



The Enforcer

A PEF Newsletter Devoted to Civil Service Issues

The Jeff Satz Civil Service Enforcement Quarterly Newsletter

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Public Authority Reform Gaining Speed

After years of leading the charge against public authority abuse, PEF has two additional allies on the "Reform Authorities" team – State Comptroller Alan Hevesi & Attorney General Eliot Spitzer.

In recent months, Comptroller Hevesi issued a report showing that the 640 secretive public authorities – or "shadow agencies" — have amassed more than \$100 billion in debt, and have over 100,000 employees working for them. Prior to the Comptroller's report, none of this information was available to the public; and, because of the shadowy operations of the authorities, we taxpayers aren't allowed to know what that vast amount of money was spent on.

Think of it. What other democratic government would put \$100 billion on its credit card and then refuse to tell the people, who ultimately are responsible for paying that bill, what it bought?

We do have a very good idea, though, who the beneficiaries of the largess of the Governor -- who controls the authorities -- are. The beneficiaries are, or course, the political appointees who are enjoying their \$100,000+ annual salaries with the shadow agencies and the lobbyists who collect ample PAC dollars donated by

thousands of contractors eager to get their voracious snouts into the public trough.

Who are the losers in the Public Authority Pork-Barrel Fantasia? That would be the public itself and the civil service merit system which was designed to protect the public from the kind of graft and corruption that the public authority system fosters. Indeed, this "Pay-to-Play" system was exactly what the civil service merit system was designed to prevent.

One of the greatest abusers of New York's system is The Health Research Institute (HRI), a private, not-for-profit corporation that's an adjunct to the NYS Health Department. This

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secretive, quasi-public entity has grown by leaps and bounds over the past several years – all while our Governor has claimed that the state was so poor it couldn't afford to fill vacant Civil Service positions. HRI has grown from 1,265 employees in SFY 1994-

95 to 1,792 in SFY 2002-03 – that's a 41 percent increase.

Because HRI is an incorporated not-for-profit, it is forced to report some of its numbers to the U.S. Internal Revenue Service. From its 2002 IRS filings we know that HRI spent this in a recent year:

- \$12.3 million on consultants
- \$68.6 million on sub-contracts
- \$3.2 million on technical services
- and more than a half million dollars on "media and marketing."

But even while spending \$569,964 in 2001 on marketing, HRI still managed to stay well hidden from public view. Indeed, HRI ignores any requests for information, and claims that it is not subject to the Freedom of Information Law. To get a copy of its payroll, PEF had to sue HRI in 2002. It settled the lawsuit without agreeing that it was subject to FOIL.

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In January 2004 PEF filed another FOIL request of HRI asking for various information on any consultant contracts valued at more than \$100,000 that HRI entered into from April 1, 2002 through March 31, 2003. To date, PEF has not received a response to that request, and will most likely have to file a lawsuit to get it.

This kind of high-handedness has no place in a democratic government, where public authorities MUST be answerable to the public itself, not just the most powerful few who are – in too many cases – beholden to the very contractors who benefit most from public authority contracts and the outsourcing of public sector work.

Fortunately, Comptroller Hevesi has proposed the “Public Authority Reform Act of 2004,” which, if passed, would be a major step in the right direction. The proposed Act would do the following:

- Create a Commission on Public Authority Reform, which would be charged with recommending the consolidation of the work of public authorities and other off-budget entities, including HRI. The Commission would ask each of these authorities and entities to “justify their existence or face elimination.”

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- Strengthen the oversight of authorities and off-budget entities by requiring external audits conducted in accordance with generally accepted accounting principles.

- Expand the definition of lobbying to include attempts to influence contracting decisions of the authorities and off-budget entities.

- Require public authorities/off-budget entities to meet at least the minimum statutory requirements applicable to state contracts, and allow the State Comptroller to review these entities’ contracts before they can become effective.

While it doesn’t have all the provisions of a similar shadow agency bill that PEF proposed and was passed by the Senate and Assembly, the bill does help preserve the Civil Service system. It requires the Commission to keep the current work of the authorities within the public sector and to recommend whether each authority or off-budget entity should be eliminated or consolidated. It also requires the Commission to recommend whether this work should be moved to state or local government agencies governed by Civil Service Law or be consolidated with a reformed public authority.

PEF has joined 35 other organizations, including the Fiscal Policy Institute, the League of Women Voters NYS, and Common Cause/NY, in supporting the Comptroller’s proposed legislation.

When the proposed bill was announced, PEF President Roger Benson said that he was “grateful that the Comptroller and the Attorney General were pursuing an authority reform agenda. Effective, accountable government attracts the best employees such as those now represented by our public employees unions.”

PEF members can help get this legislation enacted by both houses of the Legislature by writing to their local legislator and asking that they vote for Comptroller Hevesi’s and Attorney General Spitzer’s Public Authority Reform Act of 2004. More information about this legislation can be found on PEF’s website or in future issues of *The Enforcer*. ▲

-J. Waggoner

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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.

RIF Training

It was almost like a dance class at PEF. The staff of the Civil Service Enforcement Department recently received RIF (Reduction in Force) training which was new for some, a refresher for others.

This training focused on the intricacies about vertical “bumping” and “retreating” and horizontal movement. But the context in which those terms were used didn’t involve anything fun—the talk was about layoffs and how PEF members can be affected.

Terry Jordan, Craig Wright and Howard Ryan, all with the Civil Service Department, came to PEF headquarters to explain what happens during layoffs, so PEF staff can ensure members are being treated as the law requires.

The key term for any State employee who might be facing a layoff is “retention rights,” or the right to keep a job in a layoff. There are two factors which determine retention rights. First is appointment status. Second is seniority.

Unfortunately, employees serving provisionally or temporarily have *no* retention rights.

Among permanent employees, those who are not on probation have greater rights than those on probation. Employees in the same grade and title who are off probation are ranked according to seniority: the more senior — the more rights.

Here is an outline of how the layoff process

would work at a single location as described at the training:

- An agency determines the job titles and positions to be abolished.
- Agency orders seniority rosters, and verifies employee personnel records.
- Highest level title in which positions will be abolished is identified.
- Seniority roster is used to determine each employee’s retention rights.
- All non-permanent employees in the title are identified.
- Employees *not* on probation are listed.
- Agency finds out if employees with rights to be moved (“displacement” rights) to another job, in same title, will accept a move.
- The agency sends official layoff notice to employee and submits the “Green Card” to Civil Service; which, if the employee is qualified, places him/her on a preferred list for rehiring.

In most scenarios, the employees most junior and on probation are most at risk of being laid off.

Depending on retention rights and seniority, an employee who is identified for layoff may be able to accept a horizontal reassignment, displace to a lower level position (“bump”) or retreat to avoid being laid off. Generally, these rights can be carried out only in the jurisdictional class of the affected employee.

Because retention rights are influenced by the seniority of the affected employees, any member targeted for layoff should first contact their personnel office to verify seniority, and determine what rights they may have to horizontal reassignment, bump or retreat. If there are any additional questions, members should contact their PEF Field Representative.

It is unlikely that any member will have to go through the “bump” and “horizontal move” dance, but it doesn’t hurt to at least know the right steps if it does happen. Because this is one dance in which you definitely don’t want to have your toes stepped on. ▲



-J. Waggoner

The Jeff Satz Civil Service Enforcement Committee

Vice President & Committee Chair Joe Fox (*pictured right*), welcomes Bob Varano (DOL) as the newest member to the Jeff Satz Statewide Civil Service Committee. He joins the rest of the current



committee members: George Buldrini (DOH), Edith Cooper (DOL), Jeff Janiszewski (DED), Bernie Kahn (SIF), Ron Manuli (DOCS), Nancy Sweeney (T&F), & Bill Wurster (DEC).

**SECTION 71 OF
CIVIL SERVICE LAW
STILL NEEDS IMPROVEMENT**

Section 71 both protects *and* attacks civil servants. This section of the Civil Service Law allows the state or other municipalities to terminate your employment if you are absent from work for a total of one year subsequent to an on-the-job or occupational disability. Recent legislation sponsored by PEF and other public service unions that was signed by the Governor extends that protection *if you are assaulted on the job* up to two years prior to termination.

PEF has been a leader in the fight to extend Section 71 protection to all members injured on the job. PEF realized that the one-year bar being used by the state did NOT allow the Worker's Compensation Board to finalize the adjudication process for an injured worker. The bar used by the WCB has historically been two years from date of accident to a finding of permanency, especially when the injury is to the back, neck or torso.

Prior PEF sponsored legislation extending the time frame to two years was passed by both houses, but vetoed by the governor. In PEF's investigation, through the Article 13 Committee, we have verified the negative impact on our membership of the current one-year bar. Forty PEF members have been terminated in the last year where records have been kept by the State,

and a total of 400 members lost their jobs in the last decade!

PEF has again introduced legislation to mandate a two-year minimum of lost time before termination to cover any on-the-job accident or occupational disability. Your fellow injured union sisters and brothers need your help! Please support S6416/A10216 by calling your State Senator and Assemblyman.▲

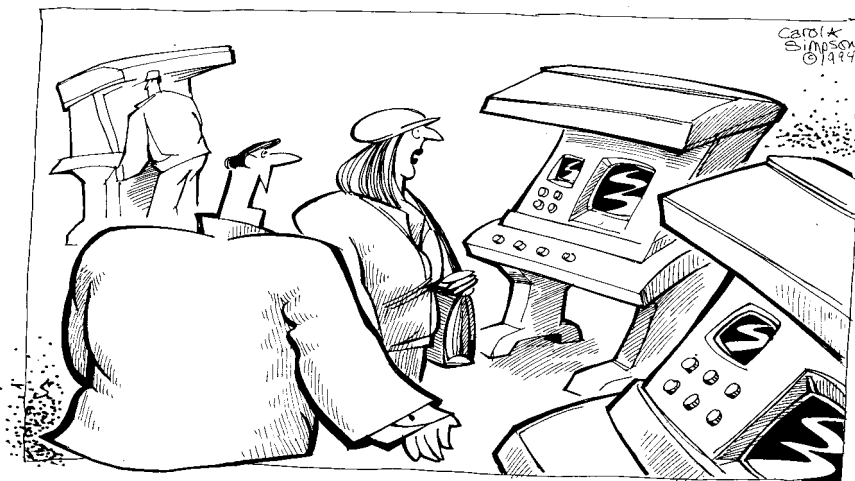
-B. Kahn

Update: Pre-list Review Lawsuit

The PEF Legal Department will shortly be challenging the Department of Civil Service's decision not to allow test takers pre-list review of any part of the Promotion Test Battery (PTB) that was held in March of 2004. Individuals who have volunteered to become petitioners in this lawsuit will be contacted in the near future, and the lawsuit will be filed in Albany County Supreme Court by end of May.▲

New Civil Service Commissioner

George C. Sinnott, who has been Commissioner of the NYS Civil Service Commission since 1995, has been named as Executive Director of the State Bridge Authority. Daniel Wall, who has most recently served as Executive Deputy Commissioner with DCS, will be taking over Sinnott's term as Commissioner.▲



"You're in luck. We have two openings, so I'm hiring you for both of them."

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