



Contract Administration

TO: Executive Board Members
Council Leaders

FROM: Renee Delgado RD
Associate Counsel
Contract Administration

DATE: January 13, 2012

RE: Opt-out Program and Questionnaire

As previously reported, we do not believe that the State's implementation of the 2012 Opt-out Program is consistent with the language in the 2011-2015 PS&T Unit Agreement ("Agreement"). Therefore, we have grieved this issue. To assist us in preparing this grievance for arbitration, we need members who believe they should be included in the class of grievants (as described below) to fill out the attached questionnaire. We are seeking your help in distributing the questionnaire to your members.

Article 9.2(j) of the Agreement identifies two requirements for a PEF-represented State employee to be eligible to enroll in the Opt-out Program: 1) the employee must be enrolled in NYSHIP prior to April 1st of the previous plan year; and 2) the employee must be able to demonstrate and attest to having *other coverage* (emphasis added). During bargaining, PEF did not agree to any restrictions or limitations on what is meant by *other coverage*. Therefore, it's PEF's position that a PEF-represented State employee who is covered as a spouse under another State employee's NYSHIP plan satisfies the requirement of having *other coverage*.

The Department of Civil Service's interpretation of *other coverage* is different from PEF's interpretation. The Department of Civil Service is asserting that the PEF-represented employee's *other coverage* cannot be NYSHIP coverage provided through employment with the State of New York. This interpretation effectively prohibits a PEF-represented State employee married to another State employee, both of whom may be enrolled in NYSHIP, from meeting the eligibility requirements for the Opt-out Program.

On January 4, 2012, PEF's Contract Administration Department filed a class-action grievance challenging the State's failure to pay the opt-out payments to eligible employees with "other coverage" through a State employed spouse, domestic partner or parent. Despite the unlimited "other coverage" language contained in Article 9.2(j), the State is denying PEF-represented employees who can attest to having "other coverage" the opportunity to receive these

bi-weekly opt-out payments if that "other coverage" happens to be provided through a spouse, domestic partner or parent who is enrolled in NYSHIP by virtue of their own State employment. In the grievance, we argue that the Agreement contains no language limiting the scope or type of "other coverage" necessary to establish opt-out eligibility in any way. Moreover, the language contained in Article 9.2(j) does not exclude or prohibit a PEF-represented State employee who is a spouse, domestic partner or dependent of another State employee (both of whom may be enrolled in NYSHIP) from meeting the eligibility requirements for the Opt-out Program.

We have attached a "Health Insurance Opt-out Questionnaire" for you to circulate to your members. We are circulating the questionnaire to collect information that will assist us in determining the class members covered by the class-action grievance. Members should fill out this form if they: (1) were enrolled in NYSHIP on April 1, 2011 (or since date of first eligibility if later than April 1, 2011) and continuing through the end of 2011; and (2) have a spouse, domestic partner or a parent (if the employee is under the age of 26) who is a State employee and who was also enrolled in NYSHIP as of January 1, 2012. The form should be returned to PEF's Contract Administration Department, P.O. Box 12414, Albany, NY 12212-2414 or fax it to (518)785-0525. Please include any correspondence between the member and the agency regarding the Opt-out Program. Members who do not have family members who are also State employees enrolled in NYSHIP should not complete this form.

If there are any questions regarding the Opt-out Program or the questionnaire, please contact Renee Delgado, Esq., in PEF's Contract Administration Department, at (518)785-1900 extension 223.