individual person whose canvassing rights were specifically violated is “aggrieved,” agencies may begin to deliberately aim their negative interviewing or canvassing violation actions at individuals they know may retire within the next year or two, or

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HELP PEF TAKE PRIVATIZATION PUBLIC

While privatization is touted by regressive politicians as being one way to “reinvent” government, the Public Employees Federation wants to make public the truth about privatization – it costs taxpayers more money, while costing the State stable jobs and undermining and endangering our communities. Here are some examples:

EXAMPLE ONE:

Three separate audits have shown that the Department of Transportation spends far more money on outside consultants than it would using in-house employees. While New York State is in the fiscal hole to the tune of \$12 billion, separate audits by former Republican State Comptroller Ned Regan, former Democratic Comptroller H. Carl McCall, and auditor KMPG (contracted at DOT expense) showed that the State pays consulting engineers nearly double the amount they pay State engineers (including benefits) for routine design and inspection work. The annual loss on this practice has been calculated at \$123 million.

EXAMPLE TWO:

The Department of Health wastes hundreds of thousands of tax dollars every year by hiring

expensive contractors – with questionable ethics and little accountability – to survey the nursing homes in which some of our most vulnerable residents live. One contractor was investigated by a Special Agent of the federal government, who found evidence that the company had been involved in fraudulent practices, yet the State continues to do business with this firm. Meanwhile, these private inspectors, some of whom don’t meet minimum qualifications for the equivalent State job, are paid an average of \$114,649, which compares to the annual salaries, plus benefits, of \$68,638 to \$72,241 that state inspectors are paid.

EXAMPLE THREE:

The State throws \$50,000 out the window each time it hires a private consultant to do the design work that professionals in the Office of General Services do, according to a report by the Legislative Commission on Expenditure Review (a Commission that was apparently put out of business for saying things powerful people didn’t want to hear). So instead of giving the work to the State employees who live and raise families in New York, the State chooses to cut our jobs, destabilize communities, and award the work and taxpayer money to private contractors, who may be located in other states. To add insult to injury, New York pays private contractors up to 60 percent more than it would pay a New York State employee – thus the \$50,000 annual per-contractor loss.

It is essential that union representatives carefully examine each and every contract that could potentially cost New York jobs and government accountability. The PEF Research Department has material available to members who are interested in joining the fight against the growing abuse of privatization. Please look for Tom Cetrino’s presentation at the PEF convention on how members can help uncover the more extreme examples of waste, incompetence, and the loss of New York jobs.

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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/Research 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.

***Update: Civil Service Policy
Allows Conditional Admittance to
Exams Pending Reinstatement***

The Department of Civil Service (DCS) has recently confirmed that it is their policy to conditionally approve applicants for an exam when the employing agency has made a request for that individual to be reinstated to a qualifying title for the exam.

This issue arose when PEF members noted that an employee had been promoted to a position even though she was not in a qualifying title at the time the promotion exam was given; therefore, it was unclear how she could have been included on the eligible list. Upon investigating, the Research Department learned that the candidate had previously held the qualifying title and had left State service. She returned to State service a few years later in a different provisional title; however, the agency then requested that she receive permanent reinstatement to her prior title.

Such reinstatement requests must be approved by the Civil Service Commission. Even though it can take several months for the request to appear on a Commission meeting agenda, the Commission is generally inclined to rule favorably on reinstatement requests submitted by agencies. DCS therefore gave the candidate conditional admittance to the exam, but they did not add her to the resulting eligible list until the Commission ruled favorably on the reinstatement request.

While PEF was satisfied with this explanation, staff at DCS were initially unable to confirm whether this policy of conditional admittance to exams was consistently applied across all State agencies. The Research Department therefore wrote to the Director of Staffing Services, who subsequently confirmed that DCS does apply this policy across all agencies. Therefore, PEF members who are awaiting approval for reinstatement to a prior title should be aware that they can apply for promotion exams that require service in that prior title.



**Test Your
Civil Service IQ**

What is Negative Interviewing?

Decide whether each of these examples constitutes negative interviewing.

- 1. The interviewer says, "This position requires extensive travel and some evening work."
- 2. The interviewer says, "If you don't decline this position, the provisional will end up out on the street. Do you want that on your conscience?"
- 3. The interviewer says, "Are you sure you can do this job?" You answer "Yes." The interviewer says, "But it's in a bad neighborhood and requires a lot of evening hours. Are you really sure?"

(Answers on page 4)

Aggrieved...

(Continued from page 1)

who may otherwise leave the candidate pool. That way, if the agency can delay an appeal until the individual retires or otherwise leaves the candidate pool, the agency would be "home free" because any other legitimate candidates who were passed over would not be considered "aggrieved." We will keep you updated as to the progress of this matter.

***The Jeff Satz
Civil Service
Enforcement Committee***



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

Exam Tips



Do you think the minimum qualifications on an exam just given were inappropriate? Well, *now* is the time to do something about the next holding of the exam – don't wait four years until the next exam announcement comes out! Exam

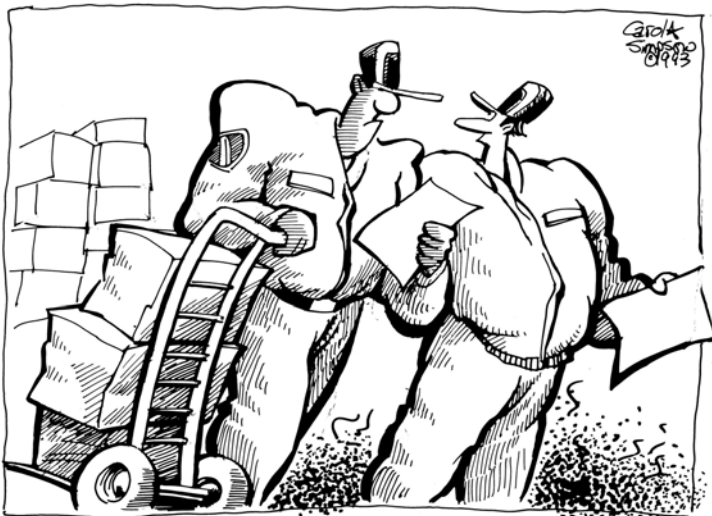
announcements generally follow months of discussion and planning by the affected State agencies and the Department of Civil Service. After all that work, they aren't likely to change the exam announcement after the fact. Therefore, members should immediately communicate their "min qual" and exam format concerns to their Statewide Labor/Management chairs, so that employee exam concerns can be placed on the L/M agenda and be discussed in-depth in enough time to be considered for the next holding of the exam.

Committee Member retires...

John Clark, member of the Jeff Satz Civil Service Enforcement Committee, has retired from State service. *The Enforcer* congratulates John and wishes him all the best in the future. We'll miss you!

Test Your CS IQ — Answers

1. This is *not* negative interviewing. The interviewer is making a true factual statement about the position.
2. This is clearly negative interviewing and is against the law. Several PEF members have recently complained that interviewers have attempted to play on their sympathy for unreachable provisional employees who stand to lose their positions. PEF members should immediately report such instances of negative interviewing to their PEF Field Representative or Executive Board member, who will relay the information to the PEF Research Department.
3. Technically, this could be considered negative interviewing in that the interviewer may be deliberately trying to make the position sound unattractive in order to discourage candidates from accepting it. However, this example lies more in the gray area between factual information and negative interviewing. It would be difficult to enforce the prohibition against negative interviewing in such a case; however, PEF members should stand their ground and continue to state that they're interested in the position (assuming that's the case!).



*"I got a blank memo too.
Management must have added another unwritten rule."*

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