



PA PEF

2015

ANNUAL REPORT TO THE DELEGATES

37th Annual Convention Syracuse, NY
October 18-21, 2015



New York Public Employees Federation 2015 Annual Report to the Delegates

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Officers' Report

Welcome, delegates to PEF's 37th Annual Convention. Since taking office on August 1, 2015, we remain humbled by the responsibility given to us by you, the PEF membership.

The pages of this Annual Report will detail some of the highlights of the important union work that was accomplished since our last convention. And we have already taken steps to ensure that we have even more success in the coming year by setting clear, strategic priorities to help us achieve our goals.

We know we have some challenges ahead. Soon, the United States Supreme Court will be hearing arguments in the *Friedrichs v. California Teachers Association* case, involving the collection of union dues. This case could have a negative long range impact, not only on PEF, but on all unions. To combat this, we need to make sure PEF is providing the services its members need and deserve and we have begun to realign resources to make sure that happens.

Soon, we will be in the midst of serious contract talks with the

State. It is our job to make sure the membership stands united in support of the PEF Contract Team as its members - your union brothers and sisters - work tirelessly to secure the best possible contract for our membership.

We hope you will join us in a renewed commitment to our union and we hope you will join us again at next year's convention where we can all look back at a year of change and growth for the Public Employees Federation.

In unity,



Wayne Spence
Wayne Spence
President



Kevin R. Hintz
Kevin Hintz
Secretary-Treasurer



Adreina Adams
Adreina Adams
Vice President



Peter Banks
Peter Banks
Vice President



Nikki Brates
Nikki Brates
Vice President

Secretary-Treasurer - Finance Department

The Finance Department continues to provide information and support to the PEF leaders and membership through reporting, training, communicating and processing of requests.

This past year, we have completed work on upgrading our accounting systems to better communicate with our divisions, regions and staff. More consistent reporting to our divisions, regions, and departments will allow them

to better plan and control their expenditures throughout the year. We are working with the budget committee and projecting PEF's future financial positions.

The biggest responsibility the Finance Department has is the day-to-day activity of processing invoices, check requests and member vouchers. Currently, we process nearly 1,000 checks per month as well as providing

financial support and training for the 12 regions and 222 divisions. This is in addition to the filing of various required reports with different federal and state agencies throughout the year and the multiple audits that are completed annually by an independent firm.



N.Y.S. Public Employees Federation and Subsidiaries

Consolidated Statements of Financial Position

Audited – March 31, 2015

ASSETS

LIABILITIES AND NET ASSETS

Current Assets

PEF Cash	\$4,713,604
Legislative Fund Cash	\$320,601
Accounts Receivable	\$2,689,300
Prepaid Expenses	<u>\$263,529</u>

Total Current Assets \$7,987,034

Fixed Assets

Land & Building	\$2,012,103
Furn/Fix/Computers/Autos	\$3,941,231
Leasehold Improvements	\$1,346,797
Less Accum Deprec/Amortiz	<u>\$(6,091,514)</u>

Total Fixed Assets \$1,208,617

Long Term Assets

Other Assets \$70,753

Total Long Term Assets \$70,753

Investment Securities \$9,450,341

TOTAL ASSETS **\$18,716,745**

Current Liabilities

Accounts Payable	\$3,448,340
Accrued Liabilities	<u>\$3,150,663</u>
Total Current Liabilities	\$6,599,003

Long-Term Liabilities

Post Retirement \$10,417,334

Total Long-Term Liabilities \$10,417,334

Total Liabilities \$17,016,337

Net Assets

Unrestricted	\$(3,542,209)
Unrestricted - Board Designated	\$5,122,570
Temp. Restricted Net Assets	<u>\$120,047</u>

Total Net Assets \$1,700,408

TOTAL LIABILITIES & NET ASSETS **\$18,716,745**

N.Y.S. Public Employees Federation and Subsidiaries

Consolidated Statements of Activities

Audited - March 31, 2015

Income		Operating Expenses	
Membership Dues Income	\$32,595,533	Reproduction	\$200,300
Agency Fee Income	\$1,480,605	Printing Expense	\$283,981
Interest Income	\$168,486	Postage Expense	\$417,055
Rental Income	\$35,524	Office Supply Expense	\$121,539
Other Misc. Income	\$1,836,631	Telephone/Communication	\$239,490
Unrealize Gain/(Loss)	\$504,614	Rent Expense (includes Real Estate Taxes)	\$949,310
		Utility Expense	\$95,950
Total Income	\$36,621,393	Janitorial & Security Expense	\$86,529
		Maintenance & Repair	\$120,707
Expenses		Equipment Rental	\$25,007
Direct Services		Minor Equipment Purchases	\$24,896
		Computer Fees	\$91,040
Union Leave Expense	\$440,246	Advertising Expense	\$407,709
Staff Salary Expense	\$10,181,494	Photographic Supply	\$529
Payroll Tax Expense	\$925,743	Books & Reference Materials	\$153,279
Benefit Expense	\$5,735,617	Insurance Expense	\$94,153
Auto Allowance & Expense	\$359,934	Temporary Hire	\$36,598
Staff Travel & Transportation	\$280,301	Steno/Transcripts/Court	\$39,906
Member Meeting Expenses	\$2,143,665	Miscellaneous Sundry	\$94,082
State EOL Expense	\$660,207		
		Total Operating Expenses	\$3,482,060
Total Direct Services	\$20,727,207	Admin/Organizational Expenses	
		Scholarship Fund Expense	\$43,650
		Arbitration Expense	\$211,345
		Contributions	\$37,893
		Affiliation fees	\$292,041
		Legislative Expense	\$517,525
		Divisional Fund	\$1,187,627
		Per Capita Fees	\$9,302,765
		Professional Fees	\$646,875
		Depreciation/Amortization	\$318,348
		Total Admin/Organization Exp	\$12,558,069
		Total Expenditures	\$36,767,336
		Net Income/(Deficit)	\$(145,943)

Divisions

The Divisions Department staff includes a Divisions Coordinator and two Divisions Information Assistants. The department assists as staff for the Divisions, Special Elections, Delegates Election, Credentials and Triennial Elections Committees. The staff supported eight Divisions Committee Meetings, three Delegate Committee meetings, Delegate ballot preparation, Delegate ballot counts, and eleven

Triennial Committee meetings.

During the year the Divisions Elections Department conducted 201 elections, of which 5 were Special Elections and 196 regular and vacancy elections of stewards and division officers.

The 2015 Convention Delegate election was conducted in 252 constituencies for a potential 1041 delegates, 884 valid petitions were submitted, 43 constituency elections went to balloting to elect 279 delegates and 397

petitioners were declared elected without opposition. There are 124 executive board, officer, and trustee delegates for a total of 800 delegates as of this writing.

The 2015 Triennial Election was also conducted in which 5 statewide officers, 3 trustees, 12 regional coordinators and 104 executive board seats were filled.

counts, and eleven

were submitted, 43 constituency elections went to balloting to elect 279 delegates and 397



Membership Information System

The Membership Information Systems Department (MIS) provides a crucial link connecting PEF's members and staff statewide including all fourteen PEF locations. MIS provides this through the support and delivery of Internet services, data services, PC and server services, networking, and telecommunications.

In addition to the daily operations of PEF, MIS continues to support the expanding business operations in Membership Benefits. MIS provides technical services that complement their insurance, retail, and e-store systems and software.

Computers, Hardware and Software

Maintaining, monitoring and backing up of PEF's servers are crucial for the day-to-day operations of the organization. We continually test not only for security, but also for performance, reliability, resiliency and redundancy.

MIS has also deployed additional email and network virtualized security appliances. These enhancements have reduced malicious emails, allow for encrypted communications and protect PEF mobile devices from malware and other infections.

In 2015 MIS assisted in the deployment of new multifunctional devices (printer/copiers) in all offices statewide which resulted in significant cost savings for PEF.

Data Services

Our custom-built Membership Information Database Application System (MIDAS) continues to expand its role within PEF. MIS is continuously enhancing the features and functions of the system to empower staff to better serve members. MIS continues to provide membership information via paper/electronic reports, labels and electronic look-up formats. New electronic reports have been developed to replace paper and reports of the past.

Web Server and Application

REGIONS CONTACT US MEMBERSHIP BENEFITS MEMBER LOGIN Search...

New York State Public Employees Federation

ABOUT MEMBER RESOURCES MEDIA CENTER ACTION CENTER CONTRACT INFORMATION CONVENTION

FEATURED

14 September 2015
To those of you celebrating the Jewish... [more]

11 September 2015
Under a sunny sky dotted with clouds... [more]

9 September 2015
Dear PEF members: I'm writing to inform... [more]

LATEST

Rosh Hashanah

14 September 2015 By Pefpr | Posted In Featured, Holidays/Remembrances, Uncategorized

CONVENTION REGISTRATION SYRACUSE 2015

CALENDAR OF EVENTS

Sep 2015

S	M	T	W	T	F	S
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19

Development

MIS maintains web servers and develops web-based applications that allow PEF to securely engage with the membership. Our website is the most forward-facing tool we have to communicate with our members, elected officials and the public. The site features a secure Members section which displays your division and region, and the name and contact information about your specific Eboard representative, council leader, regional coordinator and PEF field Representative. A mobile version of the website was developed and launched allowing members with smart phones, tablets, and other mobile devices to view the site in a format that is optimized for their device.

Desktop Virtualization and Security Enhancements

MIS recently completed a statewide thin-client desktop rollout to all PEF

staff, leveraging shared desktop and application technology. This allows for centralized management, faster statewide rollouts of upgraded software and security patches and replaces hundreds of desktops with low power thin-clients.

Looking forward....

Over the next year the MIS strategic plan will be reviewed and updated to identify business objectives and priorities and provide a road map to that end. The virtualized server environment will be built-out to take advantage of the new infrastructure; disaster recovery will be expanded; further enhancements to MIDAS will be implemented; and, web applications will be developed to better serve the membership.

Executive Board and Convention Coordination

Under the direction of the Secretary-Treasurer, the Office of Executive Board and Convention Coordination secures appropriate, hospitable, and cost effective venues for PEF members, delegates and leaders to conduct the business of the union. Utmost consideration is given to the location, security and comfort of the attendees.

Convention and Executive Board site selection begins with an RFP process. Overall costs for meeting space, overnight accommodations and transportation are considered. Final determinations for Executive Board meetings are determined by the President; and Convention locations and dates are decided by Board vote.

The annual Convention is attended by 1,200 members and guests. Event requirements include 2100 room nights, 40,000 square feet of meeting space, and 50 breakout rooms over four days. Due to the size and scope of the event, meeting locations are selected at least three years in advance.

The Convention is a collective effort by the Convention Chair and Co-Chair, the Conference Coordinator and staff from every department within PEF. Some of the many responsibilities include: Conducting elections, delegate notification, the design and production of delegate materials, publications, and stage and floor design, coordinating on-site registration, work with production and decorator staff,

oversee audio/visual and electronic requirements, coordinate educational programs, organize and manage the exhibitor area and arrange for the printing, preparation, handling, and transportation of all delegate materials. In addition, PEF Travel makes arrangements for all air, train and shuttle transportation both local and statewide.



During the event, PEF staff registers delegates, assists with housing issues and works with convention center and hotel staff to set up the plenary, meeting rooms and vendor area. Committee members work in conjunction with PEF staff to assist with transportation, registration, event management and volunteer coordination.

The role of the Executive Board/Conference Coordinator is to plan the Convention, Executive Board

meetings, various programs, events, and receptions throughout the year. Responsibilities include the development and distribution of RFP's for conference centers, hotels, and suppliers, contract review and negotiation, site inspection, the creation and management of online registration sites, secure overnight room blocks and meeting space assignments, arrange release time

for attendees, food & beverage selection, audio/visual requirements, on-site logistics, and liaison to the meeting facilities, hotels and suppliers.

The following upcoming Convention dates and locations have been determined:

*September 25-28, 2016 – Rochester
Riverside Convention Center, Rochester,
NY*

*October 22-25, 2017 – Lake Placid
Conference Center, Lake Placid, NY*

*October 21-24, 2018 – Lake Placid
Conference Center, Lake Placid, NY*



Executive Offices

PEF's Executive Offices consist of the following departments: Civil Service Enforcement, Health and Safety, Human Resources, Office of General Counsel, Legislative, Public Relations, Purchasing/Facilities Management, Training and

Education, Statewide Field Services, Organizing and Contract Administration. These departments are responsible for carrying out the many directives and initiatives of the President.



Civil Service Enforcement

In collaboration with PEF leaders and staff, the department regularly monitors the activities of the NYS Department of Civil Service (DCS) and the various state appointing authorities, which is a significant part of PEF's ongoing efforts to enforce the merit system.

Most of the inquiries formally investigated by CSE involved the following issues: salary determinations, reclassifications/reallocations, civil service exams, eligible lists, canvassing violations, provisional appointments, transfers, jurisdictional classification, contracting-out, retirement, reductions in force, probationary terminations and other questions from field and other PEF staff, executive board members, council leaders and statewide L/M chairs.

Notable Civil Service Enforcement/Research Department action:

Despite PEF's objections, the Civil Service Commission upheld the Division of Classification and Compensation's decision denying PEF's request that the title structure change of the Facility Parole Officer and Correction Counselor titles into the new Offender Rehabilitation Coordinator series in DOCCS be rescinded. The PEF Legal Department staff filed an Article 78 proceeding challenging the Commission's decision on October 15, 2013. Then, on August 19, 2014, PEF received an unfavorable decision from Albany Supreme Court Judge Richard McNally, Jr. In January 2015, the PEF Legal Department appealed that decision. It was argued in court in the Appellate Division on May 29, 2015. PEF received an adverse decision on July 23, 2015 and the PEF Legal Department has filed a motion for permission to appeal.

We continue to work with PEF leadership and field services to closely monitor job security issues and respond to inquiries about the status of the implementation of the Close to Home initiative that was signed into law by Governor Andrew M. Cuomo on March 30, 2012. The Close to Home law focuses on reducing the placement of troubled youths in non-secure and limited-secure facilities operated by the NYS Office of Children and Family Services (OCFS)

by transferring responsibility to the New York City Administration for Children's Services (ACS). Due to numerous problems that resulted from the non-secure phase, including many youth going absent without leave, we are closely monitoring the status of the limited-secure phase, which has been repeatedly delayed.

In collaboration with OPWDD statewide L/M committee members, field services and legislative staff, we continued to assist in monitoring the development and implementation of the Federal Centers for Medicare & Medicaid Services (CMS) Waiver program, including the ongoing review of the job titles likely to be impacted as a result of OPWDD's transition to a new managed care system.

Department staff continues to coordinate with OPWDD PEF leaders as well as field services, and legislative staff, to assist in monitoring closures targeted to occur between March 2015 and March 2017 (Capital District, Brooklyn, Broome, and Bernard Fineson DDSOs).

Department staff continues to collaborate with PEF leaders and PEF contract administration, legal and legislative staff to oppose Governor Cuomo's attempt to privatize state services that would negatively impact PEF members in OMH, OPWDD, and OASAS, particularly their job security.

We attended budget briefings and collaborated with PEF leaders and PEF contract administration, legal, and Legislative staff to analyze state budget proposals and proposed legislation to assess their potential impact on PEF members. Department staff also prepared public hearing testimony about PEF's position on these issues.

Despite PEF's written and oral objections to the Office of General Services' March 26, 2014 request to establish and classify as non-competitive 230 Empire Fellow positions, which included input from PEF leaders and members, the Civil Service Commission approved the request on April 8, 2014. PEF wrote an objection letter in June requesting reconsideration. In response

to PEF's request the item was placed on the Commission's September 2014 calendar. However, even after reconsidering the OGS request, the Civil Service Commission granted final approval (3-0) based on its original determination. On June 3, 2015 the Notice of Adoption was published in the State Register and the PEF Legal Department will be initiating litigation challenging the placement of these Empire Fellows positions in the non-competitive class.

As a result of PEF's meeting with the Department of Civil Service Commissioner and Director of Classification & Compensation to discuss classification standards and salary grade allocations of PEF nurses on a statewide basis, it was agreed that reviews would be conducted. The Division of Classification & Compensation has advised us that they have initiated their review of the PEF nurses' Applications for Change in Title or Salary (CC-2Es) that PEF hand-delivered on May 27, 2015. We will continue to monitor the status and apprise PEF leaders and staff as we receive updates.

In collaboration with PEF legislative staff, participated in multi-union weekly conference calls and reviewed pertinent reports and news articles as part of our ongoing efforts to monitor the status at SUNY Downstate and the implementation of the Delivery System Reform Incentive Payment (DSRIP) program.

CSE continues to facilitate members and staff access to the Career Mobility Office (CMO) information and services.

The Department continued to attend and monitor NYS Civil Service Commission meetings as well as to provide technical information and assistance to members in processing and presenting Civil Service Commission appeals.

We continue staff support to the Jeff Satz Statewide Civil Service Committee, the Career Mobility Advisory Committee, the Statewide Labor/Management Advisory Committee, various Statewide Labor/Management Committees, and the Information Technology Committee.

Health & Safety

The mission of the PEF Health & Safety Department is to prepare and strengthen PEF leaders and activists in every PEF-represented worksite. PEF Health & Safety staff work with elected leaders, H&S committees and members on a wide variety of occupational safety and health initiatives. The hallmark of the health and safety program has been its ability to mobilize the membership to design and implement programs that address key hazards that are causing injuries and illnesses among our members.

H&S staff work to:

- Build PEF by encouraging our members to take an active role in union activities.
- Provide service, information, technical assistance, research, and referral on health and safety matters;
- Conduct risk assessments and recommend control measures for safer worksites;
- Ensure that employers comply with all applicable federal, state, and local health and safety standards and laws;
- Enhance skills, knowledge, and awareness through training and education;
- Develop initiatives to improve working conditions of the membership;
- Provide support and technical assistance to Labor/Management Health and Safety Committees to proactively address safety issues in the workplace;
- Participate in national, state and local forums that advocate for improvements to occupational safety and health through legislation and political action.

Activities

Workplace Violence Prevention (WVP):

H&S staff continue to work with PEF leaders and state agencies on workplace violence issues. A number of agencies are either not in compliance or need improvements to their WVP

programs. H&S staff assist PEF leaders to file PESH complaints.

Training:

Health & Safety staff coordinated and delivered 65 training sessions for over 2,070 participants (1,586 of which were directly trained by Health & Safety staff) on a variety of occupational safety and health topics since the last convention. Trainings were conducted at various locations and events including Regional Conferences, New Council Leader training, Steward training, various training conferences, training at agency locations, etc. Topics included: Conducting Risk Assessments, Ergonomics, Workplace Violence Prevention and Bullying, H&S Tools for Activists, Infectious Diseases including Ebola, H&S Committees and many others.

2015 NYS/PEF H&S Conference:

The biannual Health and Safety Conference was held on June 16-17, 2015 at the Desmond Hotel in Albany. Over 250 PEF and management activists attended. The Judy Scanlon Health and Safety Activist Award was given to Assemblywoman Aileen Gunther for supporting the Safe Patient Handling Act. PEF member Mary Anne Alloggio also received a special award for her efforts at LIDDSO for the creation of an effective Safe Patient Handling program. Keynote speaker David Soares, Albany County District Attorney, addressed working relations with law enforcement and DA's. A new Workers Compensation Certification program was delivered to fifty-five members. This highly successful program is available to be delivered in the regions. A new Workplace Violence Prevention Program Evaluation Toolkit was also introduced at the conference and is available upon request.

Occupational Health Clinics:

Health and Safety Department staff continues to participate on the advisory boards of a number of the state-funded Occupational Health Clinics. These clinics diagnose and treat work-related illnesses, and perform myriad prevention activities.

Grant Funding

The Department received funding through July 31, 2016, from the NYS Department of Labor Hazard Abatement Board (HAB) to conduct occupational safety and health activities and training. PEF has been successful in obtaining HAB grants through a competitive process for over 20 consecutive years. A wide variety of occupational health and safety topics are offered under the grant to help PEF leaders and advocates fight for workplace health and safety. In addition to PEF members, trainings are open to other unions and M/C employees. Contact the Health and Safety Department to schedule a program for your agency/work location.

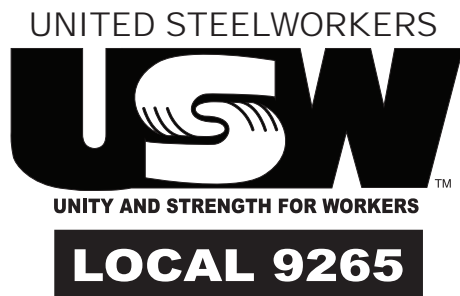
Article 13 and 18 Committees

The Article 13 and 18 Committees are both joint labor and management committees that meet to discuss issues related to health and safety of PEF members. Both committees have members appointed by the PEF president.

The goal of the Article 18 Committee is to: discuss and resolve issues that have not been resolved at agency-level meetings; to develop training and educational opportunities for the membership and management; to discuss and approve funding for specially requested programs under the Safety and Health Initiatives Program (SHIP) grants; to evaluate current trends in worker injury and to recommend changes to agencies; to assist in the development of a biannual Health and Safety Conference; to plan and to assist in the development of a biannual Conference for Agency labor and management H&S Chairs. The Article 13 Committee meets with Department of Civil Service and GOER representatives to address workers compensation issues. Topics discussed include the revision and reissuing of the Workers' Compensation pamphlet, joint training for agency personnel officers and union leaders, and the Civil Service Annual Report on state agency workers' compensation performance.

The Office of Human Resources operates under the direction of the Executive Director. The department is responsible for managing the personnel functions of recruitment and selection, job analysis and design, labor relations, and compensation and benefits. The office is staffed by two Human Resource Administrators, one of whom focuses on recruiting and labor relations related activity while the other focuses on benefit administration related activities.

Of the approximately 150 staff at headquarters and in regional offices, one third are management-confidential and two thirds are represented by the United Steelworkers, Local 9265 (USW). This



includes the staff of our Membership Benefits Program and PEF Travel.

Human Resources staff enforces the collective bargaining agreement for PEF as the employer and ensures compliance with the agreement and with staff policies and procedures. All aspects of insurance coverage for staff, including long term disability, term life, New York State disability and workers' compensation, unemployment insurance and related benefits are administered by the Office of Human Resources. Human Resources staff also manages the PEF Healthcare Plan which provides health, prescription drug, dental and vision care benefits for PEF staff. Additionally,

the department administers all other benefits including tuition reimbursement, staff development, and the 401K program.

June 30, 2015 collective bargaining agreement. It is important to note that the agreement contains an evergreen clause and remains in



Human Resources also prepares and updates job descriptions for the various positions/job titles of PEF staff, negotiates the salary grade assigned to each title, follows up on probationary reports, and prepares and maintains the paperwork for all personnel and payroll changes. Staff represents PEF at all quarterly Labor-Management, Career Mobility, Health and Safety and Joint Health Benefits Committee meetings with USW. In addition, the department participates in quarterly Health and Safety meetings with USW, Training and EAP committees, processes staff contract grievances, disciplinary actions and maintains all associated records.

The department arranges for temporary services at PEF headquarters, the Legislative Office, and the 12 Field Service offices for permanent employees on leave and in short-term work overload situations.

PEF and USW recently negotiated and ratified the July 1, 2011 through

full force. The Executive Director served as PEF's chief spokesperson in these negotiations, and additional members of the PEF team included Ed Aluck, Deputy General Counsel; Connie Fedden, Membership Benefits Program Financial Executive; Maureen Kellman, Trustee; Valerie O'Dell, Director of Finance; and Human Resource Administrators, Jackie Henderson and Jennifer Tropiano.

Health Benefits

The department is responsible for administering the health insurance plan for staff and eligible retirees. The Executive Director serves as the health plan administrator. The staff plan is self-insured. We utilize third party administrators to process claims for health insurance, prescription drugs and dental and vision benefits. We are also monitoring the impact of the Affordable Care Act on staff coverage. The PEF/USW Joint Committee on Health Benefits meets quarterly to discuss issues of mutual concern.

Office of General Counsel

I. OVERVIEW

The PEF Office of General Counsel ("OGC") is the law office of the union and provides a wide range of legal services to PEF and individual PEF members.

The primary legal service OGC provides to PEF members is legal representation to those members who face disciplinary termination charges under Article 33 of the PEF/State contract.

OGC also litigates in State and Federal Court on a wide variety of employment related issues arising under state and federal laws, and appears before administrative agencies such as the Public Employment Relations Board.

Our cases involve constitutional rights, the *Civil Service Law* ("CSL"), the *Taylor Law*, challenges to out-of-title decisions made by the Governor's Office of Employee Relations, *Freedom of Information Law* ("FOIL") issues, challenges to agency regulations, and due process rights of our members, to name a few. OGC also defends PEF in actions brought against it.

Further, OGC provides legal advice and opinions to other PEF departments and the PEF elected leadership. In addition, we also advise union officers and staff on union governance issues, such as convention resolutions, Executive Board policy and compliance with federal union election laws. We also monitor current legal cases and matters, and issue general legal advisories and guidance regarding new legislation, important court decisions and significant legal trends in the labor and employment law arena. Finally, OGC advises and represents PEF in its role as a unionized employer.

II. TABLE OF CONTENTS

This report is broken down into six sections, (A-F) which I have described below. In addition to what is described below, the Legal Department is also monitoring *Friedrichs v. California Teachers Association* which is currently pending in the United States Supreme Court. We are working with President Spence and other PEF departments to prepare for a possible unfavorable decision in this case. Along with those actions, we are working

with attorneys from SEIU and AFT affiliated unions with respect to filing an *amicus* or friend of the Court brief. We have provided a legal analysis of this case to the President and Executive Board. In brief, if the Court rules in favor of the individual unionized teachers who brought this litigation challenging the Union's right to collect dues from all employees it represents, it could severely impact PEF's ability to provide services to its members.

A. PERB Cases (pages 12 - 15)

The Public Employment Relations Board ("PERB") is the state administrative agency created by the *Civil Service Law* ("CSL") §§200 – 214, common referred to as the *Taylor Law*, which handles disputes between public sector unions and public employers such as the State of New York. PERB has jurisdiction over matters such as a union's allegation that the State violated the *Taylor Law* by failing to bargain over a new policy or rule before implementation, and controversies concerning whether a civil service position should be designated as management/confidential or placed in a bargaining unit. A final decision by PERB can be challenged in Court. This section reports on some of the significant PERB matters handled by the legal department in the last year.

B. Significant Pending Litigation and Recent Decisions (pages 15 - 17)

In this section, I report on our federal retiree health insurance case, our litigation challenging the DOH regulation requiring our members who are health care workers, particularly nurse, to wear a surgical mask in certain areas unless they have received the flu vaccination, and the decisions we received in our Hurricane Sandy overtime case and DOCCS title merger case.

C. Out-of-Title Cases (pages 17 - 18)

Under Article 17 of the PEF/State collective bargaining agreement, PEF can process an out-of-title grievances through a final decision by GOER. However, if we disagree with GOER's decision, that dispute is not arbitrable, but instead, we have to challenge the decision through a Court proceeding. We have over the years filed close to 100 such cases and have had much success. Based on that litigation, the issues subject to challenge have become

somewhat narrowed over the years. However, we still continue to aggressively litigate in this area when warranted. This section reports on the legal cases involving out-of-title claims we have filed on behalf of our members.

D. Confirming Arbitration Awards (pages 18-19)

Recently, and somewhat unusually, we have had to move to confirm contract arbitration awards, as the State has either refused to comply with the award, or is delaying compliance. Three of these cases concern contract administration decisions where the PEF Contract Administration department was successful regarding the interpretation of new contract provisions negotiated in the last round of bargaining. This section discuss those confirmation proceedings.

E. New Litigation (pages 19)

In this section, I report on our recently filed challenge to the placement of the Empire State Fellow titles in the non-competitive class, two cases where we have challenged the summary termination of PEF members because their CASAC credentials were suspended, a case challenging the failure of SUNY to provide a CSL §71 hearing to a member and a very interesting case of first impression, where we have challenged an agency's denial of PEF members request to run for local county legislative office.

F. Article 33 Arbitration Cases (page 19)

Finally, we continue to handle a high volume of disciplinary termination cases and process those cases expeditiously and overall have achieved very positive results for our members, include return to work and significant back pay awards. This section provides summary information about those Article 33 cases.

III. IMPORTANT DECISIONS AND ACTIONS

A. PERB Cases

PERB Injunction Fingerprinting and Background Checks At ITS

By decision dated August 13, 2015, Albany County Supreme Court Justice Richard E. Sise granted PEF's application for an injunction preventing the Office

of Information Technology Services (ITS) from fingerprinting and running background checks on our members at ITS.

The background of this case thus far is as follows. On May 22, 2015, PEF filed an improper practice charge before PERB alleging that ITS had begun unilaterally implementing fingerprinting and background checks of existing ITS employees who are represented by PEF, without completing negotiations with PEF, in violation of the *Taylor Law*. After the improper practice charge was filed, PEF was contacted by a number of ITS employees advising that they had received notice from ITS requiring them to be fingerprinted. Because it was apparent that ITS had begun unilaterally imposing the fingerprinting and background checks notwithstanding ITS's earlier recognition that such checks must first be negotiated with PEF, on July 17, 2015, PEF filed an application for injunctive relief with PERB pursuant to the *Taylor Law* and PERB's Rules of Procedure. PERB agreed with our position that injunctive relief was warranted to prevent irreparable harm and issued an order dated July 27, 2015, authorizing PEF to petition for an injunction enjoining ITS from implementing the checks. PEF filed its petition seeking the injunction on July 31, 2015 and the Court heard oral argument on August 7, 2015.

In the Decision dated August 13, 2015, the Court agreed with PEF's and PERB's position that injunctive relief was warranted.¹ First, it found that based on the *Taylor Law*'s strong presumption in favor of collective bargaining and the fact that ITS has operated for a number of years without fingerprinting all employees, there is at least reasonable cause to believe that respondents' failure to bargain over the issue constitutes and improper practice. Further, the Court found reasonable cause to believe that unless the practice is enjoined, immediate and irreparable injury will result thereby rendering a judgment on the merits ineffectual.

¹ The Standards required for injunctive relief under the *Taylor Law* is difficult to meet but is significantly lower than those for an injunction generally.

Under the *Taylor Law*, PERB is required to conclude the hearing process and issue a decision on the merits within sixty days after the imposition of the injunctive relief. Thus, the next step in the process is for PERB to hold expedited hearings in this matter, which are scheduled to occur sometime during the week of September 21-25, 2015, and will be handled by the Legal Department.

PEF Field Services filed the Improper Practice Charge and Application for Injunction with PERB. PEF's Office of General Counsel handled the Court proceeding. The case is currently scheduled for hearings before PERB the week of October 16, 2015 which will be handled by PEF Counsel and the injunction remains in place while the improper practice charge is pending.

Litigation Concerning Placing 250 M/C in PEF Bargaining Unit

This case is currently on appeal to the Appellate Division, Third Department.

In March 2013, PEF Contract Administration and GOER agreed that approximately 250 M/C employees should be placed in the PS&T Unit. The PERB issued an interim decision, based on that agreement placing the positions in the PEF unit.

Subsequently, GOER has been trying to overturn the decision by arguing it should not be bound by its own agreement because it had not properly advised the affected agencies of the standard for determining whether the titles should be designated M/C or placed in a bargaining unit before it entered into the agreement.

PEF has vigorously opposed those efforts, arguing that settlements like this had been entered into by the parties for many years, that GOER had express legal authority to do so without needing to seek the permission of any affected agency, and that its failure to properly advise its "clients" did not constitute good cause for it to be relieved of its obligations under the settlement.

Both the PERB Director and PERB agreed with PEF. GOER then filed litigation challenging the PERB Board decision. On December 5, 2014, the Supreme Court, Albany County (Justice Francis Collins), upheld the PERB decision which, the State then filed a notice of appeal, and this case is now

pending before the Appellate Division. We anticipate this will be on the Appellate Division's November calendar and expect a decision early in 2016.

Article 78 Proceeding Challenging Racing and Wagering² – Board's Reduction of Wages for Seasonal Track Personnel

This case is currently on appeal to the Court of Appeals. Since our last update, the case has now been fully briefed, and we are awaiting scheduling for argument.

The background of this case is as follows. In its 2012 decision, PERB had relied on the seasonal employee side-letter in the PEF/State Agreement to find that PEF and the State had, prior to the reduction in *per diem* wage rates, fully negotiated over the subject of whether the State Budget Director has discretion under the *State Finance Law* to make unilateral adjustments to compensation for seasonal, Non-Statutory ("NS") employees like those affected by this case. Thus, having already fully bargained this subject area, and having not obtained any additional restrictions on the Budget Director's discretion, PERB found that the State, through DOB, could reduce the *per diem* salary rates for seasonal, NS Board employees without negotiating with PEF. PERB labels this type of defense a "duty satisfaction" defense, because it concludes that the parties have satisfied their mutual duty, or obligation, to negotiate in good faith over the at-issue subject. Further, the party asserting the defense bears the burden of establishing that it is reasonably clear – reading the relevant agreement as a whole – that the parties intended it to cover the specific subject at issue, even if the agreement itself did not directly speak to that now contested issue.

We challenged PERB's decision on several grounds. Our main argument was that PERB had applied its duty satisfaction defense too broadly, because the seasonal side letter was not evidence that the parties had fully negotiated over the issue of seasonal employee *per diem* wage rates and discretionary adjustments to those rates by the Budget Director.

Although the Supreme Court had found that PERB's determination was reasonable, the Appellate Division disagreed, finding that the side letter was

² This agency has been renamed NYS Gaming Commission.

not “sufficiently broad to demonstrate that the subject matter that formed the basis for the improper practice charge, i.e., the unilateral 25% reduction in wages, was negotiated to completion and PERB’s determination to the contrary was arbitrary and capricious.” The State had an appeal as of right to the Court of Appeals because there were two dissents in the Appellate Division. We are hopeful that the Court of Appeals will uphold the Appellate Division’s decision, as the duty satisfaction defense imposes what we believe is an unfair burden on unions in negotiations. We expect a decision from the Court of Appeals to be issued in late 2015.

PEF v. Civil Service Department (PERB Case Challenging Increase in Civil Service Exam Fee)

On October 15, 2013, we received a somewhat favorable decision from the PERB Board concerning the appeal by PEF, CSEA, DC-37 and NYSCOPBA of a December 2012 PERB ALJ decision that dismissed the unions’ improper practice charges challenging the State’s January 2009 decision to require State employees to pay a fee to take promotional Civil Service exams.

The Board essentially found that the ALJ erred when she concluded that the unions had failed to demonstrate that the State’s ten-year (1999 to 2009) practice of not charging promotional exam fees created a reasonable expectation among bargaining unit members that such a practice would continue. This is the first step necessary to prove an enforceable past practice. The Board has remanded the case back to the ALJ to determine whether the subject matter of the charges is a mandatory subject of bargaining and, if so, whether PEF’s charge was timely filed. The State has submitted an offer of proof to ALJ, and we have submitted a reply. The ALJ has ordered a hearing for late October 2015.

GOER v. PEF – Petition Seeking Designation of 2500 PEF Positions as M/C

As of this Annual Report, PERB has not processed, nor required PEF to respond to GOER’s December 12, 2014 employer’s application which sought to designate 2500 PEF positions as Management/Confidential. However, in anticipation of the fact that PERB may on short notice require a response, we have solicited information from the 2500 PEF members named in the employer’s

application regarding their job duties and other relevant information.

PEF v. GOER (June 2015 Title Petition)

Under the PEF/State Collective bargaining agreement, twice a year PEF can file a petition with PERB seeking to place newly created or altered civil service positions in the PS&T Unit. As explained below, we filed our June 2015 petition and will be filing another in December 2015, if warranted. Also, upon the expiration of the PEF/State contract, there is an open period during which we can petition to have any civil service position placed in the PS&T bargaining unit. We filed such a petition in August 2014. This petition, as well as others, are pending before PERB.

On June 15, 2015, PEF filed a petition seeking to place 7 newly created, or substantially altered management/confidential positions in the PS&T Unit. The titles involved are Heath Program Administrator in the Department of Health, and Special Assistant in Office of Information Technology Services. This is the first of our biennial petitions which PEF can file challenging newly created positions. The next will be filed in December 2015.

PEF v. GOER (Food Service Closure at 44 Holland Avenue)

In December 2013, we filed an improper practice charge concerning the August 2013 closure of cafeteria food service at the 44 Holland Avenue State Office Building. That building houses State employees of OMH, OPWDD and OITS. We argued that by unilaterally decreasing the availability of food and cafeteria services provided to PS&T Unit employees, the State unilaterally changed the terms and conditions of employment for those employees, and failed to negotiate in good faith with PEF, a violation of Section 209-a.1(d) of the *Taylor Law*. After we filed the charge, the State issued an RFP for replacement cafeteria service, went through the bidding process, and selected a replacement vendor. Cafeteria food service operations reopened effective November 3, 2014, and on December 29, 2014, we withdrew our charge in settlement of the IP as equivalent services were being provided.

PEF v. OER (OMH) (Sagamore Tour)

On December 11, 2014, PEF settled the improper practice charge regarding OMH’s denial of the PEF President’s request to tour Sagamore Children’s

Psychiatric Center (“Sagamore C.P.C.”).

On April 10, 2014, PEF filed an improper practice charge with the Public Employment Relations Board (“PERB”) alleging that OMH, through the OMH Legislative Liaison, deliberately interfered with, restrained, coerced, and discriminated against the PEF President and the Council Leader of Sagamore C.P.C. in the exercise of their protected rights under the *Taylor Law* when it denied them the ability to attend a tour of Sagamore C.P.C. with Senator David Carlucci in December, 2013.

OMH denied the allegations, stating that the tour was not scheduled for labor-management purposes, it did not have the intent to interfere with the President and Council Leader’s *Taylor Law* rights, and that it intended to accommodate their tour on another day.

The parties settled the matter on December 11, 2014 via a Stipulation of Settlement which provided that OMH acknowledges its obligation under the *Taylor Law* to refrain from deliberately interfering with, restraining, coercing, or discriminating against the PEF President and Council Leader in the exercise of their protected rights under the *Taylor Law*.

PERB Improper Practice Charge Decrease In Pay For Student Interns

In this case, PEF’s improper practice charge alleged that OSC’s 2009 decision to unilaterally decrease the hourly pay rate for its high school, college and graduate school level Student Assistants constituted a unilateral change in a term and condition of employment, in violation of the *Taylor Law*. The ALJ had dismissed PEF’s charge, finding that the State had proved a practice whereby it annually determined whether to raise, lower, or keep unchanged the hourly pay rate for the Student Assistants. We filed exceptions to the decision, and on June 5, 2015, we received an adverse decision from PERB.

The main issue before PERB was whether PEF established an enforceable past practice. The standard for such determination is whether “the practice was unequivocal and was continued uninterrupted for a period of time under the circumstances to create a reasonable expectation among affected unit employees that the practice would continue [citation omitted].” If all these

requirements are met, the State could still defeat the finding of an enforceable past by showing a lack of a bilateral acceptance of, or acquiesce to, the practice. Constructive knowledge exists when the past practice is reasonably subject to the employer's managerial and/or supervisory responsibilities and obligations.

PEF had not met its burden of establishing a past practice as the salaries of the student interns was communicated to PEF at labor-management meetings, PEF was represented at orientation meetings for summer assistants at which their salaries were discussed, and PEF receives (on a regular basis) salary information for PS&T Unit employees by title, including student assistants (which we conceded was true).

Moreover, and significantly, PERB also explained that even if we had established an enforceable past practice by showing PEF did not have constructive knowledge that the pay rates had been reduced for student interns, PERB still would have dismissed the charge because, PERB explained, "[w]e have long held that where the evidence of a practice to extend a benefit to employees established that 'a decision is made annually, and it is not automatic,' but rather is based on 'the agency's best interest' at the time, the practice at issue is one which vests discretion in the employer." PERB found the State presented un rebutted testimony of such a practice.

PEF v. State (OPWDD) Improper Practice Charge/Abuse or Neglect Certification

On May 19, 2015, we received a decision from PERB Assistant Director Susan A. Comenzo holding that the *Taylor Law* was violated when the State unilaterally imposed a requirement that PEF-represented employees sign a certification that they had, during the time covered by their time sheets, "reported any incidents of abuse or neglect...as required by OPWDD regulations" and acknowledging potential disciplinary and criminal consequences for false certification.

Prior to the mandate, which was announced by the OPWDD Commissioner on April 28, 2011, and went into effect on May 2, 2011, OPWDD employees, including those represented by PEF, who worked in OPWDD facilities, were required to complete sign-in/sign-out sheets

indicating only their time of arrival to and departure from their facility, and that by signing them, the employee was attesting to their accuracy. However, as a result of the mandate, the post-May 2, 2011 electronic timesheets also required such employees to:

... certify that I have worked the hours indicated above; and that during such hours I reported any incidents of abuse or neglect of any individual as required by OPWDD regulations. I acknowledge that any misrepresentation made by me herein may be punishable by disciplinary and/or criminal action. [Id.]

The mandated changes to the employees' timesheets were made without negotiations with PEF.

In the improper practice charge, we argued that this new requirement constitutes a change in the terms and conditions of employment, and that since the new work rule was never bargained for with PEF, the State violated its statutory obligation to negotiate in good faith with PEF, a violation of Section 209-a.1(d) of the *Taylor Law*.

In her decision, the Assistant Director pointed out that it is well-settled that employee participation in record-keeping is a mandatory subject of negotiations, and noted that it was undisputed that the State unilaterally created the at-issue certification. She also rejected the State's argument that the certification constitutes, at most, an insignificant intrusion on unit employees' terms and conditions, noting that the employees were for the first time being required to attest to the performance of an act, and to acknowledge that discipline could apply. She further found that, given the myriad methods available to an employer for notification to employees, requiring a certification to be signed by the employees and requiring employees, for the first time, to acknowledge disciplinary and criminal consequences, does not implicate OPWDD's mission.

As remedies, Assistant Director Comenzo ordered that the State rescind the above certification and remove such

language from all documents used to record unit employees' work time; remove and destroy any executed certifications or reference thereto in its records; rescind any personnel action and record of such action taken as a result of the requirements to certify and/or acknowledge, and destroy an record thereof; make unit employees whole for any related loss of wages and/or benefits, with interest at the maximum legal rate; and sign and post the notice attached to the decision at all physical and electronic locations used to communicate with unit employees.

The State has advised that it will be filing exceptions with PERB regarding this decision, and has also engaged in settlement discussions with PEF concerning the case.

PERB Intervening in Unit Work Case Filed By CSEA

On July 24, 2015, we sought to intervene in a unit work case filed by CSEA. The basis for intervening is that we disagree with CSEA's claim that the job duty of periodic sign reflectivity inspections was exclusively CSEA work. It is PEF DOT members' position that PEF members have done this work for part of the last ten years.

There was a PERB conference on the case on July 30, 2015, and we are optimistic that we will reach a favorable settlement in the near future.

B. Significant Pending Litigation and Recent Decisions

Retiree Health Insurance Case

This is our federal case challenging the State's unilateral increase in retiree contributions to their health insurance premium. We are still working through various procedural issues in this case.

In March 2014, PEF along with several other Unions who have similar cases moved for permission to amend our complaint to name these defendants in their individual capacities. The State opposed our motion for leave to amend our complaint, and filed a motion for judgment on the pleadings.

On March 20, 2015, Judge D'Agostino of the Northern District of New York ruled that we could not sue certain State officials, including the governor, in their individual capacity. However, our lawsuit still continues against the State, certain State officers in their official capacities,

and two State Officers in both their individual and official capacity: Hite (then Acting Commissioner of CSD) and Megna (then Director DOB). Otherwise, our motion to amend our complaint was granted.

We are now working with the other unions who have filed similar cases and the Assistant Attorney General in an attempt to agree to certain protections for impacted members in lieu of class certification litigation, which can otherwise delay a lawsuit's proceeding to the merits significantly if class certification is contested by the defendants. We are hopeful that we will resolve the class certification issue in September 2015 and can then proceed again with discovery.

Flu Mask Litigation DOH Regulations

We currently have two flu cases pending. Our first lawsuit challenging the original DOH flu regulation is on appeal before the Appellate Division, Third Department. We anticipate the Court will hear the appeal in November and a decision will be issued in early 2016.

In our second lawsuit filed on March 18, 2015, we challenged the Department of Health's amended "flu mask" regulation. As anticipated, the State moved to dismiss this second case on the basis of a doctrine known as collateral estoppel. Essentially, the State argued that because we had challenged the original version of the regulation already, and because the Supreme Court had denied our petition in the first case, we are estopped from filing an identical challenge again in Supreme Court. It is our position that the regulations are not identical. The significant differences in the amended version of the regulation include changing where masks must be worn by employees from areas where patients or residents "may be" present to areas where patients or residents are "typically" present, providing an exception to mask wear for personnel providing services outside of the home or regulated facility, providing an exception to mask wear for speech therapy personnel delivering care, and providing an exception to mask wear for communication with person(s) who lip read.

By decision dated July 15, 2015, Judge Patrick J. McGrath of the Supreme Court, Albany County, granted the State's motion to dismiss our second flu case. Basically, the Judge found that the amendments to the flu mask regulation

were non-substantive in nature, and characterized them as "housekeeping" issues. He also noted that the amended version of the regulation eases the burden on unvaccinated healthcare providers. (Id.) He found that all elements of collateral estoppel had been satisfied and, accordingly, dismissed the Petition.

Thus, to protect PEF's ability to challenge the flu mask regulation, we filed a Notice of Appeal of Judge McGrath's Decision. This action is necessary to ensure that if PEF's already-pending appeal is found moot, PEF has recourse to challenge Judge McGrath's decision.

Hurricane Sandy Overtime (Article 78 Proceeding Challenging DOB's Overtime Waiver Which Only Pays Compensation After 47.5 Hours of Work)

On May 12, 2015, the Court of Appeals denied our motion for leave to appeal the Appellate Division's decision in this overtime case. There are no further avenues of appeal. Thus, the Appellate Division's decision is final.

On January 29, 2015, we had received an adverse decision from the Appellate Division Third Department in this case challenging the non-payment of emergency overtime compensation to salary grade 23, and above, employees for all overtime hours worked during Hurricane Sandy.

We argued that salary grade 23, and above, employees (overtime ineligible employees) that were assigned to perform work in connection with Hurricane Sandy must receive emergency overtime compensation for all hours worked in excess of 40 hours during the extreme emergency period. It was our position that the legislative intent of *Civil Service Law* ("CSL") §134(6) was to allow overtime ineligible employees to earn emergency overtime compensation the same way that overtime eligible employees do in periods of an extreme emergency and that the statutorily defined work week for overtime eligible employees is 40 hours. Based on this, we asserted that DOB's failure to authorize emergency overtime in G-1034 for all hours worked in excess of 40 hours was in violation of *CSL* §134(6) and was arbitrary, capricious, irrational and contrary to law.

The Appellate Court found that the *Civil Service Law* provides that the 'workweek for basic annual salary' for

employees who are overtime eligible shall not exceed 40 hours. (*Civil Service Law* §134(1)) The Court further found that overtime ineligible employees are expressly excluded from the coverage of that section, and nothing else in *Civil Service Law* §134 (6) defines the phrase normal workweek. Based on this lack of statutory definition, the Court explained that the number of hours in a "normal workweek" of an overtime ineligible state employee necessarily implicates the Budget Director's specialized knowledge of state employment practices and "involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data to be drawn therefrom [cites omitted]." Thus, the Appellate Court ruled that it will defer to the Budget Director's determination as to the length of work and uphold it if it is not irrational or unreasonable. (Decision at p. 3)

The Court further found that, based on a 1974 Budget Bulletin issued following the enactment of *CSL* §134(6), in order to receive emergency overtime compensation the employee "must work a number of hours clearly in excess of the hours his [or her] position should reasonably require." (1974 NY St Div. of the Budget Bulletin Item G-140)(Decision p. 3) Further, the Court considered the affidavit of the DOB Director which asserted, *inter alia*, that the 47.5-hour threshold had been in place for many years, was devised after consulting with other agencies involved in emergency planning, was fair treatment of ineligible employees and a responsible use of taxpayer resources. In his affidavit, the Director of the Budget found that the 47.5 threshold takes this factual assessment into account by adding a full workday of 7.5 to the 40 hours, a threshold, which he notes, has been applied in other emergency circumstances, most recently Hurricane Irene and Tropical Storm Lee in 2011.

Accordingly, the Court held that the 47.5 threshold cannot be said to be arbitrary on the ground that it departs from other DOB determinations in emergency situations. Upon upholding the lower court's decision the Court specifically cited and departed from another lower court decision [*Roberts*]³ which found that the threshold was

³ *Roberts v. Cuomo*, 42 Misc.3d 1209[A] (Sup. Ct. Albany County 2013).

irrational. That case is also on appeal in the Third Department. Based on the decision in our case, and even more specifically based on this Court's specific reference to that case in its decision, we believe that on appeal, the Court will reverse the decision in *Roberts*.

Unfortunately, since all the justices concurred with the decision in our case, we did not have an Appeal as of Right to the New York Court of Appeals. The only appeal option was a Motion for Leave of Appeal. This means the Court would have to grant us permission to file an appeal which only occurs under very limited circumstances. The Court of Appeals grants very few applications for permission to appeal. This is because their scope of jurisdiction is limited. The Court can only review questions of law, and questions of fact where the Appellate Division decision, on reversing or modifying a final or interlocutory judgment, has expressly or impliedly found new facts and a final judgment pursuant thereto is entered. N.Y. Const. Art. 6, §3(a). As stated above, we did move for leave but our motion was denied.

Although this closes the chapter on the Hurricane Sandy overtime case, we will continue to review DOB waivers brought to our attention for possible litigation if we can distinguish those waivers from the one in the Hurricane Sandy case.

Lavere, et al. v. Boone, et al. (DOCCS Offender Rehabilitation Coordinator Title Consolidation)

On July 23, 2015, the Appellate Division, Third Department issued an unfavorable decision in our case concerning our challenge to the Civil Service Commission's consolidation of the Correction Counselor and Facility Parole Officer title series. There is no appeal as of right from this decision. Our only avenue to continue our legal challenge is to ask the Court of Appeals for permission to appeal. Although there are very limited ground for such a discretionary appeal, based on the importance of the principle at stake in this case and the number of members affected, PEF filed a motion on September 9, and we expect the Court's decision by late October 2015.

The background of this case is as follows: In January 2012, DOCCS applied to the Department of Civil Service ("DCS") for a title structure change that would consolidate the correction counselor

and facility parole officer title series into the new Offender Rehabilitation Coordinator title series. In March 2012, DCS Director of Classification and Compensation Patricia Hite approved the request, and in June, 2012, we filed an Article 78 petition challenging her determination in an effort to expedite this case being heard. However, the Court found our challenge premature, and we awaited the outcome of the Commission appeal.

On January 23, 2013, a hearing was held before the Commission on our appeal. Employees of DOCCS testified regarding the negative effects of the title merger. On June 17, 2013, we received an unfavorable decision from the Commission denying our appeal. The Commission found the merger was a logical, reasonable and necessary first step toward the full and complete implementation of a new model of offender casework services..." and that it met the statutory requirement under *Civil Service Law* §118(2)(a) that the duties and qualifications of the title were "so substantially similar" that the merger was appropriate.

We then filed a lawsuit in State Supreme Court on October 16, 2013 challenging the Commission decision in which we alleged that the merger is not permitted under the *Civil Service Law* because the duties, responsibilities, and minimum qualifications for the correction counselor and facility parole officer titles are not substantially similar. Additionally, PEF alleged that the decision to merge the titles was inappropriate because the duties and functions of the titles fundamentally conflict with one another. That argument was based on the fact that the ORC title now requires the employees to both counsel inmates and to participate in parole matters that can result in suspension of or denial of parole.

By decision dated August 19, 2014, Judge McNally of the Albany County Supreme Court found that the merger was appropriate under *Civil Service Law* §118(2)(a) which permits title mergers only when the two titles are "so substantially similar" in duties and qualifications. The Judge found that despite the fact that the titles evolved over the years into therapeutic and law enforcement functions respectively, "... the core of each position was intended to enhance public safety through true rehabilitative efforts focused on the

individual offender with an ultimate goal of successful re-entry back into the community." He further found that the consolidation of the titles due to the new "blended mission" of DOCCS was necessary and logical, and thus not arbitrary and capricious (which is the standard we are required to meet to overturn the consolidation).

Unfortunately, the Appellate Division unanimously upheld the decision. It found that a comparison of the correction counselor and facility parole officer titles demonstrates that the essence and scope of each position was to prepare the inmate for successful reintegration into the community. The Court also noted the "limited standard of review" in challenging classification determinations, which requires a court to affirm the determination unless it is arbitrary, capricious or affected by error of law. In ruling that we could not meet this highly deferential standard, the Court ruled that "the substantial overlap in the duties, responsibilities, minimum qualifications and knowledge, skills and abilities of a correction counselor and a facility parole officer and their shared goal of preparing inmates for reintegration into the community provides the rational basis necessary to support the title structure change," even if there are legitimate grounds for a difference of opinion."

As stated earlier, we filed our motion for permission to appeal as, again, there is an important principle at stake and we have many members at DCCS impacted by the consolidation of these titles.

C. Out-of-Title Cases **Kent v. GOER & OCFS (Out-of-Title Child Protective Services Specialist 1, grade 14 doing work of CPS, grade 18)**

On March 26, 2015, we received a favorable decision in the out-of-title case filed on behalf of a Child Protective Services Specialist 1 salary grade 14 employed by the Office of Children and Family Services ("OCFS").

On August 29, 2013, the Governor's Office of Employee Relations ("GOER") issued two out-of-title determinations in favor of the PEF member. Specifically, GOER concluded that OCFS had assigned higher-graded out-of-title work to her and, accordingly, she was entitled to a monetary award calculated at the difference between her grade 14 position and a grade 18 Children and Family

Services Specialist 1. GOER further directed OCFS to cease and desist from making out-of-title work assignments. Notwithstanding GOER's clear and unambiguous August 29, 2013 decisions, the PEF member did not receive a monetary award and her out-of-title assignments continued. Consequently, PEF commenced an Article 78 proceeding against GOER and OCFS to enforce GOER's determinations.

Acting Supreme Court Justice W. Brooks DeBow granted PEF's Article 78 Petition, finding that GOER and OCFS' failure to implement the August 29, 2013 determinations was arbitrary, capricious and contrary to law. Consequently, the Judge ordered, GOER and OCFS must comply with the determinations dated August 29, 2013. On May 15, 2015, the State appealed the decision to the Appellate Division.

Article 78 Proceeding Challenging the Out-Of-Title Work CE 2, Grade 24 Doing Work of CE 3 Grade 27

On September 12, 2015, we filed a lawsuit on behalf of a PEF member at DOT who was a Civil Engineer ("CE") 2, Grade 24 and performed the work of CE 3, Grade 27 within DOT Region 9. He was subsequently promoted to the CE 3 position in April 2014. Prior to his promotion, the member was assigned the role of a "Construction Supervisor" within the region for an incumbent CE 3 that retired. In October 2014, a new "tentative" Classification Standard was issued for the CE 3 position.

We brought this lawsuit based on a favorable decision we received in a similar case, *Buck v. GOER*. We also alleged GOER wrongly and irrationally applied the October 2014 "tentative" Classification Standard as it was not in effect at the time the grievance was performed or when the grievance was filed. The case is scheduled to be heard by the Court on October 23, 2015, and we anticipate a decision by early 2016.

Article 78 Proceeding Challenging Out-Of-Title Work SET Grade 13 Performing Work of PET, Grade 16

On August 21, 2015, we filed a lawsuit in Albany County Supreme Court challenging the denial of a PEF member's October 2014 out-of-title work grievance. In this case, we have alleged that the PEF member, who is employed by DOT as Senior Engineering Technician, grade 13,

has been performing the duties of a Principal Engineering Technician, grade 16

In this case, the PEF member had filed 2 previous successful out-of-title grievances involving the same work in 2012 and 2013. Both of these grievances were sustained at Step 2 by DOT and Step 3 by Class and Comp. Additionally, his supervisor has confirmed that he is still performing the same job duties that he was performing at the time the 2012 and 2013 grievances were sustained. We anticipate a decision by early 2016.

Article 78 Proceeding Challenging Out-of-Title Work CE 2, Grade 24 Doing Work of CE 3, Grade 27

On March 20, 2015, we filed a lawsuit challenging GOER's denial of out-of-title work grievance pertaining to PEF member. We alleged that this PEF member who is a DOT Civil Engineer 2, Grade 24, had been assigned to perform the higher out-of-title duties of a Civil Engineer 3, Grade 27. This case was submitted to the Court for decision which we expect to be issued before the end of 2015.

D. Confirming Arbitration Awards Article 75 Motion to Confirm Award in NYSHIP Grievance

On April 11, 2014, Arbitrator Jacquelin F. Drucker issued an award related to a class action contract grievance filed and presented by PEF Contract Administration. In the award, Arbitrator Drucker found that the State violated Article 9 of the contract when it erroneously made retroactive NYSHIP premium deductions from certain members' wages by using the members' NYSHIP enrollment status as of late December 2011 and early January 2012. The State should have used PEF members' enrollment status during the four pay periods beginning with payroll dates September 28, 2011 and October 6, 2011, for the Administrative and Institutional payrolls, respectively. As a result, the class of aggrieved PEF members were subjected to higher NYSHIP premium deductions. Among other things, Arbitrator Drucker ordered that the State make those members whole.

The State did not comply with the order. Thus, on March 25, 2015, we filed a CPLR Article 75 petition in Albany County Supreme Court to confirm

Arbitrator Drucker's award. Subsequently on July 2, 2015, the parties reached a settlement wherein the State agreed to confirmation of the award and the settlement was "so ordered" by Albany County Supreme Court Justice Kimberly A. O'Connor. The State has begun to make payment, and we will monitor for full compliance.

Opt Out Article 75 Confirmation

In December 2014, we filed a motion to confirm the August 4, 2014 Arbitration award of Arbitrator James Pewtherer in the "opt-out" case. On September 3, 2015, we received a favorable decision confirming the award.

In the underlying arbitration case which was handled by Contract Administration, PEF made a motion to bifurcate the opt-out contract grievance, and by decision dated August 6, 2013, Arbitrator Pewtherer granted PEF's motion. Subsequently, Arbitrator Pewtherer issued his August 4, 2014 Award which found that the contract provision was violated, and ordered further hearings on retroactive relief. The specific relief granted was that PEF members who had been denied the opportunity to opt out of NYSHIP's Empire or HMO plan because the "other coverage" involved was also NYSHIP coverage, are prospectively entitled to that benefit. The retroactivity relief is still being arbitrated by Contract Administration and the next hearing date is scheduled for April 22, 2015. Thus, we moved to confirm the prospective relief, and the Contract Administration Department continued to arbitrate the retroactive remedy.

On September 3, 2015, Albany Supreme Court Judge Richard McNally issued a decision that confirms that the Arbitrator's Award is final, and that the State has no legal basis to refuse to comply with it. It is very likely that the State will appeal. We have also continued with hearings on the remedy aspect of the case and concluded those hearing on August 31, 2015. Our briefs are due end of October 2015.

Article 75 Proceeding Seeking Confirmation of Interim Award on Article 33 Case

On June 3, 2015, we filed a petition seeking to confirm an interim award issued by Arbitrator Ivor Moskowitz in an Article 33 disciplinary case. The Award required grievant's reinstatement to his position pending final resolution of the disciplinary case as well as full back pay for

the period of his suspension. Grievant was not reinstated to his position, but rather, put on leave with pay. In this proceeding, we are seeking his actual restoration to the workplace.

By decision dated August 25, 2015, Supreme Court Justice McDonough found that case precedent prohibited the Court from confirming an interim arbitration award, which he found was “non-final” under the law, as the arbitration proceeding has not yet concluded on the merits. In September 2015, we filed an appeal to the Appellate Division, Third Department.

E. New Litigation

Empire Fellow Non-Competitive Classification Challenge

On September 11, 2015, we filed a lawsuit in Albany Supreme Court challenging the placement of 230 Empire Fellow positions in the non-competitive jurisdictional class. The petitioners in this case are PEF and a PEF member who is a Land Use Training Specialist 1 with the Department of State.

Specifically, the petition alleges that the non-competitive classification violates the state constitution and civil service law’s well-established mandate that all civil service appointments shall be made according to merit and fitness to be ascertained, as far as practicable, by competitive examination. The petition also submits that the procedural requirements of the State Administrative Procedure Act were not followed in the process to place the titles in the non-competitive jurisdictional class.

The petition is returnable in Albany County Supreme Court on October 9, 2015. We expect a decision early 2016.

Article 78 Challenging Agriculture and Markets Denial of Outside Activity Requests

On June 3, 2015, we filed our lawsuit against the Department of Agriculture and Markets and Commissioner Richard A. Ball challenging their denial of two PEF Dairy Product Specialists requests to run for, and hold elected office as a violation of their right to free speech under the federal and state constitution, and as arbitrary and capricious. Further, in this litigation we alleged that it was outside the authority of Ag and Markets to issue a policy that prohibits “[a]ny employee that holds a position that requires him or her

to conduct inspections of regulated parties may not campaign for or hold elective office (e.g., County Legislator).” This policy was enacted after the denial of the Dairy Product Specialists’ request to run for County Legislator. This policy would cover all Dairy Product Specialists, which represents a significant number of our members at Ag and Markets.

The State has answered the Article 78 and moved for summary judgement. Our reply papers are due October 9, 2015, and the State’s reply is due October 17, 2015. The Court is scheduled to hear this case on October 23, 2015. We expect a decision early 2016.

Article 78 Proceeding Challenging SUNY (Stony Brook Hospital) Failure to Provide Civil Service Law §71 Hearing.

On June 18, 2015, we filed an Article 78 proceeding on behalf of a Teaching and Research Center Nurse 2 which challenged Stony Brook Hospital’s failure to provide the Nurse with a *Civil Service Law* §71 hearing to contest her termination from employment based on her alleged unfitness for duty. The case was heard by the Court on September 4, 2015. We expect a decision by the end of 2015.

Two Article 78 Challenges to the Summary Termination of PEF Members By OASAS

On June 23, 2015, we filed an Article 78 proceeding on behalf of a PEF member employed by OASAS. This member was a Credentialed Alcoholism and Substance Abuse Counselor (CASAC).

After an administration procedure, wherein OASAS sought to revoke the PEF members CASAC, OASAS ordered that his credentials be suspended for one year beginning February 24, 2015. On March 3, 2015, OASAS terminated this member from his PEF employment without using the Article 33 process because, they asserted, he was no longer qualified for the position and under the Court of Appeals decision in *Lanterman and Ortiz*, his termination was not subject to the disciplinary process in the PEF/ State collective bargaining agreement.

In this Article 78 proceeding, we challenge both the suspension of PEF member’s CASAC and his subsequent termination. Our main arguments are that since the member’s credentials are only suspended, he does remain a registered CASAC, and because the actual duties that he performed at the Bronx Addiction

Treatment Center did not require a CASAC, he meets the qualifications of his position. Therefore, his summary termination was arbitrary, capricious, irrational, contrary to law and without regard to the applicable facts;

In this case, the State moved to transfer the case to the appellate division because we have raised a substantial evidence question. It is likely this case will be transferred, and then, the Appellate Division will render a decision after full briefing of the case.

On September 4, 2015, we filed another similar case on behalf of another PEF member who was terminated by OASAS on similar grounds.

F. Article 33 Arbitration Cases

As you know, PEF provides legal representation free of charge to PEF members whom the State seeks to terminate from employment under Article 33 of the PEF/State Contract. The Article 33 due process procedure culminates in binding arbitration before an arbitrator from a panel agreed to by PEF and the State.

In 2014, we opened files in 230 disciplinary termination cases and 133 of those members were suspended. Since our annual report of July 2014, we have received 75 arbitration awards. Of those awards, 49 were final decisions, and 26 were interim decision on procedural issues. With respect to the final awards, 11 members were fully exonerated, 23 retained their jobs but had some penalty imposed, and 8 were terminated. With respect to the interim decisions, we received 10 interim awards regarding whether there was probable cause for suspension during the pendency of the NOD, 4 interim awards regarding our motion for specificity and 12 other interim awards on various procedural issues.

Conservatively, we estimate that we have obtained approximately \$1.47 million in back pay for our members who have been suspended, either through a settlement or arbitration award in the last year.

Dated: September 18, 2015
Respectfully submitted,

LISA M. KING
GENERAL COUNSEL

Legislative

The PEF State & Federal Legislative Office is responsible for pursuing the legislative and political agendas established by PEF under the direction of the President and in cooperation with the Regional and Statewide Political Action Committees and the Executive Board.

Our efforts on behalf of the passage of PEF's budget and legislative priorities continued throughout the 2015 legislative session. Key legislative issues were continually monitored and resulted in daily, direct lobbying for bills that would positively impact PEF members and stopping legislation that would negatively impact PEF members.

2015 Legislative Session (January—June 2015)

Legislative office staff attended the Governor's Office State of the State/ budget briefing, the Fiscal Policy Institute's budget briefing, the AFL-CIO budget briefings and the Joint Legislative Budget Hearings to get various stakeholders' take on the State Fiscal Year 2015-16 Budget.

Listed below is the status of the PEF bills that the Legislature took action on during the 2015 session:

LEGISLATIVE ACTION ON BUDGET BILLS THAT PEF OPPOSED:

The following budget actions were taken by the Legislature in response to PEF's concerns:

1. **Expand Design-Build to All State Agencies, SUNY and CUNY and Make it Permanent**

The Executive proposal would have allowed consultants, rather than professional public employees, to design and inspect projects.

The Legislature agreed to extend design-build for two years for the five entities which previously could use it and required a report on design-build from the NYS Urban Development Corp. by June 2016.

2. **300 Temporary Appointments at Office of Information Technology Services (OITS)**

The proposal would have allowed for 300 appointments, without examination, for up to five years. This section was removed from the final budget.

3. **\$1 Million for bonuses for OITS**

The Executive proposal would have been appropriated funds for employees who have certifications they use during 80 percent of their work day. The final budget removed the bonuses and replaced it with \$1.6 Million for additional training of OITS employees.

4. **300 Temporary Appointments at the Department of Health**

This proposal would have allowed for 300 appointments, without examination, for up to five years as part of the recommendations of the Medicaid Redesign Team. The language was removed from the final budget agreement.

5. **Shared Services Between the Department of Transportation and the Thruway Authority**

The original proposal was vague, other than allowing for sharing of staff and other resources between the two above-mentioned entities. The enacted budget limited such sharing to emergency or extreme weather conditions for no longer than 10 days. It would also maintain all collectively bargained agreements for employees, who would remain employees of their respective employer.

6. **Outsourcing of Education Services at the Office of Children and Family Services (OCFS) and the Office of Mental Health (OMH)**

These proposals would have expanded the use of outside contracted educators from local Board of Cooperative Educational Services (BOCES), instead of using state employees from the

agencies.

For OCFS, the expansion was limited to music, art and foreign language programs in the final budget. For OMH, the program was extended for an additional three years until 2018.

7. **Privatizing Health Care Services**

The Executive proposed a pilot program to allow up to five for-profit corporations to own and operate hospitals. This proposal was removed from the final budget agreement.

8. **Reduction in Funding for SUNY Hospitals**

The budget proposal would have reduced SUNY Hospital funding by \$18.6 Million. The Legislature restored the proposed cuts for the three SUNY hospitals.

9. **\$700 Million for Health Care in Brooklyn**

This proposal allows the Commissioner of Health to provide this funding with no bidding and threatens the viability of SUNY Downstate. It was ultimately accepted by the Legislature.

10. **Closure of additional beds at the Office of Mental Health (OMH) and Office of Alcoholism and Substance Abuse Services**

The budget proposal included 201 bed closures from OMH and 25 beds from OASAS. The final budget did not include any new closures at OMH, but allowed 137 previously planned closures to move forward. The OASAS 25 bed closure with savings invested in community-based programs was approved.

11. **Reduction in Roswell Park Cancer Institute Funding**

The Executive proposed to reduce funding for Roswell Park by \$15.5 Million. All of this proposed cut was restored by the Legislature in the final budget.

BILLS PASSED BY BOTH HOUSES

1. **Provides Continuation of State-Operated Services to OPWDD Consumers in State-Operated Community Settings—A.7332/S.4094**

This bill would allow for consumers to stay in their current facilities if the services that they require are not available in a community-based setting within their DDSO region.

2. **Veterans' Equality—A.8174A/S.5937**

This bill allows a member of a public retirement system to buy back up to three years for military service, regardless of the dates or location of service.

3. **Pension Justice for Families of Deceased Retirees—A.6045B/S.4141B**

This legislation allows for the Comptroller to accept retirement applications based on the date of the postmark in the case of a death of a member occurring between the mailing of the application and the receipt by the Comptroller.

BILLS THAT PASSED ONE HOUSE

4. **Cancer Screening—A.409A/S.4894A**

This legislation would allow for up to four hours of leave annually for any type of cancer screening.

This bill passed the Assembly. It was referred to the Senate Civil Service and Pensions Committee.

BILLS WITH COMMITTEE MOVEMENT

5. **Cost-Benefit Analysis for New York State Personal Service Contracts—A.2248**

This legislation requires that when an agency wants to contract out for services, it will be required to compare costs to determine whether the work can be performed at a lower cost by using state employees rather than consultants. Certain exceptions to that requirement are noted. A quality component is part of the

cost-benefit analysis.

This bill was laid aside in the Assembly.

6. **Safe Staffing for Quality Care Act—A.1548/S.782**

This bill sets minimum staff ratios for healthcare facilities in New York.

It was reported to the Assembly Ways & Means Committee and referred to the Senate Health Committee.

7. **Strengthens Whistleblower Protections for Public and Private Sector Employees—A.5754**

This legislation protects public and private sector employees against employer retaliation for disclosure of employer activity that the employees, in good faith, reasonably believe has occurred or will occur that constitutes illegal business activity.

The bill was laid aside in the Assembly.

8. **Preserve Retirees' Health Insurance Benefits—A.3539/S.3320**

This legislation prohibits public employers from diminishing health insurance benefits or employer contributions to the health insurance of retirees below that level they paid as active employees.

This bill was placed on the Senate floor calendar and referred to the Assembly Governmental Employees Committee.

STATEWIDE AND REGIONAL POLITICAL ACTION COMMITTEE (PAC) ISSUES

Legislative staff attended the Black and Puerto Rican Caucus as well as the Somos El Futuro Conference.

The statewide Political Action Committee and the Executive Board approved the 2016 drafts of the state and federal legislative agendas. These draft agendas will be presented to the convention delegates.

Legislative staff conducted political action training and meetings for various regions throughout the state. Staff also participated in the monthly PEF statewide Political Action Committee meetings as well as the AFL-CIO political directors and lobbyists meetings held during the legislative session.

Federal Report 2015

PEF is fighting against threatening budget proposals/legislation and the impact these proposals may have on state and local government. PEF is fighting to secure positive legislation that will protect and fund PEF member's jobs, along with the vital services PEF members provide to NY State citizens.

Federal issues PEF is fighting for: PEF strongly opposes cuts to domestic programs and should continue to lobby aggressively to secure funding for Medicaid, Medicare, Social Security, Community Services Block Grant (CSBG), Disability Determination Services (DDS), Housing, State and Local Law Enforcement Assistance and Transportation.

PEF supports a serious and credible path away from this gridlock/dysfunction and toward a long-term plan to create jobs and lay down a strong foundation for broad-based economic growth.

Fiscal Year 2016 Budget

House and Senate budget for Fiscal Year 2016. The budget reflects the across-the-board "sequester" spending caps set in the 2011 Budget Control Act (BCA) of \$1.016 Trillion – **\$577 Billion** for defense programs and **\$530 Billion** for domestic programs. This reflects the required sequester cut of \$54 Billion for defense and \$37 Billion for domestic programs.

PEF is fighting for funding in the appropriations process to make up for the budget cuts that may harm PEF jobs, services to NY State citizens and the NY State economy.

PEF strongly opposes any domestic spending cuts.

Fast Track Trade Agreements

The battle to defeat fast track has taken many twists and turns over the last month because the labor movement and other allies have blocked the path to quick enactment.

PEF opposes fast track and should continue to oppose. PEF has had faxes from members being sent to their federal representatives to stop fast track.

Safe Patient Staffing/Safe Patient Handling

PEF supports legislation to improve both patient safety and quality of care by enhancing the voice of nurses in hospital staffing decisions. Safe staffing is among nurses top concerns and is important to patient safety and retention of nurses at the bedside as we face a growing nursing shortage. The link between patient safety and nursing care is well-established.

PEF supports legislation to improve both patient and nurses safety regarding safe patient handling. The practice of manual lifting, repositioning and transferring have contributed to work-related injuries and musculoskeletal disorders (MSDs) among nurses and other health care workers. The nation, now facing a serious nursing shortage, can no longer afford to lose the nurses who leave the profession annually due to musculoskeletal injuries and pain.

Workforce Investment Act (WIA) Reauthorization

President Obama signed the Workforce Innovation and Opportunity Act (WIOA) into law.

PEF worked hard and fought to not allow language that would harm our members to be incorporated into this law.

- First, PEF fought and won – this law maintains the Wagner-Peyser Act Employment Services as a distinct program. The bill also includes funding for development opportunities/training for employment services staff.
- Second, PEF fought and won – this law secures dedicated workforce and labor union slots on workforce boards.

- Third, PEF fought and won – this law includes specific authorization levels from 2015 to 2020. These levels result in a 17% increase in FY 2020 over the FY 2014 funding level.
- Fourth, PEF fought and won – this law does not move the Rehabilitation Services Administration (RSA) from the Department of Education to the Department of Labor, as originally contained in the Senate committee version of the bill and secures PEF jobs.
- Also, aggressive federal lobbying was done so that language on the Comprehensive System of Personnel Development (CSPD) did not become **a federal mandate for states**. States now have the discretion in making the final decision about personnel qualifications.
- PEF also lobbied aggressively to secure federal grant money in the appropriations process that resulted in jobs being restored in the NY State Department of Labor.
- **SUNY, OPWDD, OMH and OASAS**
PEF has been successful in communicating our positions regarding the governor's proposed privatization proposals he has submitted to the federal government.
- The federal government has separated the first phase of awarded monies to hospitals into public and private. A total of \$250 million (more than went to the states private hospitals) has been awarded to the states large public hospitals. This is a huge victory for PEF and the large public hospitals in NY State.
- **Managed Medicaid Waiver**
PEF has been successful in communicating our position on the governor's managed care proposals that would impact services and take away quality PEF civil service jobs from OPWDD, OMH and

OASAS.

- First, we have educated the president's administration and our federal representatives that the federal government is not pressing for these changes. It was stressed that there is no federal law or rule which would compel outsourcing or privatization to obtain treatment for their constituents. PEF also shared how the federal government wants to see accountability for care, along with its share of the state Medicaid budget and how the best way to ensure that is to keep civil service/PEF jobs as part of the delivery system to the clients of OPWDD, OMH and OASAS.
- Second, we have educated the president's administration, and our federal representatives on how the governor's plan fails to answer critical questions about how services will be delivered and opens the door to abandonment of the most vulnerable individuals in New York State.
- PEF has also stressed, that the plan appears to address fiscal constraints through deregulation and de-professionalization, both which threaten to compromise quality of care and may be especially harmful to higher-need individuals who require intensive medical and behavioral services and will have difficulty thriving in other environments. This plan claims to promote transparency, yet the experienced professional workforce in OPWDD, OMH, and OASAS have been ignored as a major stakeholder in the plan's development process.
- PEF should continue to fight against managed Medicaid initiatives and continue to push forward using specific Medicaid information that supports why PEF jobs should be part of this plan to ensure that the quality of services that are performed by PEF members are not diminished to this population in New York State.

Public Relations

The Public Relations Department is the communications center for PEF leaders, members and retirees. It is the creative branch within PEF that designs and produces hundreds of printed materials, initiates and responds to all media inquiries, and works tirelessly to advance the priorities of the union. The department focuses on assisting PEF leaders in their campaigns to obtain strong contracts, job security for members, improved retirement benefits, and to highlight PEF's professional presence in communities throughout the state. It is instrumental in developing and promoting the union's views, activities and policies through media outlets, community relations and advertising.

Major Activities

As negotiations of the PS&T contract with the state approached, the Public Relations Department supported the union by getting the message out to members about local meetings. It played a role in encouraging members to take a contract survey which was available on the PEF website. *The Communicator* reported on the salient issues raised by members, which helped arm the contract team as they prepared for negotiations.

The department worked closely with other PEF departments to help ensure a positive outcome with PEF's legislative fight-back campaigns. PR designed and produced materials to support the Veterans Equality Bill which passed in the state Senate and Assembly. The department also created materials to support amending the Mental Hygiene Law and to retain pension benefits.

PR covered and reported on testimony by PEF leaders on various topics including the effects of a declining state workforce, and the importance of properly treating mentally ill inmates. Other testimony highlighted the effects of combining

counselor positions with parole officers (the offender rehabilitation coordinator title), and the need to maintain and enhance services for children with disabilities and mental illness.

The department also reported on PEF's fight with the state when it tried to place 256 members in management/confidential positions.

PR responded to numerous requests from other PEF departments as well as division leaders. It designed several flyers for the Organizing Department for parades as well as informational union handouts. The department designed and revised brochures for the Health and Safety, and Training and Education Departments. It created materials for all the regional leadership conferences, legislative breakfasts and for the Somos El Futuro reception.

PR designed and produced materials and apparel for events such as the PEF Nurses Conference Day and Healthcare Workers Lobby Day.

The department was instrumental in providing members with PEF triennial election information. A record 32-page election insert was organized, formatted and produced, which appeared in print and online.

Social media took on a prominent role this past year, as the department took over the PEF Facebook and Twitter pages. The Facebook page has seen a 30 percent increase in "likes," while the PEF Twitter page has continued to be a source of information for more than 1,200 followers, as of early September.

PR also writes the text and designs the slider art for the PEF website.

PEF now manages the PEF website. The department posts timely updates and news for members. It writes the text and designs the slider artwork.

PR works with PEF volunteers during the holiday season and arranges for news coverage for events such as the annual parole gift wrapping for deserving parolees.

The department designs and revises materials for new members. It also creates COPE brochures, badges for various events, business cards, certificates and plaques. PR also produces photo displays for the lobby at PEF headquarters, and for the PEF booth at the state fair.

The Communicator

The PR Department produces PEF's award-winning magazine, *The Communicator*. Department staff plans, researches, interviews, photographs, writes, edits, proofs, designs and sells ads for the magazine, which is published 10 times a year.

Booming ad sales from *The Communicator*, convention yearbook and health and safety booklet were a record high. The total from October 2014 to September 2015 was \$233,558.00. The ads help defray the costs of producing *The Communicator*. The magazine is available in print and online. Most members still prefer to receive the print edition.

In addition to *The Communicator* staff taking photographs for the publication, current and retired members volunteer their time to take photos of labor events around the state for use in the magazine.

Media Relations

The Public Relations Department plans and coordinates press coverage for the union. It prepares and distributes media advisories and press releases, and arranges media interviews for PEF leaders. PR helped prepare union leaders with speeches or talking points for public appearances. PR also responds to press calls from newspaper, radio and television reporters statewide.

Information Line

Every week, the department prepares, records and updates the PEF Information Line. This service helps keeps members informed of PEF activities, deadlines for PEF/state programs such as educational development, and updates on the PS&T contract negotiations.

Electronic News Clipping Service

The Public Relations Department provides a timely news clipping service for in-house department heads and PEF Executive Board members to keep union leaders aware of news stories and editorials important to the union. These clips feature breaking news in New York and across the country that affect state agencies and the workforce. Other news items focus on the state budget, elected officials, parole and nursing issues, and members featured on-the-job, working in their communities.

PEF's Annual Convention

PR department staff creates the graphics, podium art, and posters for the annual PEF convention. It plays a major role in creating the visual presentation. It produces the I.D. badges and other delegate materials, including the program guide, yearbook and annual report.

Recognition/Awards

In October 2014, the American Federation of Teachers awarded a first-place prize to PEF, shared by United University Professions, for a campaign to save SUNY Downstate Medical Center in Brooklyn from privatization. Each union received \$25,000.00 for the annual "Prize for Solution-Driven Unionism." This award was created in partnership with the Albert Shanker Institute and the AFT Innovation Fund.

In July 2015, The International Labor Communications Association awarded PEF's Public Relations Department four top awards. PR scooped up a first-place writing award for Best Labor History Story (*July Marks Mother Jones' Fight Against Child Labor*); a second-place Visual Communications Award for best photo essay (*Labor Day On The Move*); a second-place Saul Miller Writing Award for Political Action (*Hundreds Rally To Protect Community Services*); and a third-place Saul Miller Writing Award for Organizing (*AFT President Cites Visibility, Unity, Community Involvement As Key Elements for Labor's Success*). The stories can be viewed on the PEF website by selecting the 2014 March, July-August and October issues of *The Communicator*.



Purchasing / Facilities Management

The purchasing and facilities department is responsible for providing support services for a broad spectrum of organizational activities. The department is staffed by two communications technicians who report to the Executive Director.

The facilities section covers: contractor coordination and supervision support of PEF events, maintenance of the buildings and grounds, conference room set-ups, warehouse and records management, including support for Membership Benefits and PEF Retirees, oversight of U.S. postal service specifications and operation of the always busy mailroom/copy center. The purchasing area includes: assisting in vendor negotiations, centralized purchasing of equipment, supplies and services and associated special projects.

We have recently consolidated our warehouse facilities from two cramped ground level units to one larger facility.

Additionally, the new location will improve our record storage capacity and better protect important business records from damage.

continue to be replaced and updated. We will continue to replace furniture in other areas of our headquarters most in need of modernization.



We continue to focus on deferred building maintenance at headquarters, including HVAC, dock and bathroom repairs.

Multiple work stations in Membership Benefits and Organizing

During the past calendar year, a contract was entered into with Konica Minolta to provide new copier scanners and replace the existing Xerox copiers which resulted in cost savings to the union.



Training and Education

The department develops and delivers classroom and online courses and conferences; brokers educational opportunities and provides technical assistance and needs assessments. The department is responsible for working with PEF's elected leaders, members and staff to assess professional development needs and to make available opportunities and resources to enhance knowledge, skills and abilities.

Some of the topics included:

Understanding and representing PEF member's contractual and legal rights;

Leading and implementing the initiatives, policies and procedures adopted by PEF;

Advocating to protect and enhance members' rights and benefits;

Enhancing job performance skills and career mobility; maintaining professional licensure and accreditation.

Developing functional labor/management teams

Achievements

The department created and delivered online E-Learning courses including "Together We Are PEF" and "The PEF Convention Module". These courses may be found on the PEF website under the Training/Education tab, "Online Training". The department is currently updating the Division Finances online module.

Staff coordinated the logistics and presented workshops at:

New Council Leader Trainings

Individual Agency Labor/Management Trainings

Labor/Management Advisory

Regional Leadership Conferences

Statewide DOCCS Labor/Management training held in Lake Placid in June, 2015

Health and Safety Conference in June, 2015

Article 15 of the Contract

Educational opportunities are funded through Article 15 of the contract. Staff continues to represent PEF members' needs at the joint PEF/GOER Professional Development Committee where educational needs are discussed and classes under the Public Service Workshop Program (PSWP) are developed for delivery. Two Committee PEF members are appointed by the President of PEF to serve as voting members of this committee.

Workshop Seminar Reimbursement (WSR) Program, Nurses' Enhanced WSR and the Certification and Licensure Exam Fee Reimbursement (CLEFR) programs are available for members of the PS&T unit to utilize.

We have implemented leadership courses for salary grades 18 and above: the Leadership Development Program will be offered twice. A Nurse Leadership Program is under development and will be offered in the near future.



Statewide Field Services

Field Services central function is to protect the bargaining unit member's and the Union's rights under the Collective Bargaining Agreement, applicable laws, rules and regulations through a variety of means including negotiations, grievance handling, Taylor Law Improper Practice processing and otherwise exercising their expert labor/management skills in achieving gains for PEF and its' membership.

In 2015, there were thirty professional full-time field representatives working out of twelve field offices across the state. Each field office has administrative staff assigned to support the organization's activity. The field services of PEF regions are overseen by the Statewide Director of Field Services and two Regional Directors of Field Services are responsible for the direct supervision of specific regions. Jim Kemenash, Statewide Director of Field Services, in addition to his overall responsibilities, directly supervises Regions 5-9; Mike Farrell, regional Director of Field Services, directly supervises Regions 1-4 and Blair Burroughs, Regional Director of Field Services, directly supervises Regions 10-12.

Critical components of a field representative's activity include the following:

- Advise and assist shop stewards and PEF represented employees regarding workplace related matters.
- Provide guidance in a timely manner to employees and PEF leaders regarding their rights and possible options.
- Represent grievants in disciplinary matters up to and including arbitration (for termination cases PEF provides an attorney for the arbitration). Since the last convention, as of July 31, 2015, this involved 565 separate Notices of

Discipline ["NOD"]. This includes representation at interrogations and securing stipulations of settlement, where appropriate.

- Represent members, conditioned on meeting PEF's requisite for representation, at Civil Service Law Section 72 hearings.
- File Improper Practice Charges and represent PEF at the Public Employment Relations Board ("PERB") for alleged violations of the Taylor Law.
- Function, when assigned as the Agency-Level Labor/Management ("L/M") Field Representative, as the expert adviser to the respective Agency-Level L/M team on labor relations matters, attending the pre and formal L/M meetings.
- Secure written agreements which include Memorandums of Understanding and Memorandums of Agreement covering vacation, shift and pass-days, overtime, standby-on call and L/M meetings.
- Provide expertise with regard to the PEF Contract, the Taylor Law, the NYS Attendance Rules and the Fair Labor Standards Act.
- Act as a primary liaison for referrals to appropriate PEF Departments (e.g., Health and Safety, Contract Administration, Civil Service Enforcement, Policy Analysis, Public Relations, Organizing) on behalf of our activists and members.
- Identify violations of the contract, assist the shop stewards with the grievances; and where necessary, actually craft, file and process grievances through Step Three.

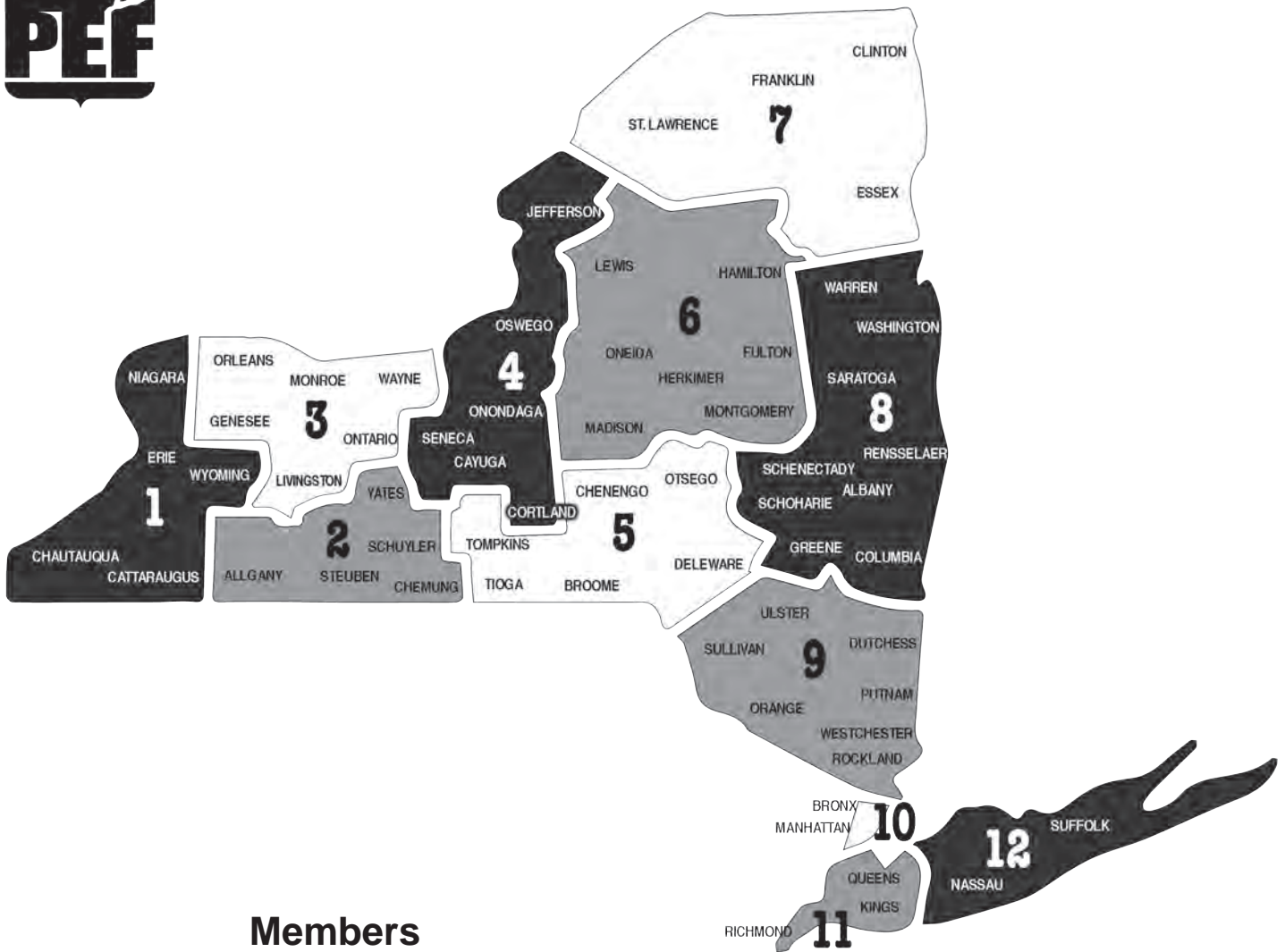
During the past year, PEF Field Services staff have, in brief:

- Responded to numerous requests for information and support;
- Lodged many complaints with employers on behalf of our members' best interests;

- Filed and processed numerous contract grievances, including as of July 31, 2015, 159 that were appealed to Step 3/GOER since the last convention;
- Filed and processed numerous Article 17 (out-of-title work) grievances; as of July 31, 2015, 160 decisions were received;
- Worked with elected leaders and PEF staff in campaigns to fight for members rights;
- Processed, as of July 31, 2015, 565 grievances challenging NODs and have secured numerous negotiated Stipulations of Settlements since the last convention;
- Acted as lead advocate in hundreds of interrogations;
- As of August 4, 2014, Field Services had 32 open Improper Practice Charges; over the next year there were a total of 36 new Improper Practice Charges filed with PERB and 24 were closed. As of August 27, 2015, about 44 remain open.
- Trained Shop Stewards and activists;
- Prepared numerous legal, civil service enforcement and contract administration intakes;
- Provided representation during layoffs and facility closures; and
- Represented numerous members in matters surrounding Civil Service Law Section 72 (e.g., involuntary medical leave).



Membership by Regions



Members

REGION	1	Buffalo	4,542
REGION	2	Elmira / Hornell	729
REGION	3	Rochester	2,361
REGION	4	Syracuse	4,070
REGION	5	Binghamton	1,733
REGION	6	Utica	1,679
REGION	7	Potsdam / Plattsburgh	1,333
REGION	8	Albany	19,042
REGION	9	Mid-Hudson	4,640
REGION	10	Manhattan / Bronx	5,181
REGION	11	Queens / Brooklyn / Staten Island	4,645
REGION	12	Long Island	4,595
OTHERS			49

Organizing

Building the power of the union – that is the mission of the PEF Organizing Department. The department does this in many ways including assisting regions and divisions with organizational development and mobilization support, developing PEF's capacity to organize internally, providing training and logistical support for political action.

POLITICAL ACTION/COPE

An important responsibility of the department is the promotion and administration of the program known as the Committee on Political Education or COPE. COPE contributions are the way PEF members and other labor union members work together to financially support political candidates for national office that will support legislation, funding and policies that support PEF priorities.

RALLIES/EVENTS

The staff in the Organizing Department is involved with the planning, promotion and logistics for all rallies and events from drawing up plans and a budget to transportation, logistics. Examples of this include department staff acting as the liaison and logistical coordinator with

other nursing unions to arrange constituent lobby visits on Health Care Workers lobby day in Albany and other department organizers working in regions around the state on community-labor initiatives, including the campaign to save SUNY Downstate in Brooklyn.

TRAINING

Organizers also provide steward and leadership training on organizing throughout the state. Since the last PEF convention organizing staff has taught the organizing section at a number of regional shop steward trainings. In addition, the department responds to requests for organizational support and assistance from divisions including targeting activists for recruitment to filling steward vacancies where there is no one stepping up.

INTERNAL ORGANIZING

In 2015 and beyond, the department will be focusing on internal organizing to address the potential negative impacts of the Supreme Court's upcoming decision in the matter of Friedrichs v. California Teachers Association. Currently we are actively working on developing: data systems to provide up to date organizing

information, training and media tools to use in addressing stewards councils and general membership meetings, a trained group of retirees to make calls and accompany membership benefits to events where they can inform members of the importance of union membership and sign members up to assist their PEF division in organizing and providing direct services to the members. Organizing is also working with other PEF departments to ensure that PEF organizing message is consistently conveyed in all PEF communications.

As a department, staff looks forward to continuing its work in assisting council leaders, executive board representatives, state wide nurses committee members, regional coordinators, labor/management chairs/committees and field representatives in implementing mobilization activities such as charting the work place, agency and region, developing work plans, acting as a resource in promoting new initiatives, assisting Labor/Management Committees and assisting with the coordination of targeted campaigns.



Contract Administration

The Contract Administration Department is primarily responsible for negotiation and statewide administration of the State/PEF Agreement for the Professional, Scientific and Technical Services (PS&T) Unit. The Department is the day-to-day liaison with the Governor's Office of Employee Relations (GOER) on state-wide labor relations issues. The Department also provides contract interpretation assistance and advice to union leadership and Field Services staff; advises and assists agency L/M committees on issues involving contract interpretation and/or negotiation of agency-specific understandings regarding our members' terms and conditions of employment; and represents the union in contract grievances at arbitration. The department also staffs: Executive Level Labor/Management, the Joint Committee on Health Benefits, the Joint Advisory Board for the Family Benefits and Employee Assistance Programs, the Joint Nursing and Institutional Issues Committee, the Albany Parking Committee and the internal PEF Grievance Appeals Committee. One Department member serves as the union's designee on the Statewide Performance Evaluation Appeals Panel. Notable activities of the department this year included the following.

2015 PS&T Unit Negotiations

A key Contract Administration Department staff function is providing professional advice and assistance to the PEF contract team in each round of negotiations. This includes both team training and proposal development prior to negotiations; presentation and negotiation of proposals at negotiations; providing advice and counsel to the team; drafting contract language; preparation of ratification materials; traveling to pre and post-negotiations member meetings on the contract and, preparing the final agreement for printing.

This year, Contract Administration Department staff was deeply involved in preparing for negotiations and in all activities associated with representing the union in negotiations with the State. This work has included: providing the bargaining team with in-depth training on the contract and the process of negotiations; working with the team to review survey results and other input from the membership regarding what our members would like in the next agreement; traveling across the state to pre-contract member meetings; working with the team to develop the union's initial conceptual proposals for negotiations; and, presenting the union's bargaining proposals and responding to State proposals in negotiations.

Department staff members providing professional advice and assistance to the team include: the Director of Contract Administration, two Associate Counsels (Contract Administration), two Health Benefits Specialists and the Contract Administration Department Assistant.

Other Bargaining Unit Negotiations

Contract Administration also provides professional assistance to Field Services and our bargaining teams at the Albany County Probation Department, Albany Housing Authority, Allegany County, Eastern Niagara Hospital, Inc., NYS Canal Corporation, and National Development and Research Institutes, Inc.

This year, the department provided bargaining advice and assistance to the following teams as they negotiated and reached tentative agreements on new contracts:

- The Albany County Probation Department team settled on a three year agreement from January 1, 2014 through December 31, 2016. In part, agreement terms included: 4.5% in across-the-board salary increases over the term of the agreement, improved longevity payments, increased warrant squad premium pay, twenty days of paid parenting leave, no health insurance premium increases for current employees, and new language establishing clear contractual protection for retiree premium contribution levels.
- At Eastern Niagara Hospital, the parties reached agreement on a new contract for Oct. 1, 2013 through Sept. 30, 2019. The agreement was the result of hard fought negotiations and involved a federal mediator. As previously reported, there were extensive negotiations over changes to the Eastern Niagara pension benefit. Prior to this round of negotiations, all other Eastern Niagara bargaining units agreed to freeze the defined benefit pension plan, entirely or in part, and replace it with a 403(b) defined contribution plan. The defined benefit pension plan for non-employees was also frozen. The PEF agreement included across-the-board salary increases in each year of the agreement, salary schedule upgrades for some titles, an increase in the sick leave accrual cap and no changes to health benefits. The agreement continued the defined benefit pension for members whose years of service plus age are equal to or greater than 70. Vested employees whose age plus years of service is less than 70 had their defined benefit pension frozen at current benefit levels. These vested employees and all non-vested employees will be enrolled in a 403(b) plan with a 2% employer contribution and a 50% employer match to employee contributions of up to 2% of the employee's salary.
- The new NDRI agreement extended the prior NDRI contract, with no changes, for one year. This included a 3% salary increase effective July 1, 2015. The existing

contract includes employee health insurance premium contributions of 10% for individual and 25% for family coverage. This will continue during the one year extension.

The department is also continuing to provide professional staff support in ongoing negotiations at the Albany Housing Authority, Allegany County, and the NYS Canal Corporation.

- The Albany Housing Authority contract expired on June 30, 2015. The bargaining teams have exchanged several comprehensive package proposals over terms of a tentative agreement, all of which include salary increases of 6% over three years. Department staff is currently working with the bargaining team to prepare another counter proposal which we anticipate will lay the groundwork for moving to a final agreement in the near future.
- Following Allegany County's declaration of impasse, the parties have been meeting with a PERB appointed mediator in an effort to reach agreement on a new contract. However, the County continues to demand significant increases in employee contributions to health insurance premiums (including a shift from a flat dollar amount to a percentage of premium contribution) and the parties have not yet reached agreement on wage increases. Two other County union's are now also at impasse in their negotiations. The various unions are now exploring what joint options and strategies may be available to resolve the impasse.
- NYS Canal Corporation management continues to propose a six-year agreement including three zeros and three 2% increases and significant increases in health insurance premium contributions for both employees and prospective retirees. The various bargaining units are continuing to communicate with

each other and share information about negotiations. Recently, management implemented health insurance contribution increases for M/C employees effective July 1, 2015. Current M/C employee contribution will increase over time culminating in contributions of 10% for individual coverage and 25% of the additional cost for family coverage by 2018. New M/C employees in salary grades 10 and above will contribute 16% and 31% respectively.

PS&T Unit Contract Enforcement and Administration

In any year, Contract Administration is deeply involved in enforcement of the terms of the PS&T Unit Agreement, both through day-to-day advocacy with GOER, and through representation of the union in the contract grievance process. Contract Administration has central responsibility for administering the Article 34 contract grievance process at Step 3 – GOER and at Step 4 – Arbitration. This includes: working with Field Services to review grievances prior to advancing them to Steps 3 and 4; day-to-day contact with GOER about pending grievances; and, representing the union in those grievances at arbitration.

A critical component of the contract grievance procedure is the Triage and Expedited Arbitration process. This process provides a means of resolving contract grievances more expeditiously than is the case in full arbitration. The Triage and Expedited Arbitration process is the primary means through which we resolve the myriad individual grievances filed by our members that reach Step 3 and 4 of the contract grievance process. Department staff meets regularly – typically bi-weekly – with representatives from GOER and our Triage Arbitrator to present, argue and attempt to resolve individual contract grievances in Triage. The vast majority of the contract grievances we handle are resolved in our Triage and Expedited Arbitration process.

There are occasions however in which grievances cannot be effectively

resolved through Triage and Expedited Arbitration. That typically occurs in state-wide class action grievances which present significant contract interpretation questions. This year, the department's work included continuing significant work on arbitrations of ongoing disputes arising during the last round of negotiations and regarding the State's implementation of the 2011-2015 Agreement.

- We received a favorable decision in our grievance challenging how the State calculated retroactive NYSHIP premium share increases for October and November, 2011. We argued this calculation should have been based on NYSHIP enrollment in October and November, 2011. The arbitrator agreed with us and held that the State violated Article 9 of the State/PEF contract when it calculated the retroactive premium based on January 1, 2012 enrollment. As a result, eligible class members -- for example, members who changed enrollment during the November, 2011 open enrollment period or enrolled in State health insurance for the first time between October and January, 2011 -- had excess premiums reimbursed. Ultimately, 1,217 enrollees received a refund, ranging from as little as \$0.84 to as much as \$155.70. The average refund overall was \$67.10.
- We received a favorable decision in our grievance challenging the State's failure to pay the \$1,000 individual coverage opt-out incentive to eligible employees who have "other coverage" through a State-employed family member. The arbitrator ruled the State violated Article 9.2(j) of the 2011-2015 State/PEF Agreement when it denied certain otherwise eligible PS&T Unit employees the opportunity to opt-out of their own individual coverage in favor of dependant coverage provided by a State-employed family member. The arbitrator directed that the State begin allowing eligible

employees to opt-out of their own individual coverage in favor of a family member's State-provided NYSHIP coverage. The question of appropriate retroactive remedy for employees who should have been permitted to opt-out previously was bifurcated for further action. Unfortunately, the State refused to comply with the arbitrator's award. As a result, the Legal Department filed the necessary papers to confirm the award on the prospective remedy in State Court. We expect a decision from the Court shortly. In the meantime, we have completed additional hearings before the arbitrator on the issue of appropriate retroactive remedy and are now briefing that issue. Once briefs are completed, the arbitrator will issue his award on the question of retroactive remedy.

- We received a mixed decision from the arbitrator on our grievance challenging the State's decision to apply the Deficit Reduction Program to time worked by certain members in excess of a regular full-time schedule. This included withholding of Deficit Reduction Pay (DRP) from extra service work. It also included summer employment of 10-month teachers. As a result, these members had more than 9 days of DRP withheld from their pay. We argued that this was a violation of Article 21 of the 2011-2015 State/PEF Agreement. The arbitrator agreed with our argument that the State improperly withheld Deficit Reduction Pay DRP from extra service work performed by overtime eligible employees but rejected our claim regarding physicians' extra service work and teachers' summer employment. The arbitrator directed the State to repay overtime eligible employees any DRP monies withheld

from extra service overtime. The Comptroller's Office is currently reviewing which class members are eligible for earlier repayment of improperly withheld DRP and in what amount.

Unit Determination Process

Once each contract term, *The Taylor Law* provides a brief period prior to expiration of the contract during which the union may file a petition with the Public Employment Relations Board ("PERB") to challenge the State's designation of certain positions as Managerial/Confidential (M/C) or Casual and argue that those positions should be included in the PS&T Unit. This process allows us to protect against the erosion of the PS&T Unit that occurs when the State shifts our work to non-PS&T Unit employees. After consultation with PEF leadership in each agency regarding which positions should be challenged, department staff prepared and filed the 2014 Open Petition with PERB in August, 2014.

Prior to filing the 2014 Open Petition, we negotiated a partial settlement of the 2010 Open Petition that placed 250 employees into the PS&T Unit. However, almost immediately thereafter, the State petitioned PERB to withdraw from that settlement. PERB denied the State's request and the State appealed PERB's decision in state court. That case is now pending on appeal from an initial court decision in the union's favor. The positions in the 2010 Open Petition which were not included in the 2013 settlement were included in the 2014 Open Petition. The 2014 Open Petitions is still pending at PERB.

In December, 2014 the State filed an employer petition seeking to change the designation of 2500 PEF represented positions from PS&T to M/C. PERB initially found the State

application to be deficient, and gave the State time to supply additional information to cure the deficiency. In February, 2015, the State filed its response and also raised a number of objections to PERB's handling of the employer's application. To date, PERB has not required a response from PEF or further processed the State's petition. The positions at issue in that petition will remain in the PS&T Unit while the State's petition is pending and remains unresolved.

Health Benefits

Department health benefits staff work to assure PS&T Unit members access to benefits provided by the New York State Health Insurance Program (NYSHIP). This includes: staffing the Joint Committee on Health Benefits; providing information and assistance to members with health benefits concerns; providing technical assistance to the PEF negotiating team; reviewing RFP's and vendor proposals for health insurance and health benefits administration contracts and, monitoring implementation of health benefits changes once negotiations conclude. As always, a significant portion of health benefits staff time involves assisting our members with individual health benefits coverage issues. This year, in addition, health benefits staff also participated in the annual HMO review process; continued to monitor federal Affordable Care Act implementation as it related both to NYSHIP and health benefits coverage for the other bargaining units we represent; provided training to the PS&T Unit bargaining team on health benefits; prepared memorandum to union leadership and articles for *The Communicator*; and, updated the PEF Health Benefits webpage with health benefits information for our membership.

Membership Benefits

The PEF Membership Benefits Program (PEF MBP) Trust is a separate entity from the union. The Trust is governed by a Board of Trustees and is managed by an Administrator, who reports to the Trustees. Union dues are never used to fund the operations of the Membership Benefits Program.

PEF MBP offers active dues-paying PEF members and retirees a wide variety of statewide and regional benefits. Programs range from group insurance and legal plans, to travel planning and entertainment discounts on movies, theme parks, performing arts, department stores, restaurants, and more. The mission of the Program is to provide exemplary member service, quality programs (thoroughly researched), and benefits that enrich the lives of our members.

New Statewide Benefit Announcements

The trustees continue to focus MBP spending on benefits for the members. With cost savings and careful planning, the trustees were excited to secure funding for the following new programs:

- **HEIP** (higher education tuition reimbursement) **pilot program** – designed to assist members with tuition charges for Fall 2014, as well as Spring, Summer and Fall 2015 semesters.
- **Legal Defense Benefit** – providing legal representation for members facing substantiated findings from the NYS Justice Center.
- **Retirement Planning Seminars** – offered at various locations throughout the state and designed to provide guidance for members planning retirement. Seminars will continue again in the Fall of 2015.

Insurance Programs

In the fall of 2014, rates were reduced on the Term Life Insurance program and an open enrollment

campaign was launched. The campaign was well-received by members with over 2,000 applications submitted. The plan continues to provide a stable, popular benefit for the membership. The following unique features of the term life insurance program help to differentiate it from similar programs in the marketplace and provide a competitive advantage:

- Double benefit payable for accidental deaths
- Premiums are payroll deducted
- Coverage can be maintained after retirement
- Accelerated benefits available for the terminally ill
- Ability to maintain a \$20,000 policy after age 70

Benefit Program Expansion

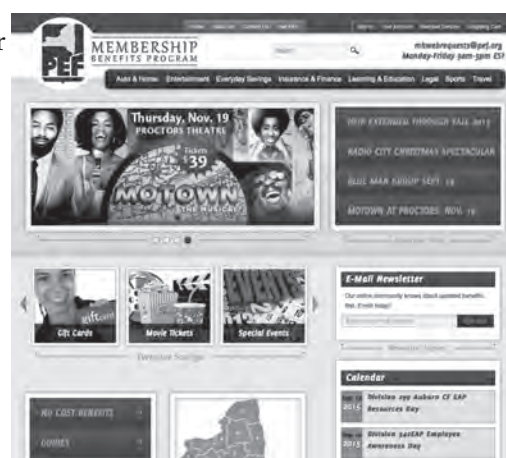
Adding new regional benefits, that appeal to a broad spectrum of members, continues to be an area of focus. With the understanding that PEF represents members in many locations with varying interests, staff continues to identify and research new benefits that will appeal to members.

New regional discounts recently presented to the membership, include:

Blue Man Group, NYC
Jersey Boys, Proctors
Watkins Glen International
Greek Peak Ski Area
Lion King, NYC
Wonder Works
Beauty and the Beast, Proctors
NJ Devils
Hill Falls Gorge
Shea's Performing Arts, Buffalo
Polar Express
NY Spring Spectacular
Cirque Du Soleil, TU Center
Book of Mormon, NYC
Boston Red Sox
Frozen on Ice, Barclays Center
Color Purple, NYC
Rochester Rhinos

Membership Outreach

During the past year, the Membership Benefits Program staff attended approximately 219 meetings, events, or benefits fairs (a 6% increase from last year), actively engaging with members and promoting membership benefits. PEF leaders are encouraged to invite our representatives to their events. If you provide our representatives with a speaking opportunity, the Program will reimburse the PEF division, \$2.00 per member, for food purchases made for that meeting.



Over 24,000 members benefit from their subscription to our email communications. Members who subscribe to our email list service are eligible to receive our monthly e-newsletter loaded with special promotions, program updates and new program announcements. They may also receive special promotional mailings regarding upcoming sporting events, performing arts events, as well as invitations to our educational seminars. PEF members wishing to receive these promotional mailings may subscribe to our email list service by clicking on our banner ad on the Membership Benefits Program home page at www.pefmbp.org.

Facebook followers have steadily grown to over 1,800. Leaders are encouraged to promote our Facebook page to members as a source for instant updates and immediate access to promotional offers. The page can be

found by searching “PEF Membership Benefits Program.”

Coming Soon! PEF leaders will receive their own bi-monthly e-newsletter, “*Leadership News & Updates*”, designed to provide program updates, special promotional announcements, and the ability to order marketing /promotional materials, schedule meetings, and ask for assistance with the simple click of a button!

Additional noteworthy activity from this past year includes:

Discount Ticket Sales

Discount tickets continue to be an extremely popular benefit. Since June 1, 2014, members placed 68,170 orders, generating over \$5 million in sales. Currently, the Program offers 295 different types of tickets including: amusement park, water park, sporting events, gift cards, movie tickets, and ski resorts. Contracting with new suppliers remains an ongoing endeavor and results in several new items annually.

Retiree Dental/Vision Administration

Membership Benefits began administering a new retiree dental and vision program for PEF Retirees. These new programs are available to active members of PEF Retirees.

New Computer Systems

Over the past year, MBP upgraded staff computers and is currently working with MIS on the purchase and installation of a new computer software program that will allow members to apply for insurance benefits and PEF membership, securely, online. The new software program is scheduled for installation Fall 2015 and MBP expects to launch the new program for membership use in Spring 2016.

PEF Travel Services

PEF Travel Services, an agency owned by PEF’s Membership Benefits Program, provides members with a 5% rebate on travel packages. Members continue to use the expertise of PEF Travel associates to book their vacations. With sales of over \$2.7 million, the agency booked over 3,000 travel packages and cruises this past year alone.

During the past year, PEF Travel Services participated in a business assessment and review. New operating and marketing strategies were developed to aid in the restructuring and rebranding of the agency. Targeted marketing, rebranding, website revisions, and the use of social media are focal points of the new marketing plan. Operating processes are being streamlined and fine-tuned to assist staff with workflow. Travel specials and deals are being researched and actively

promoted to the membership.

Looking forward to the year ahead

A distribution of a new **PEF ID card**, to be mailed to the entire membership, is planned the end of 2015. The new card will provide members with their PEF ID/MIN (member identification number). Announcements alerting members to the distribution of new ID cards, will be posted on Facebook and the website, and ads will appear in *The Communicator* and e-newsletter. Members are encouraged to carry this card with them as it provides access to the PEF and Membership Benefits Program website, as well as the ticket/e-Store system.

Spring 2016 will greet members with a **Term Life, Short-Term Disability, and Long-Term Disability** promotion. Informational packets will be distributed to members’ homes and announcements will be made through the use of social media and ads in *The Communicator* and e-newsletter.

Membership Kits are in the process of being redesigned and will offer a more functional and user-friendly look and feel. The Membership Benefits Program will reach out to leaders when the new kits are available for distribution.



MEMBERSHIP BENEFITS PROGRAM

Retirees

The PEF Retirees office is responsible for advocating on behalf of the PEF Retiree membership. The Officers and Retiree Executive Board members strive to protect the benefits of PEF Retirees that were earned during their career in state service. The department also monitors the pending proposed health insurance lawsuit whereby a 2% increase would be imposed for those who retired prior to October 2012.

Office Operations

The PEF Retiree Office staff responds to hundreds of inquiries each week concerning membership enrollment, dental and vision benefit information, retiree benefits and members who wish to continue their involvement with the union. Calls are fielded to state agencies for pension and health insurance matters.

The PEF Retirees are a growing segment of PEF and as of August 31, 2015 had 16,067 active members.

Membership in the PEF Retirees is free for the first year for eligible state employees who retired after April 2006. Thereafter the membership dues are \$1.50 monthly if a member elects to have the dues automatically deducted from their NYS pension check. Members can elect to pay their membership dues by check in the amount of \$21.00 annually.

65.2% of PEF Retiree members elect to pay their membership dues by pension deduction.

Retiree Regions

The PEF Retirees have 12 statewide regions, each of which has a chapter president who works with their team of elected officers. Most chapters will hold on average three to four general membership meetings per year, including an annual holiday party and summer picnic. The meetings are well attended and provide a useful forum for networking and reconnecting with fellow retirees. Guest speakers provide information on retiree programs. The chapter presidents are all volunteers,

advocates and previous PEF members, many of whom served on the PEF executive board.

The PEF Retirees have a Finance and Benefits Committee chair who monitor the programs and benefits offered by the PEF Retirees. The PEF Retirees have also retained the services of Peter De Carlo, CPA, PLLC to provide advice on the annual financial regulations and requirements that need to be followed.

Dental and Vision

The transition for the PEF Retiree Dental Plan to Sun Life Financial was successfully implemented in November 2014. Participating members now benefit from an improved plan offering affordable dental care through an extensive network of providers.

The PEF Retirees also introduced a vision benefit with Davis Vision (Visionworks). This plan is available to retiree members and their families for an annual fee and offers a comprehensive eye glass benefit with low out-of-pocket costs.

Membership Benefits

PEF Retiree members are able to participate in a number of PEF Retiree and Membership Benefit Programs, including discounted movie tickets, gift cards, defensive driving course, amusement park discounts and a 5% travel rebate through PEF Travel Services on travel packages.

Notable Committee Information

The PEF Retirees have one appointed member on the PEF Executive Board. Other appointments include a PAC, Women's Committee, Pension Committee and Veterans Committee representative. A retiree representative is also appointed to sit on the ROC (Retiree Organization Council) Committee. PEF Retirees work together with the active PEF membership on political and mobilization efforts via phone banking, literature distribution, rally participation and general volunteer action items.

PEF Retirees Executive Board

The PEF Retiree Executive Board consisting of 12 chapter presidents and a retiree E board representative meet on a quarterly basis for board meetings. At these meetings the PEF retiree financials and membership activities are reviewed and discussed. Each chapter shares their own local meeting notes and ideas. Core retiree goals are to facilitate retiree political action and mobilization efforts, and to increase retiree operations and membership.

Convention

The PEF Retirees are active participants at the annual PEF convention where they hold an information booth staffed by retiree board members, volunteers and trained office staff who are able to answer member's questions. The Retiree Executive Board regularly schedules one of their meetings at the PEF convention in order to interact with the PEF leadership and convention delegates.

PEF Retirees biennial Summer Conference:

The Retirees hold a summer conference that is moved around the state to different regions. In 2016 the conference will be held in Rochester. We plan on having several guest speakers and workshops focusing on the conference theme of "retirement security for all." The conference provides a useful opportunity for members to meet with other retiree members from across the state.

Communicator Articles

The PEF Retiree Statewide President, Jim Carr submits an article for each *Communicator* publication. Important issues including health care, retiree benefits preservation and retirement issues are addressed. These articles also create awareness of developments in matters relating to state retirement and social security.

PEF Regional Offices

ALBANY – Region 8

(518) 785-1900 / (800)-342-4306
FAX (518) 785-1814

BINGHAMTON – Region 5

(607) 785-1699 / (800)-724-4998
FAX (607) 786-5749

BROOKLYN – Region 11

(718) 637-2019 / (866)-897-9775
FAX (718) 637-2024

BUFFALO – Region 1

(716) 853-3100 / (800)-462-1462
FAX (716) 853-3109

HORNELL – Region 2

(607)324-6060/7911 / (800)-724-5001
FAX (607) 324-3611

LONG ISLAND – Region 12

(631) 360-4360 / (800)-832-5284
FAX (631) 360-4373

MALONE – Region 7

(518) 483-5781 / (888)-498-8532
FAX (518) 483-5786

MANHATTAN – Region 10

(212) 227-3132 / (800)-522-8700
FAX (212) 964-3571

POUGHKEEPSIE – Region 9

(845) 473-5022 / (800)-548-4870
FAX (845) 473-5053

ROCHESTER – Region 3

(585) 232-6980 / (800)-724-5003
FAX (585) 232-6469

SYRACUSE – Region 4

(315) 471-2311 / (800)-724-5004
FAX (315) 471-2382

UTICA – Region 6

(315) 768-0123 / (800)-724-5005
FAX (315) 768-1360

PEF Headquarters Departments

518-785-1900 / 800-342-4306

FAX: 518-785-1814

Accounting	261	Health & Safety	254	MIS	221
Albany Field Office	228	Health & Safety Fax. . (518)-250-7839		MIS Service	308
Accounting Fax	(518)-785-0892	Human Resources	212 or 214	Organizing	227
Payroll confidential fax (408)-786-1900		HR Confidential fax. . (518)-218-9235		PEF Trustees	411
Civil Service Enforcement	280	Legal.	241	Public Relations	277
Contract Administration	223	Legal Fax	(518)-785-1323	PR Fax	(518)-785-8174
Con.Admin. Fax.	(518)-785-0525	Legislative Office	(518)-432-4003	President's Fax	(518)-783-1117
Divisions.	231	. . . . .	(800)-724-4997	Retirees Office	289
Divisions Finance	232	Legis.Office Fax	(518)-432-7739	Statewide Field Offices.	425
Education & Training	312	Mailroom	401		
Executive Office	470	Membership Benefits	243		
Health Benefits.	283	MB Fax.	(518)-783-5339		

Other Important Numbers

PEF Info Hot Line (800)-553-2445

PEF Emergency Hotline (888)-850-7409

AAA/NYC.	(212)-484-3220	Liberty Mutual Ins.	(800)-734-6796	PEF/PSTP.	(800)-342-4306
Aflac	(800)-366-3436	MetLife	(800)-438-6388	Scholarships	(800)-342-4306 x221
AFT/Wash.DC	(800)-238-1133	NYSUT/Albany.	(518)-213-6000	SEFCU.	(800)-727-3328
Defensive Driving	(800)-427-2365	. . . . .	(800)-342-9810	. . . . .	(518)-452-8183
EAP- members	(800)-822-0244	PEF Travel	(518)-782-9045	SEIU/Wash	(800)-424-8592
EAP- staff	(800)-252-4555	. . . . .	(800)-767-1840	UUP.	(800)-342-4206
GOER	(518)-473-8375	. . . . .	Fax: (518)-782-9768		

