

**STATEWIDE PEF/NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION LABOR/MANAGEMENT COMMITTEE MINUTES
June 29, 2005**

Management thanked PEF for their support in making DEC's Central Office picnic an outstanding success. Based on last meeting's discussion, it was agreed that the process would be reformatted into a three-part program: issues both sides believe are major points of discussion, information exchange and unresolved topics. PEF expressed their disappointment with the processing of minutes from the last meeting, regardless of format. Management expected that matter to be resolved. Much of the delay was from extending the Commissioner an opportunity to review the minutes. Management asked that the discussion remain generalized. Details can be deferred to workgroups. PEF stated that if management could assure that division directors are responsive, it would help clear the agenda. Both parties have had issues or concerns that have been addressed between meetings. PEF will contact the agents once they are provided.

ISSUE

Privatization

ACTION

Management made a commitment to answer the questions by the next meeting or within 30 days for the minutes and should be able to produce all numbers requested for contracts.

DISCUSSION

PEF provided a definition of contracting two months ago. Various interested groups were listed. DEC understands this is big issue for PEF and is doing everything possible to fill all targets. They are seriously taking look at some of the areas contracted out to see if in this year's budget request, they can convert some contractual costs into personnel. Current status is tied with the target. Every agency does have numerical targets that can't be exceeded. Goal is to get the number up to 3330 and find ways to clearly and cost effective move some money. Need to see if legislation passes and impact. Civil Service is lead for state agencies on providing comment for recommendations to GOER. The main change is next year's budget, if GOER doesn't provide some relief.

PEF focused on the Division of Water because it provides a good example of contracting out, with the available information. Concerns focused on contractors sitting among state employees in the central office and regional offices. Division of Water has several types of contractors, NEIWPC (New England Interstate Water Pollution Control Commission) and a not for profit associated with Cayuga Community College known as RACNE, IAGT, or the Institute. There are around 30 [contractors] NEIWPC and 20 [contractors] RACNE in Water's organizational structure for Central Office. \$10 million in the last five years went to NEIWPC and \$10-20 million with RACNE, most money spent on work traditionally done by DEC. This conflicts with Civil Service policy, which deals with patronage problems, ethics concerns and binds employees to certain standards of work. PEF presented a map based on an April 2005 listing of everyone on the fourth floor with red demonstrating contractors. In many cases contractors are not even introduced to civil servants when working close together. The fourth floor consisting of Division of Water and Environmental Permits had 55 contract positions and 30% were Water FTE's of the

183 base employees seated on the floor. In the Central Office, the entire fourth floor is 24% contracted positions of the 239 total on the floor. In 2001 there was a 20% decrease in DOW staff, 14% decrease in DOW regional staff. Fills decreased from 275 to 225 statewide in 2004. Central Office vacancies are up 36%. It's an inverse relationship, as fill levels decreases, contracts increase. As employees are moving to different divisions and departments, lost through mass retirements, attrition most positions are filled by contractors. Information on fills and intended fills show loss of civil service positions with a one to one replacement brought in from RACNE. This has negative effects.

PEF is concerned with ethics. Contract employees aren't bound by law, while civil servants are. They represent themselves at public meetings as DEC employees. Hopefully their decisions are correct. Hiring practices opens potential for patronage. Next are training concerns. PEF members spend a considerable amount of time training consultants and contractors. There is a considerable amount of turn over. An Environmental Engineer paid at \$40-55,000 depending on the contract. The person arguably will need to be trained for one year to be productive, a significant expense. In many cases contractors are leaving the program after one year. Costs to the department could be \$50-60,000 considering additional training needed depending on the discipline. Many programs take one year to completely understand regulations and be productive. Training opportunities have been given to contractors, opportunities that might not be available to civil servants. No restrictions on out of state travel are applied to consultants. DEC employees are not being trained. More focus is on short-term employees that might leave.

Management asked if PEF was directed to train and break in these employees. PEF replied yes, which lead to morale concern. For example, one employee, after 20 years of working in the department, was not offered a new position, which should have been an EE2 Civil Service position, but was contracted out, providing no opportunity for the employee. Contractors are blocking transfers and promotions. This employee worked a significant number of hours outside the regular core hours. The position the employee was hoping to be promoted to was not offered internally but was filled by a contractor. Interviews are being arranged by postings on websites and not posted in the building or readily available for civil servants to view. Civil servants have interviewed, and for the most part unless retired, are not chosen. There may be a hiring bias. If one civil servant returns as a contractor, the Department hasn't gained an employee but lost one civil servant. There are examples of people actually interviewing for a demotion because of interest in posting for a specific program and that have been denied those positions. Types of postings for these contracted positions are generally descriptions of jobs that mirror Civil Service position listings and associated descriptions. The Department has civil service lists of people that are already trained and knowledgeable within the department and the Department is missing the opportunity for promoting our professionals. It is questionable that if a list is available, then why are we hiring contractors because these positions are not specialized? In the example presented, the Department may lose twenty years of experience because of closing the door on this employee's opportunity to obtain a promotion by contracting out. The employee has considered leaving the agency as a result of these hiring practices.

The next concern leads to diversity. PEF hasn't seen diversity in DOW. It's not the ratio of men to women hired but more of an affirmative action issue. Contracting out is cheating the Department out of diversity that results from following the Civil Service process.

There are issues of losing control of programs and funding. Contractors are becoming DEC's interface with the public. Contractors are running many parts of programs including movement of funding, dealing with the public, and making recommendations for hiring more contractors. In many cases positions are funded outside Department (i.e.: NEWIPPC). As a result, we are not seeing that money coming to the department. Concern overall has been moving funding outside of the department or other agencies. You don't see how much the true costs are to run programs. They don't appear in usual breakouts of numbers needed for doing a job. The amount being done per reported cost is inflated. It appears that Department does more for less, which is very risky for future budgeting. Don't have true representation of what a program needs to function. We know how much money is spent in plans, we have pie charts with NEIWPC funding in it. We are hoping this information be made available in order to make accurate assessments of all contracted work. We are interested in fringe benefits numbers. RACNE's administration fee increases over time 15-20% and 5% profit margins when we are told they are not for profit.

Loss of control of EnCon's business is a big concern. In many programs we have, there is one person remaining with institutional knowledge. Retirements may be equivalent to losing 1.5 people because of their training and knowledge. Many places have no one ready to move up. We are leaving ourselves vulnerable because contractors leave without employees ready to take over. We are looking at types of functions they are doing. Contractors are in positions like Environmental Program Specialist, Environmental Engineer, Environmental Analyst, Program Aide, and fiscal titles. An EE3 job posting was posted through NEWIPPC. An individual working for NEIWPC wrote letters to government officials. Civil servants aren't interfacing with the public. In cases of work plan and web development, any new needs lead to recommendations for hiring contractors. Not truly identifying program needs. These people are in a position of budgeting for contractors. DOW contracts chemists with labs and is in charge of contracting. We are losing control of our decision-making functions.

Management asked if PEF believed contractors were performing duties that, in fact, have been past duties performed by PEF state employees or is the understanding that they are duties for programs that would have otherwise not been able to be done. PEF replied that they felt the positions were the same as employees. In Floodplain Management, two employees are working under a civil servant, both contractors. When staff leave civil service, contractors replace the exact duties.

PEF added that as field positions decrease, there would be certain areas within the department where less or no one is doing that function. That results from moving to contracting money in order to continue doing that function. Most jobs posted are identical to Civil Service positions or jobs persistent to Civil Service descriptions. There are times with no funding for Civil Service to do jobs and work is moved to contractors. That's the most important issue as loss of control or skills that you should retain. There should be no difference when you have outsiders doing functions that no one else in your department does problem. There's a direct correlation between mass retirements and increases in hiring contracts. Retirements are filled with NEIWPC.

Management asked if PEF supported ERI. PEF replied that they expressed that fear but was told the alternative was lay offs. PEF was opposed to targets and always challenged that portion in the bill for the same reasons to dealing with the loss of certain skills and abilities that the agency

felt was needed. The fill position should have been increased at the time people left. Contract employees don't contribute to the retirement system. PEF stated that from discussions with contractors, you would find that some of the contractors' qualifications don't meet Civil Service requirements or are equivalent to what they were hired as. It was suggested to some contractors, for the long term, to make to take an exam since they don't have the qualifications, but they replied they make more money this way. An EPS (Environmental Program Specialist) must be a Grade 13 or 14. The contractor may be hired at Grade 16 equivalent. During that two-year period, because they may be the only one dealing with program, they renegotiate to a higher grade. EPS involves one-year steps from Grade 13 to 14 to 18. Contractors are hired around G16 or G18 equivalency, less contract administration and profit fees, and argue for G23 within a similar time period. It creates problems. An argument may be there isn't a savings. DOW is the best example to use.

Management felt this was the most comprehensive description of concerns they ever heard and asked that the presentation be submitted in a summary. At the present time, there is no one for one replacement by a contractor when an employee leaves. On May 3, waivers went to DOB requesting 10 items for DOW in the Central Office and regions. 135 waivers went to DOB in May. A package was signed yesterday with another 67. We are pushing the envelope. You may see it on a specific item or issue where a contractor comes in when someone leaves. Generally it's not one for one. They couldn't say if it happened shortly after retirements. NEIWPC is a great example. The lines may be blurred. Most of the contracting out is in the field and those people are not seen. On NEIWPC, in some cases federal money keeps coming even though our jobs keep dropping. If we come to some resolution to increase our staff we could get that money that flows directly to NEIWPC to flow to our department. This year's budget is still 3330. Unless the legislature passes a budget with an increase in personnel services dollar budget they cannot hire. PEF stated that if the legislature raises the number for DEC, positions would not be filled because the Governor sets the number. PEF doesn't see as many complaints from the executive that was used by others when losing staff. The legislature needs more support, answers and hard arguments. Management will try to have positions added next year. They are struggling with the time it takes to replace retirees but are being aggressive. There are about 55 more items than we have fills for. The waiver yesterday included retirees scheduled to retire before July 1. Most of the time, getting automatic backfills has been routine. For a long time, they were not happening nor were many promotions. NEIWPC people have been here seven to eight years. PEF asked if DOW is now going back to funneling money into Section 106. Management replied that if we get to the point when we can move people with DOB from NEIWPC to regular staff, we can work fairly easy with EPA directly. PEF asked if there have been efforts to divert this Section 106 work with EPA to get money back to staff. The reason the Legislature hasn't been successful in putting specific staff positions into the budget is because of recent court decisions limiting their power to do so. We sense that the current managerial staff is not as committed to being more assertive in fighting for adequate staffing and funding at DEC to fulfill our mission. Management disagreed.

PEF felt that because of the longstanding, artificial numbers capping, the agency's staffing levels and funding, that managerial staff are tired trying to get more staff, and are now in a pattern of self-censoring themselves into not even seriously asking, much less aggressively fighting for staffing. Also, it can't be said that their hasn't been a one for one with retiring staff being

replaced with contractors until an accurate number of the contract employees in the areas requested is provided.

PEF is concerned that DER consent orders with major gasoline companies allow them to do their own inspections and monitoring. Also concerned with the five County Delegation MOUs for petroleum bulk storage inspections. They don't believe they are working well, and that they have not had appropriate managerial review and evaluation for effectiveness. This is on top of them doing work PS & T staff used to do and could do with adequate staffing. Management couldn't say if a retiree may not find NEIWPPC money to do that person's job. Under the current scheme of DOB, if someone leaves DOW, they will get the item back. Staff is sought first and then contractors. PEF requested that Cornell and Syracuse ESF, MOUs with SUNY and global consent orders be added to the list of things they are looking at.

ISSUE

Work Schedule

DISCUSSION

A memo was sent to the commissioner on May 12. On March 7, the work scheduling policy and the draft attachment was sent. Meetings took place on time and attendance. PEF wanted to be on the committee that would discuss these issues. Management stated they received one hundred comments.

PEF requested the start times before 7:30 continue to be allowed. It benefits Department in many ways, reduces traffic emissions and fuel usage and there is greater coverage. Complaints from land stations arrive very early and are able to get out into the field right away. DEC has a long record of being a professional agency and to adjust the work schedules within reason reflects management's respect for staff. Employee's needs are childcare, health care and dependent care responsibilities. Changing the times would disrupt arrangements. PEF believed the larger time frames also helps with recruitment, retention, morale and increasing diversity. It helps with those who have a second job cover financial needs, without disruption to the agency.

Management felt they had a good document. They stated that 80% of the many responses to the memos started with "I have to be there because..." The first issue was if it was clearly work-related. The idea of having an electronic time keeping system requires different approvals or processes to make sure things are done properly. There's no method for people working late when job related. Those were the concerns of the division and bureau management, loss of control and coverage. They are trying to strike a balance between PEF's document and having an efficiently functioning department beyond call hours. It's down to an issue of 7:00 vs. 7:30 and coming up with some policy that reflects management's needs and the department and employee. PEF was content with the status quo. The mechanisms should still be in place to raise this for discussion. PEF thought management needed to be educated on the amount of control they possessed. These are only guidelines and the decisions remain with them.

ISSUE

Diversity

DISCUSSION

Management looks at the numbers for women and people of color, especially in management positions. The Environmental Engineers (EE) provided a good example where they didn't believe there were any at EE4, very few at EE3 but women were coming up through the ranks. Disparity was underrepresented. PEF asked if their affirmative action office receives the goals annually, as required. They also asked for more specifics to get an overall picture. PEF didn't agree that the EE4's was the place to start when the EE 1-3 positions weren't diversified from the beginning to offer qualified candidates. Management felt dialogue was needed to provide ideas. PEF provided a definition from the executive law. The Environmental Program Specialist series was a vehicle to promote from the administrative to PEF but those functions are being taken over by NEIWPC. A number of women and other protected classes appear on promotion lists. Management will be looking to the EE3 and EE4 lists where people are pegged for particular positions.

ISSUE

Promotional ladders

DISCUSSION

Management stated that there was an on-going group working on the parity issue. Nothing is currently pending at DOB. Management is interested in meeting and selecting a new representative. PEF felt a person meeting certain criteria and appearing on list, and who had demonstrated manager level skills should move from one level to another. They have heard DEC has very narrow career tracks. PEF asked management to identify two or three areas to focus discussion, and have a subcommittee look at some titles. The career track was removed for biologists. Management had discussed engineers moving to EPS titles. Much of the resistance is in Civil Service itself by placing restrictions on people moving from title to title. PEF has looked at job descriptions becoming murkier over the years as shown by Article 17 grievances. Employees are realizing their jobs and situations have changed and need some flexibility in terms of defining titles. Management added that some opportunities were not open to certain people because their current titles were non-competitive. PEF tried mechanics to change that but impacts other titles. Anything you can do where you make titles available to more individuals will improve things. There are substantial minorities in other titles than engineers. Given the current status of contracting and different ways of getting work done drags out that issue.

Division of Fish and Wildlife did a lot of this on their own. PEF sought retention and recruitment problems, especially in Regions One and Two. We have come up with the money to change it. Management said there is no package at DOB at this time. PEF added there were geographical differentials where we have lost people. This subcommittee should get back together and start working on this again.

ACTION

PEF asked management to designate agents to work on at least 4-5 titles to raise at the next meeting.

Management stated that lab consolidation could be introduced on the agenda. Preliminary discussions took place with assistant commissioner. He acknowledged that PEF representation would be useful. The Health and Safety office will be included.

Agenda Items

1.e. The Conservation Fund is over \$5M in the red.

2. Civil Service

a. How many waiver requests are pending at DOB? How many waiver requests did DOB approve?

Waiver requests information was given above. A few of the title positions will rectify a number of out of title situations.

b. Did Civil Service approve Job Classification Standards with professional titles of Engineering Geologist and Environmental Engineering Technician? Approval is still pending.

c. Did Civil Service approve Management and Budget's \$600,000 submission of the Division of Fish, Wildlife and Marine Resources fiscal impact forms that request increased geographic pay differential for the Biologist 1 and Biologist 2 (Marine) for appointments to Region 1 and 2? That's an internal issue between the Director of O & B and management.

d. How will DEC recruit candidates for the Associate Bacteriologist (Marine) position if there is no Senior Bacteriologist (Marine) title to provide a pool of qualified candidates? Management replied that they would recruit or hold exams for at least three candidates. Did DEC fill the Bacteriologist (Marine) position? The position was filled on December 30, 2004

g. Acting Positions Still Pending – Stamford Forester 3 appointment was made on June 14. There has been no response on the EE4 position for DER in Albany.

ISSUE

4. Office Moves A & B

DISCUSSION

OGS is negotiating the lease for a new one-story office building in Region 4, which could potentially be occupied in late 2006. The team includes representatives from both sides. The space requirements are based on the number of people that will be occupying the space. Management will certify at a certain level. PEF commented that substantial resources were put in to 625 Broadway green building. We fought for improvements for handicapped accessibility. Talked about setting goals, employees should have a suitable place not necessarily thinking green building. EnCon should be taking the lead. DEC is not strongly pushing for it and didn't specifically delineate it in the proposal.

New Paltz plans specifications and the building code checklists have been sent to OGS for review because of its size. The bid schedule will then be determined. Any concerns should be in by late August. PEF asked the minutes to reflect PEF will receive any update. Tarrytown move

to White Plains is on a month to month lease until finalized in White Plains. The new facility required some modifications. Furniture may be one of the sticking points. PEF felt someone should communicate with the steward and that status. Ground breaking is dependent on bids, could be October. PEF wanted the minutes to reflect that the administration will address any problems getting responses by contacting people for assistance in getting those responses.