

**STATEWIDE PEF/NEWYORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION LABOR/MANAGEMENT – Meeting Minutes**

September 10, 2014

Attendance:

PEF:

Carl Fritz, Region 1
George Stadnik, Region 2, Exec. Board (Regions 1-4)
Keith Browne, Region 3, Div. 169 Leader
Joseph Battista, Region 3, Div. 169 Secretary
Christopher O'Neill, Region 4, Assistant LM Chair
Jim Yuchniewicz, Region 4
Frank Flack, Region 6, Exec. Board (Regions 5-9)
Rich Coriale, Region 6, Statewide Health and Safety Co-Chair
Terry Tyoe, Region 6, Div. 169 Assistant Leader
Kelly Cloyd, Region 8
James Sacco, Region 9
Jeffrey Dyber, Albany, LM Chair
Holly Clark, Albany
Denise Hobson, Albany, Div. 169 Treasurer
Rob McDonough, Albany, Exec. Board (Central Office)
Sharon Parker, PEF
Debra Greenberg, PEF Field Representative

Management:

Mark Cadrette, DEC Director of Employee Relations
Paula Laime, DEC Employee Relations
Julie Gibson, DEC Employee Relations
Nina White, DEC Employee Relations
Gregg Townsend, Regional Engineer, Region 6

PEF's questions and statements are in bold faced type. The information placed in [brackets] consists of issues from prior L/M meetings retained for additional discussion or for which a response is forthcoming.

Management's responses are in italics.

1. PEF Labor/Management Committee Issues

Proposed dates for 2014:

1. **March 13 - Central Office – completed**
2. **June 12 - Central Office – completed**
3. **September 10 - Utica - completed**
4. **December 11 - Central Office**

2. Pollution and Energy Reduction

Consistent with DEC's mission, PEF supports telecommuting at DEC to save energy, decrease pollution and increase employee morale and productivity. PEF wants to enter into a telecommuting agreement with DEC through the process prescribed in the Memorandum of Agreement on telecommuting between PEF and GOER. At the June 2014 L/M meeting, management committed to provide a draft telecommuting proposal within two months and participate in an L/M subcommittee to negotiate a telecommuting pilot agreement. PEF is looking for a status update and the draft proposal so that negotiations can begin.

Management's response: Management is scheduled to meet with the Executive Deputy Commissioner on this issue on September 24, 2014; will report to PEF with the status within a week.

3. Budget

What is the current FTE fill level? Has the maximum fill level (BFL) of 2,919 changed? How many new hires and new promotions have been approved, but have not been filled?

Management's response: Current BFL 2918, current fill level 2864; 48 outstanding waivers. There are 59 promotional authorizations in various states of approval. Management will attempt to send a breakdown of the 59 promotions. The next package is being put together and waivers are typically approved quickly.

4. Health & Safety

PEF members who smoke electronic cigarettes have expressed concern about the upcoming proposed changes to the smoking policy. One member has a doctor's prescription to use electronic cigarettes as a smoking reduction device. Once this policy change is implemented, how will management accommodate an employee's right to take a prescribed medication while protecting their nonsmoking coworkers?

Management's Response: The smoking policy is currently being amended to include electronic cigarettes. Management will provide PEF with a draft of the amended policy for their review and comments. Situations with prescriptions will be reviewed on a case-by-case basis and in addition, employees have the ability to go through the reasonable accommodation process.

Are seasonal employees and contractors required to take all of the mandated training courses? If not, what responsibility do their PEF-represented supervisors bear if a seasonal employee or contractor does not comply with a policy due to lack of training?

Management's Response: GOER has mandated that all employees including seasonal employees and contractors take the mandated training courses. Management will follow-up with the DEC training office on how contractor training completions are tracked.

5. Parking

[As we discussed at the March L/M meeting, employees at the DEC office in Utica have lost their parking garage and no longer have assigned parking. After the March L/M meeting, management indicated that they had reached out to the Region 6 director on the parking issue at the Utica office and that the director was discussing the issue with OGS. Has DEC found a solution to the parking problem at the Utica office?]

Management's response: OGS has reviewed the parking availability situation and has not committed to addressing this issue. The Health & Safety issues regarding this will be moved to the Health & Safety agenda. A tour of the parking lot will occur after this meeting.

For the Region 2 parking problem PEF suggested that Management look into getting parking placards from NYC for employees personal vehicles.

Management responds: Management will look into it.

6. Contracting Out

The New England Interstate Water Pollution Control Commission (NEIWPC) is advertising (as of August 21st) several contracting jobs at DEC's Region 1 and Region 2 offices. The positions include:

- **Hurricane Sandy Relief Positions. The duties for these positions include expediting permits, participating in reconstructing projects, project reviews, wastewater treatment plant contracts, and providing advice, council, expertise and guidance.**
- **Assistant Information Officer (Region 1) – includes assisting the public on permit applications.**
- **Environmental Analyst (Region 1) – 2 positions**
- **Environmental Analyst – Marine Biologist (Region 1)**
- **Environmental Analyst – Biologist – Ecology (Region 2)**
- **Environmental Engineer (Region 2)**

The positions in the NEIWPC advertisements have equivalents at DEC. Why is DEC filling these jobs with contractors instead of hiring State employees?

Management's Response: These positions are being funded by community Block Development Grant money for Sandy Recovery through HUD over a 2 ½-year period; there will be 29 FTE's hired. DEC does not have the statutory authority to accept funding from an authority nor does it have appropriation authority to spend funding from an authority.

What is the budget and funding source(s) for these positions? What other contractors will be able to hire from this funding source(s)?

Management's Response: Community Block Development Grant through HUD. Management does not know if other contractors could use this funding source.

Public employees are legally bound by the Public Officer's Law to act ethically. Are there statutes that hold contractors to the same ethical standards? If so, please name the statutes and explain how they require contractors to meet the standards in the Public Officer's law?

Management's Response: Contractors are not covered by the Public Officer's Law, but they do have to follow DEC policies. Management is unaware of any laws or regulations regarding contractor ethical obligations.

DEC employees who leave State service are subject to a two-year ban on performing private sector work for DEC and a lifetime ban on projects that they worked on. Do NEIWPC employees sign a conflict of interest agreement that bans them from working on DEC projects for a certain time period after leaving their contract positions? If so, provide the details of these bans. If not, what prevents NEIWPC employees from leaving their contract positions and immediately taking jobs representing the regulated community?

Management's Response: There are no limitations to post-employment for contractors.

PEF suggested that DEC formulate policies that require contractors to comply with the ethical aspects of the public officers law.

Management's response: Management requested that PEF provide contracting questions in advance so that Management can confer with legal staff to address PEF's concerns.

7. Personnel

As follow-up to a June 2014 item: What is the posting and filling status of the longstanding "acting" positions which were issued 'cease and desist' letters regarding the need to permanently fill these positions?

Management's Response: Fourteen "cease and desist" letters went out, of which seven were PEF employees. Currently one PEF position is unresolved. Management will discuss acting positions with Personnel and determine if Personnel can be notified when "acting" positions are made and if that information can be shared with PEF.

8. At the June 2014 L/M meeting, PEF asked, "Earlier this year, two Environmental Engineer 3 positions were filled in the Division of Water in Region 1. Can Personnel explain which position-specific profiles were used to fill the positions? Generally, is a position-specific profile created for each Environmental Engineer 3 opening?"

Management's response was, "There was one EE3 in Water filled in Region 1, Item 12011. The roster/profile is posted on the Department's In-site. Management has confirmed with program that the duties on the roster are accurate and are the duties that the incumbent, appointed in April 2014, are performing. The other EE3 position (Water, Region 1) has

been filled for several years. Management asked that PEF forward the specifics on the EE3 position in Region 1 Division of Water.”

Subsequent email communications between the Personnel director and a PEF steward explained that the position filled with the posted position-specific profile was not the position that was the subject of interviews based on the posted and canvassed profile/roster. One existing EE3 in Region 1 DOW was re-assigned to the interview-based position, and the posted profile/roster was used to backfill the vacated position resulting from the re-assignment. The Personnel director stated that her office approved of these transactions.

The original questions remain unanswered. In addition, is it management’s position that a position-specific profile is actually not specific to a particular position? Is it negative interviewing to canvass and interview from a particular position-specific profile for a particular posted position then use that canvass/interview data for a completely different position?

Management’s response: [Management offered to respond but PEF requested that the issue be tabled to the next L/M meeting for the Director of Personnel to address in person]

9. Other Issues

[For over a year, the Department has had a draft clothing policy to finalize and implement.] At the June 2014 L/M meeting, management committed to provide the draft clothing policy within a few months and will meet and confer with PEF regarding the final policy. As a few months have passed since the last meeting, when will PEF receive the draft clothing policy?

Management’s response: Management expects to provide PEF with a draft of the clothing policy by the end of this week. PEF and Management will subsequently meet and discuss the policy after PEF provides comments.

At the June 2014 L/M meeting, management indicated that they would share DEC’s draft succession plan when it becomes available and that PEF’s comments would be solicited before the plan is finalized. As management indicated that the plan would be circulated in approximately four months, what is the status of the plan?

Management’s response: There has been little or no progress; will provide PEF with draft plan when it becomes available.

Please update us on the implementation of the License Event Notification System (LENS) program. We expect that the LENS program will now be used as a tool to prevent unlicensed employees from driving State vehicles, rather than a tool for discipline. Does management agree with this approach?

Management’s response: Management is now receiving advance notice of pending suspensions and revocations. The employees are being notified immediately to prevent contravention of

agency policy.

PEF suggests that responsibility for the LENS program be shifted to Operations.

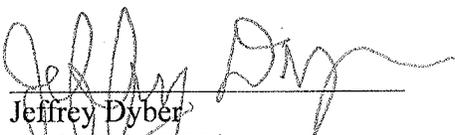
Management's response: Management will consider PEF's suggestion.

[During the meet and confer on February 6, 2014, management indicated that DEC will issue a revised vehicle use policy and that PEF will be provided with a draft of the policy. When will management provide PEF with this draft policy? PEF expects to negotiate the terms of this policy with management.] Will this policy include an opportunity for employees who do not drive State vehicles to opt out of the LENS program?

Management's response: The draft policy is currently being amended and will be provided to PEF for their review, comments and recommendations. Management expects the opt-out to be part of the policy. Management reminded PEF that all employees can send an email to Internal Audit to apply to opt-out.


Mark Cadrette
Director of Employee Relations
Department of Environmental Conservation

Date: 10/16/2014


Jeffrey Dyber
L/M Chair, PEF/encon

Date 10/16/2014