

# PEF Steward Handbook

## TABLE OF CONTENTS

	<i>Page</i>
The Steward Makes the Union Live	2
Union Resources	2
Responsibilities of the Steward	2
Duty of Fair Representation	4
Grievance Procedure	5
Contract Grievance Timetable	7
Settling a Grievance	8
Guidelines on How to Present a Grievance	10
Counseling	12
Insubordination	13
Discipline	14
Just Cause in Discipline	16
Probationary Termination	18
Performance Evaluation System	20
Labor/Management Overview	21
Labor/Management Techniques	25
Protection of Employees – Article 22	26
Health and Safety	27
Legislative/Political Action	28
Strikes Under the Taylor Law	29
New York State Health Insurance Program	31
Domestic Partners Benefits	32
Employee Assistance Program	33
Divisions	34
PEF Membership Benefits Program	35
Glossary	36
PEF Regional Map	40
Trouble Shooters Guide	41
Important Phone Numbers	51

## The Steward Makes the Union Live

As the PEF steward, you are a key person in the union structure. For the majority of PEF members, you are the only union official they know. Consequently, your attitudes and actions have a lot of influence on how the members perceive the union.

To be an effective steward, you must be familiar with the contract, the legal and contractual responsibilities of the steward, the PEF Constitution, and other relevant union policies. To keep current, you are expected to participate in union sponsored education and training programs and to communicate with your field representative.

Although being a steward requires time, hard work and commitment, it is rewarding to know that you are helping other PEF members and building the strength of the union.

## Union Resources

This handbook reflects the continuing experience of PEF stewards, officers, and field representatives. It is intended as a guideline for your role as a steward and as a backdrop for your own judgment and experience. Your field representative should be considered a valuable resource to aid you in your role as a steward. In addition to their knowledge and experience with the contract, they provide training and access to PEF departments for you the steward.

## Responsibilities of the Steward

The Steward has five main roles:

1. **Grievance Representative:** to assist bargaining unit members in the handling of grievances.
2. **Counselor:** to counsel and advise members
3. **Communicator:** to impart information to the members and to communicate information from the members to the officers of the division, regional office as well as informing appropriate field representatives when need is indicated.
4. **Membership Coordinator:** to build the membership of PEF.
5. **Union Building:** to promote PEF policies and activities.

### *A. Grievance Representative*

- Determine how problems can best be handled: informally, complaints, grievances or whether another avenue should be pursued. Prepare grievances for presentation to the supervisor.
- Present grievances and be present at other steps in the grievance procedure. Preserve confidentiality of personal grievances.
- Act as a liaison between the grievant and the union's resources.
- Maintain records of all grievances, making sure your field representative has copies.
- Involve your Field Representative whenever information, advice or any assistance is needed. They are here to help you.

***B. Counselor***

- Counseling and advising members is an integral and important part of your responsibilities as a PEF Steward.
- Listen carefully to members to determine the exact nature of any problem, grievance, gripe, personal or family concern.
- Decide what procedure to follow: file a grievance, contact a Field Staff Representative, refer a troubled employee to the Employee Assistance Program (EAP), route an issue to the Labor/Management or Health and Safety Committee.
- Ask questions; get all the facts; give the member feedback. If you cannot assist the member yourself, find out where a referral can be made.

***C. Communicator***

- Keep the union's actions, programs, and available services visible and accessible to your members.
- Represent the membership at all union meetings and/or executive sessions.
- Communicate information to the members through personal contacts, bulletin board postings, newsletters, or telephone networks.
- Keep the union's leadership informed as to problems and/or accomplishments.

***D. Coordinator***

- Recruiting, retaining and organizing membership in PEF.
- Promoting union growth through involvement in meetings, elections, community work and social functions.

***E. Union Building***

- Promote PEF policies and activities.

***F. Member Mobilizer***

- Coordinate mobilization with Member Mobilizers including their recruitment.
- Serves as Member Mobilizer for non-organized locations.
- Assist in the charting process.

## Duty of Fair Representation

The “Duty of Fair Representation” is an established legal principle developed in a series of cases heard by the United States’ Supreme Court which holds that a union in the exercise of its exclusive right to enforce a collective bargaining agreement must treat all members of the bargaining unit equally and fairly.

The **first principle** of the Duty of Fair Representation (DFR) is that in processing grievances the union may not discriminate between members and non-members of the union. Further, the union may not discriminate against members or non-members on the basis of race, creed, sex, political belief, or opposition to the elected leadership of the local union or in PEF’s case, Division.

The **second principle** established under the doctrine of DFR is that the union is responsible for making a thorough investigation of a bargaining unit member’s complaint. Thus, never be too quick to dismiss a case. Rather, conduct a full investigation in every instance.

The **third principle** of DFR is that the bargaining agent PEF, can be held responsible for negligent acts in enforcing the contract and processing grievances which may cause a member of the bargaining unit loss of benefits or work status under the contract. The case which established this principle involved a local union which failed to file a first step grievance within the time limits of their grievance procedure.

Failure to fulfill the Duty of Fair Representation (DFR) may render the Union subject to civil suit and liable for damages by the bargaining unit member or members who may feel that they have not been adequately represented. Although such suits are costly and time consuming, it is best to realize that DFR is an advantage to the union and its grievance representation in that it provides an additional incentive to do an honest and effective job in making the collective bargaining agreement a living document that brings justice and equity to the workplace.

# Grievance Procedure

**Introduction** One of the more demanding responsibilities for the local Steward is “policing” or administering the Collective Bargaining Agreement. Often this subtle process involves the investigation and filing of a grievance. A grievance is often defined as an “Act or omission that violates specific contract language.” The Collective Bargaining Agreement between the Public Employees Federation and the State of New York incorporates two grievance mechanisms:

**A.** “A Contract grievance is a dispute concerning the interpretation, application or claimed violation of a specific term or provision of this Agreement. A contract grievance also encompasses any benefit or privilege provided by law, rule or regulation. (See your Field Representative for a fuller explanation.) Other disputes which do not involve the interpretation, application, or claimed violation of a specific term or provision of this Agreement including matters as to which other means of resolution are provided or foreclosed by this Agreement, or by statute of administrative procedures applicable to the State, shall not be considered contract grievances. A contract grievance does not include matters involving the interpretation, application, or claimed violation of an agreement reached pursuant to any previously authorized departmental negotiations.”

**B.** “A Non-Contract grievance is defined as ‘any other dispute or grievance concerning a term or condition of employment which may arise between the parties or which may arise out of an action within the scope of authority of a department or agency head and which is not covered by this Agreement’ and shall be processed up to and including Step 3 of the grievance procedure, except those issues for which there is a review procedure established by law or pursuant to rules or regulations filed with the Secretary of State. (Non-Contract grievances may be appealed only through Step 3.) Make sure you check with your Field Representative when there is any question about the proper forum to pursue.”

Stewards should be aware that in both of the above mentioned procedures, the grievance may be moved to the next step in the procedure, if the State does not reply in a timely manner at the current step.

The above actions will boil down to the crucial “**W’s**” of Grievance Investigation:

**WHO** is involved?

- a. Grievant
- b. Responsible Management Person
- c. Witnesses

**WHEN** did it happen?

- a. Time and date of event.

**WHEN** must the grievance be filed?

**WHERE** did the event occur?

**WHAT** happened?

- a. What did a Management representative do or not do that gives rise to the complaint?

**WHY** is it grievable?

- a. Specifically what is wrong with “What happened?”
- b. Contract language or policy violated (cite article, section, paragraph, page number, etc.).

**WHOLE** or Remedy Sought?

- a. Corrective action requested?
- b. What will the Union settle for?

If the above investigation results in the filing of either an Article 34 contract grievance (including Article 17) or non-contract grievance, the Steward is then responsible for adhering to the time limits outlined in the Collective Bargaining Agreement. Failure to file any of the following steps in a timely fashion will result in the grievance being dismissed without consideration of merit. The steward must be aware of all responses and due dates. **If no timely response is received, the grievance should be moved to the next step unless an extension of the time frames have been agreed to in writing.**

**Step One:** Must be filed at the facility or local level within thirty (30) days of the act or omission.

**Step Two:** Upon receipt of the Step One decision, the Step Two appeal must be filed within ten (10) working days! This appeal must be made, in writing, to the agency responsible for the facility or local department.

**Step Three:** Upon receipt of the Step Two decision, the Step Three appeal must be made, in writing to the Governor’s Office of Employee Relations, within fifteen (15) working days.

**Step Four:** Arbitration: Upon receipt of the Step Three decision, contract grievances, which are appealable, shall be filed for Arbitration with the Director of the Governor’s Office of Employee Relations, within fifteen (15) working days of said receipt.

**The Steward should be aware of the following:**

- 1.) That Step Three and Step Four of the grievance procedure are solely the province of PEF
- 2.) That non-contract grievances cannot be appealed beyond Step Three of the PEF – NYS grievance procedure.
- 3.) That Article 17, Out-of-Title work grievances included in the body of the PEF – NYS contract, are to be filed directly at Step Two, with the copy of the grievance to the Facility or local representative. Article 17 grievances are not arbitrable.

## Contract Grievance Time Table

<b>Initiated By</b>	<b>Step</b>	<b>Time</b>	<b>To Whom</b>	<b>Must Reply</b>
(employee or PEF)	One	30 Calendar Days	Facility or Institution Head or designee	20 Working Days
(employee or PEF)	Two (appeal)	10 Working Days	Agency Head or designee	20 Working Days
(PEF)	Three (appeal) Attach Step 1 and Step 2 decision to original grievance form	30 Working Days	Governor's Office of Employee Relations	30 Working Days
(PEF)	Four	15 Working Days	GOER	Arbitration

In those facilities which normally operate on a 7-day a week schedule, 10 working days shall mean 14 calendar days and 5 working days shall mean 7 calendar days.

It must be understood that all grievances must be received by the appropriate State authorities within the prescribed time limits. The best way of doing this is either by hand delivery with a receipt or to mail the grievance by Certified Mail, Return Receipt Requested. The grievance must be received at the designated addresses within these time limits.

Article 17 Out of Title and Article 18 Health and Safety Grievances must be filed at the Agency level. Article 17 appeals to an Agency decision must be filed within 10 working days from receipt of decision. (Article 17, 3, b) It is important that the local field office and appropriate Field Representative receive a copy at each step of the grievance procedure at the time the grievance is filed. Article 17 grievances are not bound by the 30 day time frames found in Step 1 of Article 34. Out of title work grievances should always be treated as timely when initially filed.

## **Settling A Grievance**

**Facts and figures!**

**Write them down!**

There is no better advice for a Steward upon attempting to settle a grievance. All the arguing in the world will not convince supervisors like a few cold hard facts.

Whether a grievance is successfully resolved is often determined by how carefully the Steward investigates the problem. Make sure the employee doesn't omit information which might be helpful to the case or gloss over facts which later might prove to be damaging. Talk with the employee patiently and, if necessary, assure them that the problem will be handled confidentially. Respect their privacy, but make certain you have the facts you need before proceeding.

Dig into all the surrounding circumstances. They may help save a worker's job — or to get a better one. Get evidence, proof. Question others who may have information including witnesses or fellow employees subject to the same supervision and working conditions.

Check the contract, current policy, past practices, the law. Consult with knowledgeable individuals and explore what happened in similar cases. Remember that more than one section of the contract may have a bearing on the case. Make sure that you check all sections that may apply.

Once you have all the facts in hand, double check with your grievance committee, local leaders or field representative and determine whether the member has a grievance and, if so, what can be done about it.

If the employee does not have a legitimate grievance, explain the whole process carefully. Be tactful. If the complaint is valid but the contract doesn't provide for the situation, explore other options including Human Rights, PERB, U.S.D.O.L., N.Y.S.D.O.L. PESH, a non-contract grievance or labor/management. If possible, always suggest another avenue to resolve the issue at hand.

If the member has a valid grievance, make sure he/she understands what they can reasonably expect to be done about it and when and how. When you go to management with the aggrieved employee, be sure that she/he understands who will speak to the issues.

Keep the member informed of developments as the case goes forward, and instruct him or her to report any future management action to you immediately.

Facts have a way of getting lost or twisted unless they are put into writing. For this reason, use PEF standard fact sheet and grievance forms to report grievances and record their disposition. The standard form appears on the following pages. The grievance form defines and formalizes the grievance and records its progress, step by step, through the grievance procedure. It, along with the fact sheet, should become a file for use in future negotiations and serve as a basic source of information.

If you and the supervisor can't informally settle the problem, file a grievance citing appropriate articles and remedy.

If a settlement is arranged, it should be confirmed in writing, either on the grievance form itself or in a formal written statement.

If it becomes necessary to file a second step grievance, involve the field representative if you've not already done so. If the grievance is not favorably decided or settled at Step Two, PEF MAY DECIDE to take the grievance to Step 3, the Governor's Office of Employee Relations (GOER), for a decision. Non-contract grievances end at this step.

### **Grievance Appeals Process**

Prior to PEF filing the 3rd Step grievance with GOER, the following actions shall be taken:

- The assigned Field Representative will review the second step grievance, management's response and all related documents and decide whether the grievance has merit to be processed further. This decision will be shared with the appropriate staff in the Contract Administration Department.
- If the grievance is found to be meritorious, it shall be filed at Step 3.
- If the grievance is found NOT to have merit, the Contract Administration Department will provide the aggrieved and the local PEF elected representative a written statement outlining the reasons why it should not be processed at Step 3.
- The aggrieved's elected PEF Division official can appeal this decision to the PEF Grievance Appeals Committee. The appeal must include all related documents, the letter of denial and the reasons this appeal is based upon. The time limit to do this is within 10 working days from the receipt of the denial to the Step 3 response.

Contract grievances MAY BE APPEALED by PEF to Step 4. Arbitration. In any case, the steward should keep the assigned field representative informed at all steps of the grievance process.

**Remember, arbitration that is final and binding should be used as a last resort!  
Arbitrations define the contract until negotiations change the articles arbitrated!**

## PEF Guidelines on How to Present a Grievance

- 1. *Know Your Facts ... Be Confident***

When you are ready to go into a conference with the supervisor, try not to outsmart him/her. Know your rights under the contract. State all your facts plainly and clearly. Avoid opinions or hearsay evidence. Too many grievances are lost because the steward did not have the facts clearly stated. Representation style alone rarely wins grievances. It takes FACTS.
- 2. *Stick to the Point ... Be Businesslike***

While discussing the grievance, the supervisor may try to sidetrack the real issue and lead the steward off into a discussion of irrelevant issues or inject additional complaints against the employee. The steward should insist on discussing only those issues raised by the grievance. Don't get trapped by this maneuver.
- 3. *Settle the Grievance at the First Step***

The most desirable result is to have the grievance settled at the first step. The steward should strive for this but you need to be clear about what the facts are as well as what it is that you want.
- 4. *Take a Positive Position ... Don't be Defensive***

Don't be timid or convey the feeling to the supervisor that you are presenting the grievance because it is an obligation on your part to do so. Avoid being apologetic—impress the supervisor that there is no possible doubt that in your mind the grievance has merit and should receive an equitable settlement.
- 5. *Shift the Burden of Proof on the Supervisor***

If possible the steward should let the supervisor try to justify and prove that the action they have taken is correct. You may then have a better opportunity to show where they are wrong. Let the supervisor carry the burden of proving their rationale of the case. Maintain your position on a grievance until proven wrong.
- 6. *Disagree With Dignity***

If you disagree with the supervisor do so in a calm, firm, positive manner. Declare your intentions of taking the grievance to the next step if it cannot be resolved at this stage. As a rule, supervisors prefer to settle complaints early on before it is taken to a higher management level.
- 7. *Maintain a United Position***

Make sure that you and the grievant are both in agreement as to the facts and issues BEFORE you go to meet the supervisor. Make sure that you have had an opportunity to talk with the employee in private prior to meeting with management. It is here that you and the grievant must plan your case and strategy. If you find that you and the grievant have a difference of opinion during the grievance hearing take a recess (CAUCUS) and work out the problem in private. It is important to present a UNIFIED position to the supervisor.
- 8. *Remedy***

Before you meet with the supervisor, be sure that you have a solution or remedy to the grievance. Be CERTAIN the remedy is acceptable to the employee. Be ABSOLUTELY CERTAIN to inform the supervisor of the proposed solution. It is up to the employee and/or the steward to suggest a solution or remedy. It IS NOT the supervisor's responsibility to suggest a remedy to the grievance.

9. ***Avoid Bluffing***

Sooner or later you will be caught at bluffing. It is in the best interest of the employee and your credibility as a steward to develop a reputation for honesty.

10. ***Follow Through on the Grievance and be Prompt***

Refer the grievance to the chief steward or to your Field Representative if the matter is not resolved at the first step. Give them all the facts and arguments used when you presented the grievance to the supervisor. Don't allow the grievance to gather dust. Delayed grievances mean delayed justice. Be prompt. Keep a constant check as the grievance proceeds from step to step. Report back to the grievant on a regular basis.

11. ***Keep a Chart on the Time Limits for Grievances***

You need to keep a chart showing the date the grievance is submitted at each step so that the grievance will proceed on a timely basis. The grievance chart should also indicate when the grievance was returned as well as the dates it should be submitted at each succeeding step. If you miss the time limits the grievance becomes untimely and you lose.

## Counseling

Counseling is a means whereby the State takes corrective action towards some specific aspect of an employee's behavior or overall performance. Counseling in theory is designed to improve an employee's performance or conduct. It is to be non-punitive in nature and be designed to modify the employee's behaviors. All counseling should take place in private and face-to-face.

Ordinarily, the sequence of actions in corrective counseling is as follows:

- oral counseling
- written counseling
- disciplinary action

An oral counseling session consists of clearly informing the employee that misconduct or incompetency has occurred and that repetition will result in further counseling and could lead to disciplinary action. During the oral counseling the specific problem must be identified; what is expected of the employee must be communicated; and the consequences of repeating the behavior outlined. Employees are not contractually entitled to representation at counseling sessions (Article 33 provides employees with the right to representation when they are considered "a likely subject of discipline." Individuals being "counseled" are not typically considered "likely subjects of discipline").

If oral counseling is ineffective, written counseling is the next step in the process. This written counseling document becomes a part of the employee's record.

The written counseling memo should review the main elements of the oral counseling session including the consequences of continuing such conduct. Written counseling memos can be problematic for you as a steward. In addition, there is no requirement that oral counseling must occur before a written counseling takes place.

Too often they are written as reprimands and not as counseling memos. Rather than describing the behavior, management characterizes it. Examples include "theft," "insubordination," "sick leave abuse," etc.

Also, another problem would be where an actual penalty is included in the "counseling." Consult your PEF Field Representative with questions regarding such written documents.

If an employee feels that he/she is being disciplined rather than counseled then an examination of the facts for possible Article 34 action should be done.

In conclusion, as a steward you should:

- investigate thoroughly
- aid the member in writing a rebuttal to be attached to any counseling memo
- grieve any appropriate areas after discussions with your Field Representative
- arrange for a meeting with the employee, manager and yourself
- if appropriate suggest a rewrite of any counseling memo
- negotiate any possible impact on the member

## **Insubordination**

As a steward, you should know that insubordination is a refusal to obey some order which a superior is entitled to give and have obeyed. Further, it is a willful disregard of express or implied directions of the employer. (Black's Law Dictionary)

Six steps to consider when addressing situations of insubordination are:

1. Were the supervisor's instructions or orders clear?
2. Was the supervisor authorized to give the questioned orders, directives, or instructions, and did the involved employee understand that this supervisor was so authorized?
3. Did the affected employee understand that this supervisor was so authorized?
4. Was the employee clearly instructed by the person giving the "order" about the penalty or the possible and probable consequences for failure to comply?
5. Was there a clear refusal to perform the requested task or was there merely a protesting discussion or disrespectful attitude manifested?
6. Did the "order" require the affected employee to perform an illegal or immoral act or place the employee in immediate danger? As a steward, you should inform members who are given orders that do not reach this threshold to do it and grieve later otherwise they could face further disciplinary action.

## Discipline

The right of management to discharge or displace permanent PS&T employees who have completed their probation is specifically governed by Article 33 of the Agreement. These due process rights are listed in the Agreement under the employee's "Bill Of Rights and Article 33." This Article should be carefully reviewed when investigating a disciplinary situation

### Discipline Procedures

The following information will concentrate on defining these rights and insuring proper representation to all PS&T unit members faced with discipline. Information will include:

- Explanation of Disciplinary procedure
- Materials provided to employees faced with discipline
- Disciplinary grievance form

### *General Information*

Field Representatives handle most disciplinary cases through arbitration. In only those cases where termination is sought, PEF will offer an attorney. An employee may choose to be represented by private counsel at his/her own expense.

PEF will pay the ordinary fees of the arbitrator, but will not be responsible for any fees incurred for an arbitrator due to an untimely adjournment by his/her representative (see Attorney Sign-off Agreement).

Although not required, management often signals their intent to discipline an employee when that employee is interrogated. An interrogation is distinguished from the "routine questioning" of an employee by the fact that management has determined that the employee is a likely subject for disciplinary action. If an employee questions if he/she is being interrogated, or questioned, they should clarify the situation from management by asking the following:

#### **At this time, am I the likely subject for future disciplinary action?**

If management responds in the affirmative, that employee is entitled to the contractual due process protections and should immediately seek representation. Such representation is at the employee's choice not management's.

Current PEF policy allows for a Field Representative to represent employees during an interrogation. Article 33 further provides that an employee be given a reasonable time period to obtain such representation.

Employees should be advised that their failure to respond to questions during an interrogation could lead to additional charges of insubordination.

Questions regarding interrogation should be directed immediately to your Field Representative. Permanent employees must receive a Notice of Discipline (NOD) setting forth the charges and proposed penalty before any disciplinary action can be taken.

This NOD may be served by personal delivery or certified mail to the employee. If the employee does not accept the Certified mailing, the NOD can still be considered to have been served. A disciplinary grievance must be filed within 14 calendar days or the proposed penalty can be imposed. This grievance should be filed certified, return receipt requested to the person designated on the NOD.

### **Use Immunity**

Where an employee is directed to answer questions under the threat of insubordination charges, any statements made in response to those questions cannot be used in a criminal proceeding against that employee. This is called “use immunity” and it flows directly from the Constitutional right against self-incrimination. However, keep in mind that any statement made by the employee during the interrogation can be used in any subsequent disciplinary arbitration hearing.

### **Procedure**

If a member contacts you because they have received a Notice of Discipline (NOD), you should immediately do the following:

1. If the employee wishes to contest the discipline, help fill out the disciplinary grievance form and call your Field Representative immediately.
2. If time is short, send the grievance certified, return receipt requested, to the person designated on the NOD.
3. Make copies of all pertinent material.

## **Standards for Judging Whether the Employer had Just Cause in a Disciplinary Case**

1. The employer is entitled to prescribe reasonable rules of conduct unless his/her discretion is limited by a negotiated agreement.
2. The employee has a right to know what is expected. The employer has an obligation to give adequate notice of the rules.
3. The employer has limited jurisdiction over the employee's private life.
4. The employee must conform to reasonable rules.
5. The employer must avoid arbitrary, hasty or capricious action against any employee. Supervisors must not overreact against what they perceive as a challenge to their authority. This is one of the most persistent problems giving rise to discipline cases. Such overreaction arises especially in cases of alleged insubordination.
6. Disciplinary treatment should be consistent and non-discriminatory as it relates to all employees.
7. The punishment should fit the offense.
8. Proper disciplinary action is corrective, not punitive. Its purpose is to achieve self-discipline. Discharge, which involves cost to both sides, should normally be invoked only as last resort, after it has become clear that corrective measures will not work.
9. The proper penalty depends not only on the immediate offense but on the employee's previous disciplinary record. For less serious offenses, which generally include infractions of rules or improper conduct such as tardiness, absence without permission, etc., the concept of progressive discipline has been recognized by arbitrators.

Progressive discipline is defined as a series of steps that begin with an oral warning or counseling followed by a reprimand or fine and finally discharge.

However, in instances where the offenses are extremely serious such as theft, client abuse, persistent refusal to obey a legitimate order, etc., the employer may NOT be held to the concept of progressive discipline and thus a more severe penalty or termination may be immediately invoked.

10. Proper procedure or procedural due process must be followed. This involves notice in writing to the alleged offender, the right to counsel, the right to fair representation, the right to a hearing and the right to appeal. The charges contained in the notice must be specific.

***Statement Required to Accompany Notice of Discipline Pursuant to Article 33.5(c) of the Collective Bargaining Agreement Between the State of New York and The Public Employees Federation***

When an employee in the PS&T unit is served with a Notice of Discipline pursuant to Article 33 of the State/PEF agreement,

1. the employee has a right to object by filing a disciplinary grievance within 14 calendar days;
2. he/she has the right to have the disciplinary action reviewed pursuant to the provisions of 33.5 (f) or pursuant to review by an independent arbitrator;
3. the employee is entitled to be accompanied for the purposes of representation by PEF or an attorney at every step of the disciplinary proceeding;
4. if a disciplinary grievance is filed, no penalty can be implemented unless the employee fails to follow the procedural requirements, or until the matter is settled, or until the review procedure specified in Article 33.5 (f) or the arbitration procedure specified in Article 33.5 (g), whichever is appropriate, is completed.

## Probationary Termination

As a steward, you may become involved when a probationary employee is terminated. Probationary termination cannot be grieved except in the case of illegal discrimination. An investigation should begin the moment you become aware of a termination. It is for you and the Field Representative to decide whether or not to forward the case to the appropriate Director of Field Services. Here the case will be reviewed and possibly filed as an Article 78 action in the Courts. There is a 120-day time limit from the date of termination for filing such action. It may also be possible to appeal the termination to the Civil Service Commission. There is a 30-day time limit from the date of termination for these appeals.

### *Civil Service*

#### *Rules and Regulations*

### **CHECKLIST**

- 4.5(a) (5) (ii) A PROBATIONER MAY BE TERMINATED AT ANY TIME AFTER 8 WEEKS AND BEFORE COMPLETION OF THE PROBATIONARY TERM. When did the probation begin? When is it terminated?
- 4.5(a) (5) (iii) THE PROBATIONER'S SUPERVISOR SHALL CAREFULLY OBSERVE CONDUCT AND PERFORMANCE. Did this occur? What facts exist which show that this did not happen (eg. was the supervisor on extended leave of absence during the period)?
- 4.5(a) (5) (iii) THE SUPERVISOR SHALL REPORT IN WRITING ON THE PROBATIONER'S CONDUCT AND PERFORMANCE AT LEAST 2 WEEKS PRIOR TO THE END OF THE PROBATIONARY TERM. Did this occur? Get a copy of the report.
- 4.5(a) (5) (iii) THE SUPERVISOR SHALL, FROM TIME TO TIME, ADVISE THE PROBATIONER OF HIS STATUS AND PROGRESS. Did the supervisor do this? If in writing get a copy. If verbal: What was said? When and Where? Were there witnesses?
- 4.5(a) (5) (iii) A PROBATIONER SHALL RECEIVE WRITTEN NOTICE OF TERMINATION AT LEAST ONE WEEK PRIOR TO SUCH. Did this occur? Obtain a copy of the letter.
- 4.5(a) (5) (iii) UPON REQUEST THE PROBATIONER SHALL BE GRANTED AN INTERVIEW WITH THE APPOINTING AUTHORITY OR HIS REPRESENTATIVE. Has the employee requested and been denied? See Negotiated Performance evaluation MOU (PEF/NYS) THE PROBATIONER SHOULD BE GIVEN A PERFORMANCE PROGRAM (TASKS AND OBJECTIVES) PRIOR TO THE 7th WEEK ON THE JOB? Did this occur? When did the employee receive this program? Obtain a copy of such.

**DISCRIMINATION** Do you as the Steward, after investigating the circumstances surrounding the termination, believe there was an illegal motive for the discharge (i.e.: race, creed, disability, union activity, sex, age, criminal record, color or marital status)?

The above are some of the standards used to judge the merits of a probationary termination. Based on this information, a logical course of action can be developed by PEF Field Services, Legal and Research (i.e.: Civil Service Appeal, an Article 78 proceeding, Human Rights Charge)

## Performance Evaluation System

This system is a management prerogative. The State exercises this management right to evaluate its' employees within the constraints found within the PEF/NYS Agreement. As a steward you should know:

- ONLY UNSATISFACTORY performance evaluations can be appealed.
  - Appeals should be reviewed on procedure and merit.
  - All employees have the right to attach comments to their evaluations and should be encouraged to do so.
  - Any concerns not addressed in the MOU of the Agreement are legitimate subjects for Labor/Management discussions.
  - Appeal forms are available from your facility or PEF Field Representative.

**The following is a checklist for investigating unsatisfactory evaluations:**

- Was there an initial conference?
- Was the employee provided an employee worksheet?
- Was the reviewer a management/confidential employee?
- Did the immediate supervisor of record sign the performance program as the rater?
- Was the performance program timely?

***Does the performance program contain:***

- tasks and objectives?
- standards of achievement as relates to each task?

***Do the tasks and objectives accurately describe what the employee's job is***

- Are the standards realistic and attainable?
- Was the six (6) month recertification timely?
- Is the rater a permanent employee?

***Your Field Representative should be immediately contacted.***

## **Labor/Management Overview**

Each negotiated agreement between PEF and the State has contained an article mandating that statewide, agency and local labor/management committees shall meet at least biannually to “discuss and attempt to resolve matters of mutual concern.”

The agreement further specifies that, in connection with these meetings, written agendas should be exchanged by the parties no less than seven days before the meeting. It also identifies as possible meeting topics questions concerning implementation and administration of the negotiated agreement; distribution and posting of civil service examination announcements scheduling of employee workdays within the established workweek; and additional subjects that may be placed on the agenda by mutual agreement.

Items addressed by local or agency joint labor/management committees that were not agreed on and disputes arising from an alleged failure to comply with a local or agency level committee agreement are to be referred to the next level in the local-agency-state hierarchy.

Finally, labor/management committees are another indication that PEF has a role as a communication link with employees/members.

The Labor/Management Coordinator Services office at PEF headquarters functions as a support to labor-management committees statewide. This office works with the regional field offices to provide technical assistance to committees on an as needed basis. Committees should forward their agendas and minutes for meetings held to the Department of Labor/Management Services. Committee-assigned field representatives will provide commitment reports generated from agency-level meeting to the L/M Chair and the Director’s Office.

PEF’s Education Department offers various levels of labor/ management training workshops ranging from starting up a new labor/management committee to advanced training on techniques of effective labor/management. Teams considering such training should call the Mobilization and Training Department of PEF.

### **Labor Management Committees**

Labor/Management meetings are established in the contract at three levels:

#### ***Statewide Level***

The Director of Employee Relations or his/her designees shall meet with the President of PEF or his/her designees to discuss and attempt to resolve matters of mutual concern.

#### ***Department or Agency Level***

Each department or agency head, or his/her designees, shall meet with PEF representatives no less than biannually to discuss and attempt to resolve matters of mutual concern that affect PS&T members within the department or agency.

### ***Facility or Institution Level***

The head of each facility or institution, or his designees, shall meet with PEF representatives no less than biannually to discuss and attempt to resolve matters of mutual concern at the local level.

### ***Purpose***

#### ***Definition:***

- method to resolve issues and/or problems
- method of preventing problems through consultation
- to bring professional concerns to the attention of management

The most successful labor/management committees are those in which the issues are clearly defined by the representatives of PEF and the State and in which a commitment is made by both parties to sincerely attempt to find a resolution. It is important for a committee member to know what PEF's position is and in what ways a problem could be resolved. If a matter is currently going through the grievance procedure, it generally should not be a topic of discussion at a labor/ management meeting. General problem areas related to a grievance may be discussed, however.

### **Successful Labor Management Meeting**

- solicit agenda items from your membership and leadership structure with documentation
- do your homework. No item should be placed on your agenda without being certain you have all the facts. Do not raise an issue unless you have specific details. Make certain that you have a specific remedy or recommended course of action to propose. (unless the item is for informational purposes only.) Avoid getting into personalities whenever possible. The Labor/Management Committee should be issue-oriented
- know when an issue is ready, appropriate, timely for agenda
- discuss thoroughly in advance
- gather facts
- determine the resolution or remedy
- make clear statement of issue and proposed resolution
- prepare agenda in advance: forward at least 7 days in advance (Art. 24.2, 24.3)
- who needs to be present at meeting to effectively discuss this issue
- have a pre-meeting to finalize strategy and who will present the issues

### ***Meeting Format***

- be sure most important issues have sufficient time (avoid excessive time); try to schedule these first
- follow-up on open issues, from previous meetings (old business vs. new business)
- use meetings to gain information on future issues and/or problems

- use meeting to set future meeting date
- review commitments made by labor and management at end of meeting.

### ***Behavior***

This is one of the most critical aspects of the meeting. Management must believe that you represent the people of your agency/facility and that you are united. Contradictions, disagreements, and bickering in front of management will insure failure.

First, you should choose a chief spokesperson. No one else on the committee should speak unless you have agreed in advance that a given individual will speak to an issue. In that case, the chief spokesperson will say to management, “Mr./Ms. “X” will speak on this issue.” In all other cases, the chief spokesperson’s voice should be the only one heard.

Keep in mind that your disagreement with the spokesperson can be communicated to management by means other than verbal. Guard against any facial expression or body language that gives away your opinion. Failure to follow these guidelines will render your Committee ineffectual, and insure management’s lack of respect for you.

If you find it necessary to communicate with the chief spokesperson during the meeting, simply pass him/her a note. If the matter is pressing, the chief spokesperson should tell management that the labor team would like a few minutes to caucus. In caucus, straighten out the problem.

If you cannot do so, request that the item be put over to the next meeting. Whatever you decide to do, make sure that you come back to the room united. While development of this sophistication may take some time, it must be done. If Management sees the labor team repeatedly in disarray, you will be at a permanent disadvantage.

### ***Meeting Behavior***

- be and act as ONE
- ONE spokesperson
- if more, establish in advance
- if it is necessary to communicate during meeting, pass a written note to your spokesperson—remind them of a point or ask for caucus
- don’t let management permanently fracture your spokesperson’s control

### ***Attendance***

- continuity in the group
- concerned and knowledgeable group
- representative group

### *Have Pre-And Post-Meetings*

**PRE:** To gather any outstanding information

- to set fine points of agenda to review position
- to develop strategy

**POST:** To be sure everyone had same understanding

- to air immediate impressions
- to establish assignments for following through on commitments that were made at the meeting
- work assignments for next meeting, minutes, or publicity

### *Minutes*

One person on the Labor Team should be designated to take minutes at the meeting. All that is needed is for someone to keep a record of the major points of discussion and final disposition of a matter. PEF can provide the assistance of a Labor Management reporter for Statewide Labor Management meetings only.

These minutes can then be used in writing a report to the membership and to keep track of what is transpiring over the years.

Minutes will also document what attempts have been made to resolve an issue which is later moved to the next level of the labor/management structure.

Jointly signed minutes (by labor and management) should be prepared if possible to document positions and agreements made. See Sample Labor/Management Minute Format located in this section.

### *Inform the Membership*

It is very nice to resolve problems at a Labor/Management meeting. However, if only the people who attended the meeting know about it, the meeting's value is severely reduced. Therefore, it is important to communicate the results to the membership.

## **Labor/Management Techniques**

1. Know what your membership wants to achieve from labor-management consultation. You must know what the real problems are that the members face. Solicit agenda items with documentation.
2. Don't put any problem on the agenda unless you can suggest a solution. (unless they are for informational purposes only.)
3. Keep the membership informed.
4. Establish a regular meeting date.
5. Establish an agenda before the meeting. Both sides have equal opportunity to place items on the agenda.
6. The PEF team must meet before the labor/management meeting to prepare for the meeting.
7. One spokesperson per issue, no cross dialogue.
8. Keep minutes with all relevant attachments and file.
9. Follow-up after the meeting to make sure all participants carry out their promises.
10. Report to the membership.

## **Article 22: Protection of Employees**

When considering contracting out which will affect permanent employees, the State must give 90 days advance notice to PEF. PEF and the State will meet to explore alternatives to the contracting out and PEF may propose alternatives to the contracting out.

If the State exercises its right to contract out services, permanent employees **MUST** be given 60 days written notice of intended separation.

Employees affected by contracting out will be offered redeployment options. See Appendix VI (a) of the Agreement.

If no redeployment rights are available, affected employees will be offered transition options. These include:

- a stipend for certain educational opportunities
- severance pay
- preferential employment with the contractor at the contractor's terms and conditions.

In all matters concerning this article, your first contact with PEF should be with your field representative.

## **Health and Safety**

One of the key functions of a steward is to be prepared to look at Health and Safety issues in the work place.

Under Article 18 of the PEF/NYS Agreement, each worksite is entitled to a local H/S Committee. The Steward should work with these committees to identify and resolve H/S issues affecting PEF members.

At the Agency level PEF and NYS have formed joint H/S Committees. Many of these committees are part of statewide L/M Committees. These committees meet monthly to work on H/S issues that are statewide in scope.

There are many hazards PEF members face on the job. An effective steward thoroughly investigates alleged H/S problems at worksites. This means that the right questions need to be asked as well as taking the necessary steps toward resolving the issue.

The following outline shows PEF's structure for handling health and safety problems:

- 1) Members with health or safety problems bring them to the attention of the steward or the local health and safety committee/Council Leader for action;
- 2) The PEF Field Representative should be copied on documentation regarding health and safety problems addressed at the local level so that they are aware of the activity and can provide support as needed;
- 3) If problems cannot be solved at the local level, the steward, health & safety committee or Council Leader should contact the PEF Field Representative for assistance. Assistance provided may include strategic decision-making, provision of resources, referral or direct intervention, depending on circumstances and needs.
- 4) PEF Field Representatives and health and safety committees or Council Leaders may contact the PEF Health and Safety Department for assistance. If the Health and Safety Department is contacted directly by health and safety committees or division/councils, the Health & Safety Department will keep the Field Representative informed.
- 5) As per Article 18 of the contract, local health and safety committees may appeal problems to agency level health and safety committees, and agency level committees may appeal them to the Statewide Committee for resolution.

The steward should contact their Regional Field Reps for any assistance they need in preparing to resolve H/S issues.

***In addition, stewards can contact  
PEF's Occupational Health and  
Safety Specialist at the Albany office at:  
(518) 785-1900  
1-800-342-4306***

## **Legislative/Political Action**

Politics shape the State and Federal budgets.

PEF's Legislative and Political Action Departments help the Union secure a better budget as well as improve the terms and conditions of employment.

PEF encourages members to become politically active in election campaigns and to vote.

In addition, every PEF Region and Division have PAC Subcommittees.

The Statewide PAC Chair must be advised of any political initiatives being contemplated by any Regional or Divisional PAC.

PEF members and PEF Committees are prohibited from lobbying in the name of PEF on any issue without authorization from the Statewide PAC Chair or the President of PEF.

PEF will provide assistance and training to the Regional PAC's regarding lobbying activities.

PEF also encourages rank-and-file members to become actively involved in the legislative process through either their Divisional subcommittees or Regional PAC's.

One of the main functions of the Statewide and Regional PAC's is to make recommendations regarding endorsing political candidates. Such endorsements must be part of an overall strategy to improve the Union.

In January of each year, the Statewide PAC will meet and establish a calendar for endorsements on scheduled elections.

Statewide PAC will consider and recommend endorsements for the Executive Board to act upon.

The Executive Board shall be polled at least three weeks prior to any Statewide primary election for the purpose of voting Statewide endorsements.

## Strikes Under the Taylor Law

Any form of concerted work stoppage or work behavior that is not usual or customary is considered a strike,

The Taylor Law defines a strike as “any strike or other concerted stoppage of work or slow down by public employees”. CSL §201(a). The term “strike” has been broadly interpreted by courts and PERB to include a wide variety of job actions.

In general, partial work stoppages of any kind or a failure to perform work in the customary or usual manner are strikes under the Taylor Law. Violations have been found for failure to work regularly scheduled overtime, teacher’s refusing to participate in faculty meetings, field trips and parent-teacher conferences, mass sick outs, group resignations, refusal to accept extra duties, and performing work to conform precisely with rules (“work-to-rule”).

The justification for work stoppages has little bearing on whether the Taylor Law is violated. For example, work stoppages to demonstrate or protest political activities are unlawful. State of New York (State University of New York, 12 PERB ¶3073 (1979). In State University of New York, employees struck to protest a proposed action by the Mayor of New York City.

To justify the strike the employees argued that the action was not intended to improve working conditions and was not related to any matters covered by the Taylor Law. PERB rejected this rationale and concluded that any concerted work stoppage, regardless of the terms used to describe it, is a strike. A strike might not violate the Taylor Law if it is based on a refusal to engage in unlawful or dangerous activities. *Transportation Workers Union v. PERB*, 58 N.Y.2d 354, 461 N.Y.5.2d 262, 267 (1983). However, concerns for safety and legality have not justified a work slow down where the actual motivation for the strike was related to Collective bargaining. (Ibid).

In *Transportation Workers*, the Court supported PERB’s finding that safety concerns were a pretext for the employees’ concerted refusal to work. During a strike the burden is on the employee to justify any absence from work. The Taylor Law presumes that “an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties...when a strike occurs, shall be presumed to have engaged in unlawful strike...”. CSL §210(2) (b). This presumption is rebuttal by a showing of substantial evidence that the individual was absent from work for a reason other than a strike.

This presumption may not be easy to overcome. For example, in *Van Vlack v. Ternullo*, 53 N.Y.2d 1003, 442 N.Y.5.2d 474 1981), employees absent from work during a strike claimed they were threatened with violence if they crossed a picket line.

The Court determined that while some employees were threatened with violence, there was also testimony that some crossed the picket line without incident and that there was no actual violence. The Court concluded there was substantial evidence to support the determination that the employees engaged in a strike. Thus, they did not overcome the presumption against them.

The Taylor Law imposes penalties on both employees and unions for engaging in strikes. An employee can receive a penalty equal to “twice his daily rate of pay for each day or part thereof” that he or she is on strike. CSL §210(f).

In addition, a union that violates the no strike provision can forfeit its right to the "dues check off" procedure. CSL §210(3)(a). In conclusion, any form of concerted work stoppage or work behavior that is not usual or customary is considered a strike in violation of the Taylor Law.

## **New York State Health Insurance Program (NYSHIP): Important Sources of Information and Assistance**

Many sources of information and assistance are available to members enrolled in NYSHIP. By using these resources to their advantage, members are likely to gain much more satisfaction from their health care plan.

When a member has a question concerning his health care coverage, s/he should first refer to the NYSHIP General Information Booklet, and/or the member contract or certificate of insurance (and any subsequent addendums). Members are responsible for knowing this information. If further assistance is needed, the member should be referred to the agency Health Benefits Administrator (HBA), usually found in the Personnel Office. The HBA can obtain full information concerning a member's enrollment status as well as the eligibility requirements and benefit provisions of all health care plan options. The HBA can also assist employees in resolving any claim problems and in filing an appeal of a claim determination.

The Empire Plan and the HMOs offered to members all have procedures for appeals. In the event an Empire Plan carrier or HMO has determined a medical service or item is not covered, in whole or in part, a review of the determination may be requested using this mechanism. Members should be instructed to retain copies of all correspondence and document telephone conversations related to their appeal.

If the member is not satisfied with the results achieved through the formal appeal process, s/he may contact the PEF Joint Committee on Health Benefits (JCHB), in care of the Health Benefits Specialist, and request the Committee's assistance in pursuing the appeal.

If, after conducting an investigation, the PEF JCHB determines the denial of benefits is questionable and/or the decision regarding the appeal was not adequately explained by the carrier or HMO, the appeal will be brought to the PEF/NYS Joint Labor/Management Health Benefits Committee level for further discussion and resolution.

If, after this administrative avenue of appeal has been exhausted, the member is still not satisfied with the outcome, the NYS Insurance Department or, when an HMO is involved, the NYS Department of Health may be contacted and a consumer complaint filed. This would be considered the last step in the administrative appeal process.

Finally, a member may pursue legal means when all other attempts to resolve the matter have failed.

## **Domestic Partners Benefits**

Effective 1/1/95, unmarried PS&T employees may cover same- or opposite-sex partners with whom they reside and have a committed, long-term relationship of mutual support and financial interdependence. The child(ren) of a domestic partner who reside permanently with the employee and partner may also be eligible for coverage.

Persons who live together for economic reasons, but who have not made a commitment to an exclusive, enduring domestic partnership, will not be considered to be domestic partners for the purposes of enrollment in New York state benefit programs. Additional details about eligibility requirements are included with enrollment applications.

Enrollment applications can be obtained from the employee's Health Benefits Administrator (HBA), who is usually located in the agency or facility personnel office. Once enrolled, a domestic partner is eligible for health, prescription drug, dental and vision care coverage as the employee's covered dependent.

Because the IRS does not generally permit domestic partners to be named as dependents, the amount paid by the employer for a partner's coverage is treated as income for federal tax purposes. This "imputed income" will be added to the employee's salary and reported as income in addition, payment of premiums for a domestic partner's coverage cannot be paid with pre-tax dollars through the Pre-Tax Contribution Program. It is recommended that employees direct questions about income tax implications to a qualified tax advisor.

## **Employee Assistance Program**

The Employee Assistance Program is a joint labor-management effort aimed at improving worker health, productivity and reducing absenteeism. The Public Employees Federation sees the Employee Assistance effort as something more . . . we see the EAP as a long-awaited step toward enhancing employees' quality of life, in the workplace and at home.

Marital, family, drug, alcohol, emotional, and financial problems have a devastating effect on our lives and can seriously impair our ability to perform our jobs. You, as a shop steward, are among the first to intervene with troubled employees.

In your position, you can help a troubled employee by urging him or her to get some help.

The EAP can help.

### **Things you need to tell our members:**

1. The program is confidential.
2. Promotions and other work incentives are not affected by participating in the program.
3. This is a voluntary program. No one can be forced to see the EAP Coordinator.
4. The program is neutral. The coordinator will not take sides between an employee and employer.

## **Divisions**

This department maintains files on about 200 PEF Divisions, helps organize new divisions at the worksite, coordinates division elections, and keeps financial records for each PEF division.

There is a document outlining specific guidelines and financial records policies available from PEF headquarters.

***If you need information regarding  
Division procedures call PEF at:  
518 785-1900 or 1 800 342-4306.***

## **Membership Benefits Program**

The PEF Membership Benefits Program is one of the most progressive of its kind, offering a wide variety of benefits to dues paying PEF members. PEF members turn to Membership Benefits for both the security of life and disability insurance and to save money on movie tickets.

Our programs are designed with recreation, as well as financial needs in mind. The type of benefits and the providers we endorse are selected after extensive investigation and review.

### **Benefits Available**

Term Life Insurance  
Universal Life Insurance  
Short Term Disability Insurance  
Long Term Disability Insurance  
Auto/Home Insurance  
Private Retirement Annuity/Roth IRA  
Wireless Phone Discounts  
Movie Ticket Discounts  
Amusement Ticket Discounts  
Ski Ticket Discounts  
Video Rental Discounts  
Baseball Voucher Discounts  
PEF Travel Program  
Open Competitive Exam Fee Reimbursement  
e-Learning Courses  
Enterprise, Hertz, National, Avis, Alamo Auto Rental  
National Safety Council Driver Safety Courses

Free coverages available to PEF Members include:

- Assault, Trauma and Captivity coverage
- \$15,000 Accidental Death coverage

The Membership Benefits Program continues to remain totally self-funded. PEF union dues are never used to fund the operations of the Program or any of the benefits offered.

## Glossary

**Age Discrimination in Employment Act** – A federal law, passed in 1967 and amended in 1978, which makes it unlawful for an employer, an employment agency, or a labor union to discriminate in employment opportunities against persons between the ages of 40 and 70. This law also applies to employees of federal, state, and local governments.

**Agency Shop** – A union security clause which provided that an employee in the bargaining unit who refuses to join the union must pay a service fee to the union equal to union dues.

**Agreement Contract** – A written agreement (contract) arrived at as a result of negotiations between an employer and an employee organization, which sets the terms and conditions of employment (wages, hours, fringe benefits, etc.) and the procedure to be used in settling disputes that may arise during the term of the agreement.

**Allocate** – To assign a class to a particular grade in the salary schedule based on an evaluation of its relative worth. To reallocate is to change the existing allocation of a class to a different salary grade in the schedule.

**American Arbitration Association (AAA)** – A panel of professional impartial arbitrators.

**Arbitration** – A method of settling a labor-management dispute whereby an impartial third party renders a decision which is binding. Most agreements provide for the arbitration of grievances arising from the interpretation of an existing contract.

**Arbitrator (Arbiter)** – An impartial third party to whom disputing parties submit their difference for decision (award). An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of an agreement or a stipulated term, hearing all disputes that arise during this period.

**Bargaining Unit (Negotiating Unit)** – A group, class, or category of employees that has been determined by the employer or the Public Employment Relations Board as appropriate to be represented by an employee organization for purposes of collective bargaining. The primary criterion in such a determination is “community of interest” among the employees included.

**Competitive Class** – That jurisdictional class comprised of positions for which it is practicable to determine the merit and fitness of applicants by competitive examination. A new position is in the competitive class unless the Civil Service Commission acts on another designation.

**Coordinated Bargaining** – Joint or cooperative efforts by several unions in dealing with an employer that has employees represented by each of the several unions. Also called coalition bargaining.

**Desk Audit** – A review and discussion of the duties and responsibilities of a position made at any employee’s desk or other regular place of work.

**Earmark** – The term used when a position has been designated for restudy when vacant to determine its proper classification before being refilled. An earmark may be placed against an item by Classification and Compensation, the Civil Service Commission, or the Division of the Budget.

**Exempt** – The jurisdictional class of positions for which it is deemed impracticable to fill by tests of any kind. No minimum training and experience requirements are established for exempt positions. (See Section 41 of the Civil Service Law.)

**Inconvenience Pay** – Money added to the base salary of employees, other than part-time or seasonal employees, who work a tour of duty which includes four or more hours between the hours of 6:00 PM and 6:00 AM - exclusive of any hours for which overtime compensation is paid. This is a negotiated benefit currently paid at the rate of \$500 annually.

**Labor-Management Meetings** – Formal meetings, on a regular basis, between representatives of the employer and union to discuss and consider matters of mutual concern. Such meetings are most useful in preventing the development of problems and disputes that would otherwise lead to formal grievances. The labor-management meeting is an outgrowth of the contract.

**Minimum Qualification or "Quals"** – Education, training, and/or experience requirements denoting the minimum standards that all candidates are required to possess to give reasonable assurance that they can perform satisfactorily.

**Non-Competitive Class** – The jurisdictional classification which included positions which are not in the exempt or labor classes and for which it is found by the Civil Service Commission to be not practicable to ascertain the merit and fitness of applicants by competitive examination. An agency may appoint a person who meets the minimum qualifications of training and experience. (See Section 42 of the Civil Service Law.)

**Parenthetical** – A descriptive designation in parentheses following a common base title, to distinguish a specialty within a given field, as Senior Clerk (Library) and Senior Clerk (Purchase).

**Past Practice** – An employment practice which, through sanction or use becomes an enforceable standard even though not included in a contract.

**Posting** – The placing on an official bulletin board announcements defining any positions, titles, types of appointments, duration of appointments, and/or special situations. Joint development of the procedures for implementing this benefit is a legitimate subject for agency level and/or local level labor/management meetings.

**Probationary Period** – A stated period of time during which a newly hired employee can be terminated at the will of the Employer; the period of time before the employee is protected by the just cause provision of a contract.

**Public Employment Relations Board (New York state PERB)** – The administrative agency created by the Public Employees’ Fair Employment Act which is charged with the administrative responsibility for Article 14 of the Civil Service Law and its amendments. It is composed of three members appointed by the Governor, with the consent of the Senate. It administers and enforces the Act. Its functions include: defining appropriate bargaining units, holding elections to determine whether a majority of workers want to be represented by a specific union or no union, certifying unions to represent employees, interpreting and applying the act’s provisions prohibiting certain employer and union improper practices.

**Reallocate** – To change the salary grade of a class with no change in title.

**Reclassify** – To effect a change in the title of an existing position based upon a change in duties.

**Reassignment** – A change, without further examination, of an employee from one position to a position in the same title under the jurisdiction of the same appointing authority.

**Section 55.b** – A Section of the Civil Service Law which provides for hiring qualified handicapped individuals into positions which are normally filled on a competitive basis. The position is reclassified from the competitive class to the non-competitive class and designated with the parenthetic (Section 55.b). A Civil Service Commission earmark is placed against all 55.b positions.

**Seniority** – According to Section 80.2 of Civil Service Law, seniority shall be defined as the length of an employee’s continuous State service, whether part-time or full-time, from the date of original appointment in the classified service on a permanent basis. An employee who has resigned and who has been reinstated or reappointed in the service within one year thereafter shall be deemed to have continuous service for purposes of determining seniority. A period of employment on a temporary or provisional basis or in the unclassified service, immediately preceded and followed by permanent service in the classified service shall not constitute an interruption of continuous service for determining seniority nor shall a period of authorized leave without pay or any period during which an employee is suspended from his position pursuant to Section 80 or Section 80-a of the Civil Service Law.

**Shift Differential** – Payment of additional salary to employees in a given occupation regularly assigned to work on a shift having 4 hours between 6:00 PM and 6:00 AM, authorized by the Director of classification and compensation.

**Transfer** – The change, without further examination, of a permanent employee from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority, or to a position in a different title under the same appointing authority; a transfer may only be made to a position at the same or similar salary grade (currently no higher than two salary grades or I-M grade).

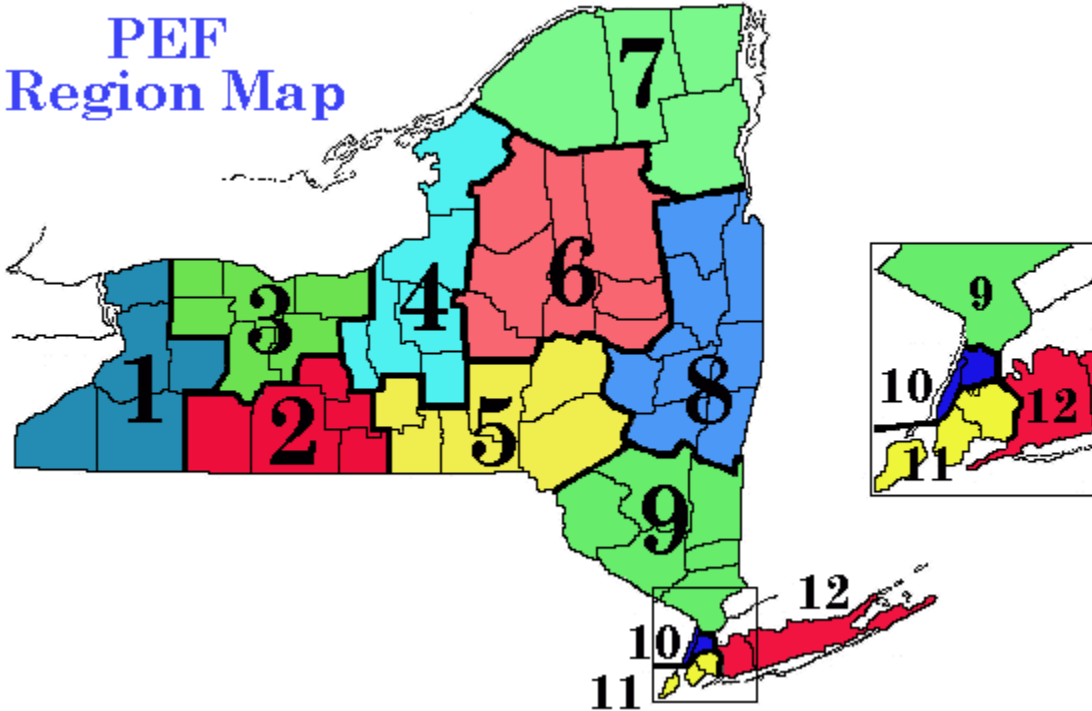
**Transfer Administrative** – A transfer between “administrative” positions pursuant to Section 52.6 of the Civil Service Law; “administrative” positions include those in the areas of law, personnel, budgeting, methods and procedures, management, records analysis and administrative analysis.

**Transfer, Non-Competitive Qualifying** – A transfer to a different title. The individual must meet minimum qualifications for the position and have passed an examination appropriate for the title (Section 70.4 of the Civil Service Law).

**Transfer, Regular** – A transfer between titles based on a determination by the Department of Civil Service that the titles have similar minimum qualifications and tests (Section 70.1 of the Civil Service Law).

## PEF REGIONS

### PEF Region Map



**Region 1** – Buffalo  
*Niagara, Erie, Wyoming, Cattaraugus,  
Chautauqua*

**Region 2** – Hornell  
*Allegany, Steuben, Yates Schuylar,  
Chemung*

**Region 3** – Rochester  
*Orleans, Genessee, Monroe, Livingston,  
Ontario, Wayne*

**Region 4** – Syracuse  
*Seneca, Cayuga, Cortland, Onondaga,  
Oswego, Jefferson*

**Region 5** – Binghamton  
*Tompkins, Tioga, Chenango, Otsego,  
Delaware, Broome*

**Region 6** – Utica  
*Oneida, Lewis, Herkimer, Hamilton,  
Fulton, Montgomery, Madison*

**Region 7** – North Country  
*St. Lawrence, Franklin,  
Clinton, Essex*

**Region 8** – Albany  
*Saratoga, Schenectady, Schoharie, Rensselaer,  
Warren, Greene, Columbia, Washington*

**Region 9** – Mid- Hudson  
*Ulster, Sullivan, Orange, Rockland, Dutchess,  
Putnam, Westchester*

**Region 10** – Manhattan- Bronx  
*New York (Manhattan), Bronx*

**Region 11** – Queens- Brooklyn-Richmond  
*(Staten Island), Queens, Kings (Brooklyn)*

**Region 12** – Long Island  
*Nassau, Suffolk*

## TROUBLE SHOOTERS GUIDE

PROBLEM	PEF INVOLVEMENT	1ST CONTACT	FURTHER ASSISTANCE	KEY TIME LIMIT
Improper Labor Practice	PEF Steward assembles all pertinent data documents and witnesses in concert with PEF Field Rep. PEF Field Representative will draw up charge. Director of Field Services will approve all PERB IP filings. PEF will consider the assignment of an attorney if the issues raised are of unit-wide significance.	PEF Field Rep. to draw up charge - PEF Director of Field Services for filing approval.	Legal Department for direct presentation at PERB or for appeal of ALJ's decision.	An improper practice charge must be filed within 4 months of the alleged misconduct.
Health & Safety Problems	Members with health or safety problems bring them to the attention of the Steward or the local Health and Safety Committee/ Council Leader for action.	The PEF Field Rep. should be copied on documentation regarding health & safety problems addressed at the local level so that they are aware of the activity and can provide support as needed.	<p>If problems cannot be solved at the local level, the Steward, Health &amp; Safety Committee or Council Leader should contact the PEF Field Rep. for assistance. Assistance provided may include strategic decision-making, provision of resources, referral or direct intervention, depending on circumstances and needs.</p> <p>PEF Field Reps and Health &amp; Safety Committees or Council Leaders may contact the PEF Health &amp; Safety Department for assistance. If the Health &amp; Safety Department is contacted directly by Health &amp; Safety committees or division/ councils, the Health &amp; Safety Department will keep the field reps informed.</p>	As per Article 18 of the contract, local health & safety committees, and agency level committees may appeal them to the Statewide Committee for resolution. Article 18 grievances must be filed not later than 30 calendar days after the date on which the act or omission giving rise to the grievance occurred.

<b>PROBLEM</b>	<b>PEF INVOLVEMENT</b>	<b>1ST CONTACT</b>	<b>FURTHER ASSISTANCE</b>	<b>KEY TIME LIMIT</b>
Termination Disciplines	PEF Steward will notify Field Rep immediately upon learning of NOD. PEF Steward will assemble all pertinent data, witnesses, etc. deemed appropriate. Legal Counsel will be provided at arbitration hearing.	PEF Field Rep will handle any interrogations, interviews of grievant, as well as all Step II hearings scheduled.	Legal Department will handle, unless private counsel is retained and PEF waiver executed.	A disciplinary grievance must be filed within 14 calendar days after receipt of the NOD. A demand for arbitration must be filed within 24 calendar days regardless of whether the Agency issues a decision or not.
Non-Termination Disciplines	PEF Steward will notify Field Rep of NOD. PEF Steward will assist Field Rep in assembling all pertinent records and witnesses. PEF Field Rep will represent grievant at all stages.	PEF Field Representative	PEF Field Representative will represent grievant at non-dismissal NOD arbitrations.	Disciplinary grievances must be filed within 14 calendar days after receipt of the NOD. A demand for arbitration must be filed within 24 calendar days regardless of whether the Agency issues a decision or not.
NYS Retirement System Issue	PEF Steward will assist member in obtaining all payroll and service related documents needed. PEF does not generally provide representation to members and retirement matters unless the case is of unit-wide legal significance. However, PEF Legal and Civil Service Enforcement Departments will review issues and provide opinions on retirement issues for unit members.	NYS Retirement System Information Service (518) 474-7736	PEF Civil Service Enforcement/ Research Department PEF Legal Department Generally, members appeal to NYS Retirement System Appeals Board on their own for any issue administratively unresolved.	Once you retire your papers must be on file for at least 30 days but no more than 90 days. You can withdraw your papers up to the day of retirement. Early retirement programs vary. Check with your Field Rep. If a member believes he or she is the recipient of an adverse determination by the State Employees Retirement System, the general statute of limitations for filing a legal challenge is four months.

<b>PROBLEM</b>	<b>PEF INVOLVEMENT</b>	<b>1ST CONTACT</b>	<b>FURTHER ASSISTANCE</b>	<b>KEY TIME LIMIT</b>
Unemployment Insurance Claim	PEF Steward will assist member in filing claim usually right at job site.	PEF Stewards	NYS Department of Labor - Local Offices (blue pages of phone book for nearest office)	Once unemployed, file your claim immediately (bring your Social Security Card, one form of I.D., recent pay period payroll stub) (Local work site claim filing may be offered)
Workers Compensation Claim	PEF Steward should assemble all factual data if Article 13 violation is alleged.  PEF Steward should review Accident Report being filed with employer.  PEF Steward should notify PEF Health & Safety Chair/Council Leader about incident for follow-up.	PEF Field Representative	Article 13 and/or 18 violations if alleged - pursued by grievance mechanism.	Notify employer of on-the-job injury as soon as possible after work related injury/illness.  Article 13 grievances must be filed not later than 30 calendar days after the date on which the act or omission giving rise to the grievance occurred.
Human Rights Violations	PEF Steward will assist claimant in assembling all forms, data, documents, possible witnesses, etc.	PEF Field Representative may assist claimant with filing of charge	Possible legal action per individual case review and determination by PEF Legal Department.	To fully preserve all possible remedies, employees must file charge of discrimination with the EEOC and SDHR within 240 days of the alleged discriminatory event.
Alleged ADA Violations	PEF Steward assembles all factual data, witnesses, etc. pertinent to the member's alleged violation.	PEF Field Representative	PEF Legal Department for possible legal assistance. Advocate's Office for Persons with Disability, 473-4129, web: <a href="mailto:information@oapwd.state.ny.us">information@oapwd.state.ny.us</a>	Complaint must be filed not later than 180 days from date of alleged discrimination. Some exemptions exist. Call your Field Representative.

<b>PROBLEM</b>	<b>PEF INVOLVEMENT</b>	<b>1ST CONTACT</b>	<b>FURTHER ASSISTANCE</b>	<b>KEY TIME LIMIT</b>
Overtime Pay Issue  Contract Issue	PEF Steward will assemble all pertinent data and consult with Field Rep for possible grievance. PEF may provide legal representation in cases where members have been denied overtime pay mandated by the Fair Labor Standards Act.	PEF Field Representative PEF Legal Department	PEF Legal Department for possible FLSA violation and possible litigation.	Contract grievance must be filed not later than 30 calendar days after the date on which the act of omission giving rise to the grievance occurred. The statute of limitations under the Fair Labor Standards Act is two years.
Overtime Pay Issue – FLSA  Fair Labor Standards Act Issue	PEF Steward...for possible FLSA violation and legal action.	PEF Field Representative	PEF Legal Department for possible FLSA violation and possible litigation.	For Back Pay: 2 years to file from date of work. If employer intentionally violated you have 3 years to file with USDOL Wages and Hours Division.
Family Medical Leave Act (FMLA) Violations	PEF Steward will investigate violation and gather all pertinent data, witnesses and documents for review with PEF Field Rep for possible violation.	PEF Field Representative will investigate and pursue substantiated incidents for legal review.	PEF Legal will review and file claims on cases reviewed and deemed meritorious.	Statute of limitations is 2 years after the date of the last event constituting a violation. For willful violations the statute allows 3 years.
PSWP (Workshop) Issues (Class attendance denial by supervisor/ closed-out)			PEF Education 1-800-342-4306, Ext. 328	See most recent Catalog.
PSTP (Voucher) Issues Voucher Alternatives	Member should call 1-800-342-4306, Ext. 328 for resolution.	PEF Field Representative	PEF Education 1-800-342-4306, Ext. 328	Deadlines vary each semester. See recent catalog.

<b>PROBLEM</b>	<b>PEF INVOLVEMENT</b>	<b>1ST CONTACT</b>	<b>FURTHER ASSISTANCE</b>	<b>KEY TIME LIMIT</b>
Civil Service: Reallocations, reclassifications, out-of-title, minimum qualifications	PEF reviews. If warranted, raises challenges or questions to the attention of the Director of Classification & Compensation. Unsatisfactory determinations may then be appealed to the Civil Service Commission.	PEF Field Representative	PEF Civil Service Enforcement/Research Department	Although all problems should be addressed as soon as possible, there is no specific timeframe established for initiating a Classification and Compensation inquiry. However, the Director of Classification and Compensation's final determinations must be appealed to the Civil Service Commission within 60 days
Civil Service Exam Issues: Minimum qualifications scores, testing content or administration.	Candidates may appeal all of these issues but may only appeal ratings/scores of 60 or above. Scores of 60 or below require special consideration of the Civil Service Commission.	PEF Field Representative	PEF Civil Service Enforcement/Research Department	Candidates should follow the time limitations stated in the notification received from Civil Service. The Civil Service Commission, for good cause shown, has the discretion to waive the timeframes.
Civil Service: Oral Exam Appeals	PEF is prepared to render technical assistance to candidates who can substantiate an oral test appeal. However, since candidates must file their appeals within 10 days of the tape review, it must be emphasized that candidates have the responsibility to insure that their oral exam appeals are filed on time.	PEF Field Representative	PEF Civil Service Enforcement/Research Department	5 days to request comments, 10 days to notify of intent to appeal and request tape review, 2 weeks to submit objection(s)

<b>PROBLEM</b>	<b>PEF INVOLVEMENT</b>	<b>1ST CONTACT</b>	<b>FURTHER ASSISTANCE</b>	<b>KEY TIME LIMIT</b>
Civil Service: Disqualifications	Civil Service may refuse to examine or to certify applicants who do not meet minimum qualifications. Applicants may also be disqualified based on falsification of an exam application. Disapproved applicants must be provided a written explanation and may provide information contesting the disapproval to the Civil Service Commission.	PEF Field Representative	PEF Civil Service Enforcement/Research Department	Candidates should follow the time limitations stated in the notification received from Civil Service
Civil Service: appointments transfers reinstatements eligible lists	PEF reviews and, if warranted, initiates inquiries to the Department of Civil Service. Unsatisfactory determinations may be appealed to the Civil Service Commission.	PEF Field Representative	PEF Civil Service Enforcement/Research Department	Although all problems should be addressed as soon as possible, there is no specific timeframe established for initiating an inquiry to Civil Service. However, the final determination must be appealed to the Civil Service Commission within 30 days.
Civil Service: Probationary Termination (procedural violations only)	PEF reviews and, if warranted, appeals to the Civil Service Commission.	PEF Field Representative	PEF Civil Service Enforcement/Research Department	30 days from date of termination.
Layoffs: Procedural questions	PEF reviews procedural issues and, if warranted, initiates Civil Service inquiries and/or appeals.	PEF Field Representative	PEF Civil Service Enforcement/Research Department	Generally, must be initiated within 30 days and should be initiated as soon as possible.

<b>PROBLEM</b>	<b>PEF INVOLVEMENT</b>	<b>1ST CONTACT</b>	<b>FURTHER ASSISTANCE</b>	<b>KEY TIME LIMIT</b>
Article 22 Contracting Out	PEF will negotiate with NYS possible alternative proposals in response to contracting out by NYS. See further assistance column for more PEF involvement.	PEF Field Representative	PEF's Contract Administration Department will provide direct assistance to affected PEF employees in redeployment list placements, traineeship possibilities, transition benefits, severance pay options, education stipends, and preferential hiring opportunities.	NYS must provide PEF with 90 days advance notice of any contracting out proposals which will affect permanent PEF employees.  Permanent employees affected by the State's right to contract out must be given 60 days written notice of intended separation.
Layoff: Redeployment and Continuity of Employment Assistance.(Art 21)	Continuity of Employment Committee/ PEF Education and Training Department	PEF Field Representative	Article 21 Continuity of Employment Committee and PEF's Education and Training Department will develop strategies to provide continuity of employment when displacement occurs.	You must inform your Field Rep. as soon as possible after notice of layoff is received.
Licensing Charge	PEF will provide legal representation to a current unit member served with formal licensing charges arising out of the member's duties as a State employee if the license is a condition of State employment.	PEF Field Representative		Once charges have been served, the PEF Field Rep should be contacted as soon as possible.
Probationary Dismissal	PEF Legal Department will investigate to determine whether there are any legal grounds upon which to challenge a probationary appointment.	PEF Field Representative	PEF Legal Department	There is a four month statute of limitations for the filing of an Article 78 petition challenging a probationary termination. The statute runs from the notice of termination.

PROBLEM	PEF INVOLVEMENT	1ST CONTACT	FURTHER ASSISTANCE	KEY TIME LIMIT
Out-of-Title Work Occupational	PEF will provide legal representation to challenge an arbitrary, capricious or illegal out-of-title determination by GOER.	PEF Field Representative	PEF Legal Department	<p>A grievance under this article must be filed by the employee or PEF with the Agency head. An appeal of an unsatisfactory decision must be filed within 10 working days. Once the grievance is rejected at step 3 by GOER, an Article 78 petition challenging the rejection must be filed within four months.</p> <p>An appeal of the original determination can be made if additional facts or the existence of a dispute of fact can be documented. (17.4,d)</p>
Occupational Disability Leave Civil Service Law 71	PEF generally provides legal representation in a Section 71 hearing to an employee who can produce medical evidence contesting an employer's determination that the employee is not fit to return to service after a year's absence or who is denied the right to such a hearing.	PEF Field Representative	PEF Legal Department	If, upon examination by the State Employee Health Service after the year's leave of absence expires, an employee is found not medically fit to return to duty, the employee has 10 working days in which to request a Section 71 hearing to contest that finding.

<b>PROBLEM</b>	<b>PEF INVOLVEMENT</b>	<b>1ST CONTACT</b>	<b>FURTHER ASSISTANCE</b>	<b>KEY TIME LIMIT</b>
Leave for Ordinary Disability Civil Service Law 72	After a Section 72 hearing has resulted in a determination that an employee is not medically fit to perform the duties of the employee's position, PEF Legal Department will review whether the employee's determination was arbitrary, capricious or contrary to law and whether the procedures used by the appointing authority were in compliance with the statute.	PEF Field Representative	PEF Legal Department	Any final Agency action pursuant to CSL 72 would be subject to the four month Article 78 statute of limitations. There is a 30 day time frame to appeal to the Civil Service Commission.
CSL 73: Separation for Ordinary Disability: Reinstatement	PEF generally provides legal representation in a Section 73 hearing to an employee who can produce medical evidence contesting an employer's determination that the employee is not fit to return to service after a year's continuous absence or who is denied the right to such a hearing.	PEF Field Representative	PEF Legal Department	The law and its regulations do not state how long one has to request a Section 73 hearing, but PEF's position is that the Section 71 regulations should apply. Those regulations provide ten working days in which to request a hearing.
CSL 65: Long-Term Provisional Appointments	PEF's Legal Department will review provisional appointments in excess of nine months to determine whether such appointments should be challenged in court.	PEF Field Representative	PEF Legal Department	Provisional appointments in excess of nine months constitute continuing violations of CSL 65 and, thus, there is no statute of limitations for their challenge.

<b>PROBLEM</b>	<b>PEF INVOLVEMENT</b>	<b>1ST CONTACT</b>	<b>FURTHER ASSISTANCE</b>	<b>KEY TIME LIMIT</b>
Miscellaneous Civil Service Law Violations	PEF's Legal Department will review for possible legal challenge alleged violations of Civil Service Law provisions concerning appointments, promotions, layoffs, and exams to determine whether an action or determination of the State Department of Civil Service or the Civil Service Commission is arbitrary, capricious or contrary to the law.	PEF Field Representative	PEF Legal Department PEF Civil Service Enforcement/Research Department	Generally, any final action or determination by the Department of Civil Service or the Civil Service Commission is subject to a four-month statute of limitations for legal action under Article 78.
Individual Civil Rights Violations	PEF's Legal Department will review a claimed violation of civil rights but, unless an issue of unit-wide legal significance is presented, PEF generally will not provide legal counsel to members in such cases.	PEF Field Representative	PEF Legal Department	Statutes of limitations for civil rights violations range from four months to three years.
Health benefits, complaints and suggestions	PEF's Health Benefits Specialists respond to health benefit questions and complaints, as well as assist members with the process used to appeal the payment or denial of a claim.	Agency/Facility Health Benefits Administrator-HBA (Personnel Office)	PEF Legal Department PEF Contract Administration Department	A violation of Article 9 of the PEF/State Agreement is subject to the 30-day grievance statute of limitations.

## Important Phone Numbers

**PEF Albany:**.....1-800-342-4306 or (518) 785-1900  
www.pef.org

**PEF Membership Benefits:**.....1-800-342-4306 or (518) 785-1900  
www.pefmembershipbenefits.com

**PEF Travel Corp.:**.....1-800-767-1840 or (518) 782-9045  
www.peftravel.com

**PEF Local Office:**.....Your Region # \_\_\_\_\_

**PEF Retirees:**.....1-800-342-4306 or 518-785-1900

**Civil Service:**.....www.cs.state.ny.us  
General Information.....(518) 457-2487  
Civil Service Exams.....(518) 457-6216  
Civil Service Lists.....(518) 457-4295

**Dental Plan: GHI Preferred Plan**.....www.ghi.com  
1-800-947-0101

**Optical Plan: Davis Vision Care Plan**..... www.davisvision.com  
Within the Capital District.....(518) 382-0355  
Outside the Capital District.....1-800-999-5431

### **Prescription Plan:**

Empire Plan Subscribers Call **Express Scripts:**.....1-877-7NYSHIP  
(1-877-769-7447)

**Health Insurance:**.....1-877-7NYSHIP (1-877-769-7447)

**HMO Enrollees** (*Contact your Agency Health Benefits Administrator*)

### **Empire Plan:**

Complementary & Alternative

Medicine (CAM) Program:.....1-888-447-2144  
www.empireplancam.com

The Empire Plan Nurseline:.....1-877-7NYSHIP  
www.myuhc.com

Centers of Excellence for Transplants Programs:...1-877-7NYSHIP

Managed Physical Medicine Program (MPN):.....1-877-7NYSHIP

Infertility Treatment:.....1-877-7NYSHIP

**United Health Care** (medical).....1-877-7NYSHIP  
www.myuhc.com

**Empire/Blue Cross** (hospital).....1-877-7NYSHIP

**Health Call** (Pre-Admission/Certification).....1-877-7NYSHIP

**Home Care Advocacy Program**.....1-877-7NYSHIP

**Value Options**.....1-877-7NYSHIP

**Health Care Spending Account**.....1-800-358-7202  
www.flexspend.state.ny.us

**Educational Opportunities:**

PEF Education.....1-800-342-4306 ext. 328  
(518) 785-1900 ext. 328  
www.pef.org

**NYS Offices (Albany) General Information:**..... (518) 474-2121