

AGENDA

OTDA PEF Labor Management Meeting

Date: July 12, 2023

Location: 40 North Pearl Street, 3rd Floor Conference Room, Albany, NY

Time: 9:00 am – 12:00 pm

Introductions

Agenda Items

1. Agenda Item – OAH 3/2 Calendar

New Business Old Business

Description: While management continues to communicate with labor on the OAH issues, this has failed to produce any improvement in working conditions for the state Hearing Officers. The 'temporary' 3/2 hearings since November 2020 have increased the backlog of unscheduled cases and are compounded by the massive influx of new hearings. Adding additional cases to the daily hearing calendars creates a frustrating situation for the appellants by not allowing them ample time to speak during their hearings. Similarly, ALJs have increased frustration in trying to hold hearings quickly and accurately. The trial 3/2 calendar has not worked. Please show us how this has made it better for OAH because we feel that it is so much worse now, and request that we go back to 1/1 calendars.

Please provide your data for each month listed below: How many ALJs were working (employed by OTDA and holding hearings)? How many hearings were requested? How many hearings were held? Total number of vacation days taken by ALJs? Total number of sick days taken by ALJs? The total number of personal days taken by ALJs?

February 2020, 2021, 2022, 2023, May 2020, 2021, 2022, 2023, August 2020, 2021, 2022, and December 2020, 2021 & 2022.

Additionally, how many ALJs were employed by OTDA and holding hearings in February 2020 vs currently?

Response: The temporary 3/2 schedule in place since November 2020 is no longer temporary. OAH added an additional monthly writing day upon request. OAH continues regularly evaluating calendar and case mixtures and numbers to optimize operations and workforce needs.

Month	Year	Hearing Requests	Hearings Held	Hearing Officers	Total accruals charged, Sick, Personal, Vacation
February	2020	14,893	6,001	112	1462.25
May	2020	10,865	5,342	111	486
August	2020	10,218	4,606	114	1736
December	2020	15,864	7,800	107	1798.5
February	2021	11,669	7,484	109	1192.25
May	2021	10,245	6,084	112	1525.5
August	2021	12,802	6,022	109	2693.25
December	2021	13,810	6,611	109	3040.25
February	2022	11,452	8,803	109	948.25
May	2022	12,608	7,174	108	1441.25
August	2022	13,781	6,406	105	2782.75
December	2022	12,816	6,369	111	2466.5
February	2023	10,391	5,821	107	1210.75
May	2023	12,619	6,783	106	1441.75

Action Item:

2. Agenda Item – Administrative Law Judge Caseload Albany vs. Brooklyn

New Business Old Business

Description: PEF requests to know the caseload size for Albany vs Brooklyn Administrative Law Judges. What are the differences between calendars in Brooklyn and the rest of the state (ROS)?

There has been knowledge that Brooklyn's hearings calendars have always been greater than ROS calendars. Brooklyn was told the reason for this is that RIS calendars have various types of hearings on one calendar. While Brooklyn is getting calendars with 16 or 17 TA or SNAP, we believe the ROS calendars are inequitable. Some areas are getting 9 or 10 cases on a calendar.

Response: The number of hearings on a calendar varies depending on the type of hearing scheduled and modality, regardless of the responding agency. Management is taking additional action to increase hiring and retention.

Action Item:

PEFMANA ✓

3. Agenda Item – Employee Morale

New Business Old Business

Description: Members are getting tired of doing more with less. Labor has mentioned that morale is down, and we are concerned. It feels as though OTDA rewards good, hard work with more work and no promotions. PEF understands that management is working to hire and retain new employees.

However, what is management doing to retain knowledge and keep members happy at their jobs while feeling appreciated?

How does management deal with supervisors who appear to bully people? In other words, what does management do when more than one subordinate complains that their supervisor is micromanaging or bullying?

How does management encourage supervisors to reward their subordinates and not micromanage? What ideas has management considered and implemented in an attempt to increase morale across all of OTDA?

Response: Management and Labor encourage all staff to file incident reports when warranted. We also support the submission of ideas to increase employee morale. Labor has indicated they have several ideas to increase employee morale that will be shared with Management.

Action Item:

4. Agenda Item – Reasonable Accommodations

New Business Old Business

Description: The Reasonable Accommodation (RA) process has become cumbersome and difficult for members to navigate and to obtain accommodation in a timely manner. When a member needs an RA, multiple doctor visits should not be necessary to obtain their accommodation.

When the RA process requests additional information, the verbiage is confusing. Members express frustration at the process and, despite believing the accommodation will assist them in job functions, give up in the attempts to obtain the accommodation.

How can a doctor explain the job duties a person may do when they don't know the job being performed, even when the member submits the entire form to the provider?

It is up to the employee to relay to the doctor what their job duties, or essential functions include, then the doctor can make an assessment about how the employee's limitations impact their ability to perform those duties. In addition, if appropriate medical documentation is not provided by the employee, to the DRA, with the Section A (application), the DRA sends the employee a Section C (requesting med doc) to the employee along with the Civil Service Classification Standard for the employee's position, which outlines their duties.

Why did OTDA send blanket statements rescinding RA's when the pandemic officially ended?

With the end of the public health emergency, the agency began reassessing telecommuting RA requests based on COVID-19. The EEOC has stated "an employer may evaluate accommodations granted during the public health emergency and, in consultation with the employee, assess whether there continues to be a need for reasonable accommodation based on individualized circumstances. Consistent with the ADA's "business necessity" standard, this evaluation may include a request for documentation that addresses why there may be an ongoing need for accommodation and whether alternative accommodations might meet those needs.

Why were members not given information on how to transition back to the office once their accommodation ends, in accordance with the guidance from www.eeoc.gov?

Information was provided in the email to employees. Management is not clear what guidelines Labor is referring to in the link above.

If RA requests are submitted, does OTDA provide guidance on the accommodations available, or are employees required to be their own advocates? Yes, the DRAs provide guidance on accommodations.

Are RA requests for the same type of accommodation uniform or tailored to each request? Each RA is handled on a case-by-case basis.

Is it division-specific or agency-wide? Each RA is handled on a case-by-case basis.

(Things like flexible work schedule, telecommuting requests, etc.) PEF requests that management look at streamlining the RA process.

PEF requests management provide the average turnaround time for a Reasonable Accommodation request, as well as recertification of an RA. Management cannot provide an average turnaround time for the hundreds of RAs that have been processed, as each case is composed of different factors that must be addressed.

Response: Responses to each question are listed above. In addition, OTDA follows the NYS policy regarding Reasonable Accommodations. The request process is intended to be interactive. Members are encouraged to reach out to the DRA regarding any questions they may have pertaining to their RA.

Action Item:

CONFIDENTIAL

5. Agenda Item – Artificial Intelligence (A.I.) and Digitalization Programs

New Business Old Business

Description: Implementation of Artificial Intelligence and Digitalization Programs.

OTDA is trying to automate processes, which is causing a backlog at one end or another. How is OTDA implementing automation while keeping the flow of work at a steady pace? If you automate one part of a process, you will get a backlog in another part. Does management know of any current A.I. programs/processes that affect job performance?

How much importance is OTDA putting into A.I.? What kinds of studies are being done before implementing such processes? Labor is requesting notice and discussion when management is interested in implementing A.I. and Digitalization programs that may have an impact on the performance of work processed by members.

Response: There is currently no A.I. within OTDA.

Action Item:

6. Agenda Item – HELP Program

New Business Old Business

Description: OTDA met with the NYS Civil Service Commission on June 14, 2023, to discuss OTDA titles for the HELP (Hiring for Emergency Limited Placement Program).

What is the current update from this meeting regarding all OTDA HELP titles?

Has there been any update or change from the Civil Service's ability to provide Provisional Placement exams for the Calendar year 2023, or will OTDA solely rely on the HELP program to recruit?

Response: Civil service approved the following titles for inclusion in the HELP program:

- ❖ Disability Analyst 2
- ❖ Disability Analyst 2 (Spanish Language)
- ❖ Hearing Officer (including all trainee levels)
- ❖ Fair Hearing Specialist 1
- ❖ Fair Hearing Specialist 1 (Spanish Language)

Implementation of the program is not set to occur until late Summer/early Fall 2023

Action Item:

7. Agenda Item – Appointment Mechanisms

New Business Old Business

Description: There seems to be more provisional, temporary and non-competitive titles in OTDA than ever before. Please explain your process. Is it because of a lack of exams, staffing shortages?

How does one in a provisional title get promoted?

Who determines if a position is competitive vs. non-competitive?

What is the agency doing to get temporary and provisional staff moved to permanent positions?

Response: Provisional appointments are made when there is no viable list for appointment. Non-competitive items are created when it is impractical to test for the knowledge, skills and abilities to perform the duties of the position. This can occur when there is no viable list (meaning less than 3 candidates from the eligible list willing to accept the position) for competitive appointment and an exam is not able to be offered. Temporary items are created when the need/duration of the position is expected to be finite/time limited.

Provisional staff become competitive through subsequent exam and appointment. Provisional staff do not gain qualifying credit towards promotional exams while in provisional status.

By default, all positions are in the competitive class. Agencies must request and the Civil Service Commission must approve any position outside of the competitive class (e.g. non-competitive). Temporary staff, by definition, are expected to remain temporary. OTDA requests exams for titles where there are provisional appointments.

Action Item:

8. Agenda Item – OTDA: Posting/Advertisements of Civil Service Exams.

New Business Old Business

Description: What is OTDA's policy/practice regarding posting/advertising of Civil Service exams within Departments and across the agency?

Are all employees who are eligible to apply for the exam(s) contacted based on agency contact information? Please elaborate.

Response: OTDA sends out all Civil Service Exam notices to all employees.

Action Item:

FINAL

9. Agenda Item – Increase for Administrative Law Judges

New Business Old Business

Description: Management has said that they have been trying to get increases in Administrative Law Judge (ALJ) grade 27's.

Labor would like to see any and all documents submitted to Civil Service, including all rejections from Civil Service or whoever has the decision-making process.

Response: Civil Service is undergoing a State-wide pay equity review, and OTDA continues communicating with Civil Service regarding pay disparities.

Action Item:

FINANCIAL

Informational Items/ Accomplishments

At DDD SWLM on May 24, 2023, it was discussed that the Division of Budget (DOB) was reviewing the Disability Review Psychologist salary as of April 21st, 2023. Please provide any insight into how long this process is expected to take while at the Division of Budget. Has there been any update within the past six weeks?

Note: Labor acknowledges that Management stated on June 14, 2023, that there has been no movement on this.

These are still pending DOB approval as of August 9, 2023.

Next Meeting/Date & Place

The next OTDA PEF Labor/Management Meeting will be held on October 5, 2023, at PEF headquarters.

The following individuals were present at the OTDA PEF Labor/Management Meeting held on July 12, 2023:

Labor

Chuck Ajoku
Carl Anderson (Phone)
Leslie Apacible
Pam August
Sharon DeSilva
Germaine Greco (Phone)
Mickey Heller
Dianne Herrmann
Peter Maurer (Phone)
Jill Poeller
Joyel Richardson (Minute Taker)
Martin Robinson
Scott Staub
Ryan Stoliker

Management

Colleen Brooks
Barbara Guinn
Eric Schwenzfeier
Sam Spitzberg
Jared Tallman
Daniel Tietz
Felicia Valle Job