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May 20, 2010

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Dear Ms. Newman:

On April 13, 2010, State Fund Chief Operating Officer Harrison Jerome issued an office-wide email, announcing a change in State Fund Fleet Policy, as well as changes to State Fund employee income tax reporting procedures related to the use of State Fund cars for commuting purposes. After reviewing these proposed changes, I write to request that State Fund immediately cease and desist from the implementation of these changes for the following reasons: **OMP EXECUTIVE**

- I. The Dills Act requires State Fund to formally notify SEIU Local 1000 of proposed changes prior to implementation, and meet and confer with SEIU Local 1000 over the effects of the proposed changes.

The Dills Act requires that State Fund formally notify the union of any policy change that impacts terms and conditions of employment for its members. Under the Dills Act, the Public Employee Relations Board (PERB) has consistently found that the use of an employer-provided vehicle is a direct economic benefit to the employee, and within the scope of bargaining.

Chief Operating Officer Jerome's e-mail informed State Fund employees that State Fund has decided to implement new policies which will eliminate as many as 1,000 cars from the fleet. The implementation of this policy without bargaining over the disruptive and far-reaching effects of such a change would constitute a blatant violation of the Dills Act. To date, SEIU Local 1000 has received no formal notification from State Fund concerning this policy

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change, nor has SEIU Local 1000 had the opportunity to meet and confer over the effects of such a change. State Fund cannot proceed with this policy until it formally notifies SEIU Local 1000, and fulfills its duty under the Dills Act to meet and confer in good faith. If State Fund implements these policy changes without meeting with the Union, it will have committed an unfair labor practice.

II. The proposed policy mandating that State Fund vehicles will only be assigned to positions with 80% business miles is arbitrary and unsupported by any IRS rule.

Jerome's email also describes a new Fleet Policy to limit the assignment of State Fund vehicles to only those positions that have a "*substantial business purpose*" for use of a State Fund vehicle. State Fund seeks to define "*substantial business purpose*" as meaning 80% of the miles driven in the vehicle are for State Fund business purposes. Given that Jerome offers no indication of the basis or the reasoning for this threshold, the number appears arbitrary.

In fact, this high threshold is entirely inconsistent with State Fund's proposed change in IRS reporting rules for personal commuting miles in State Fund vehicles. Jerome goes on to announce that "*business use of a vehicle*" is established with only 50% business miles driven in State Fund vehicles.

The arbitrary 80% rule, set at such a threshold, is troubling. This rule essentially confers disparate, discriminatory benefits for different employees based solely on the geographic proximity of their residence to their worksites. This rule limits the long-standing use of State Fund vehicles to only those employees who live in close proximity to State Fund offices, witnesses and hearings, regardless of whether other employees require State Fund vehicles in order to work effectively and fulfill their occupational responsibilities.

III. Since State Fund meets all of the requirements for election of the Commuting Valuation Rule (CVR) in calculating and reporting personal commuting miles to the IRS, forcing election of the Safe Harbor Valuation Rule based on an arbitrary standard is unwarranted, burdensome, and inconsistent with IRS rules.

Under limited circumstances, IRS tax rules and regulations provide for the election of use of special valuation rules for calculating and reporting fringe benefits for employees, including the use of employer vehicles for personal commuting. One of these special valuation rules is the Commuting Valuation Rule (CVR) often referred to as the "\$1.50 each way rule." Jerome's email states that because of IRS tax rules and regulations, State Fund employees with more than 50% business miles will require use the CVR for reporting their personal commute miles, while drivers with less than 50% business miles will be required to use the Safe Harbor Fair Market Value Rule to report income for the 2010 tax year. This is a completely arbitrary standard, with no basis in the IRS tax rules or regulations.

IRS tax rules and regulations permit State Fund employees to report their commuting miles through the CVR or the "\$1.50 each way rule" if all of the following requirements are met: 1) an employer owns or leases a vehicle and provides it to one or more employees for business use, 2) an employer requires an employee to commute in this vehicle for bona-fide non-compensatory business reasons, 3) an employer has established a written policy that the vehicle shall not be used for personal use, other than commuting, 4) an employee does not use the vehicle for other than commuting, and 5) the employee is not a control employee of the employer.

All State Fund employees who are currently assigned a State Fund vehicle should meet **ALL** of the requirements for use of the CVR, including the mandate that State Fund must direct an employee to commute in this vehicle for "*bona-fide non-compensatory business reasons.*" Jerome's email uses an overly simplistic analysis for this requirement, stating that "[b]usiness purposes must be related to the vehicle as a required tool for the job- similar to needing a telephone or a computer. But even under this simplistic analysis, State Fund

employees meet the requirement. State Fund Fleet Management Memo (Index #35-20-008) states that vehicles are assigned to employee positions “which primarily and regularly require the use of automotive transportation.” Pursuant to this memo, State Fund employees with State Fund vehicles regularly and consistently use their vehicles to work offsite, appearing across the state at Board meetings, hearings, witness interviews, policy-holder audits. A State Fund vehicle is a necessary tool, without which they could not execute their job responsibilities. They clearly meet the test set forth in Jerome’s email.

Moreover, the definition for “*bona-fide non-compensatory business reasons*” is not limited to the question of whether an employee’s need for a vehicle is similar to their need for a telephone or a computer. IRS Publication 15-B sets forth an acceptable example of “*bona-fide non-compensatory business reasons*” that is entirely applicable to State Fund. IRS rules and regulations permit the use of the CVR when a field employee, who would otherwise have to return to the workplace before going home, can work longer if allowed to commute in an employer-provided vehicle. The ability to commute home after using the State Fund vehicle for offsite work saves them the time it would take to return from the field to the home office to exchange vehicles. In this sense, the employees who live furthest from the home office would have a strong bona-fide non-compensatory business reason to use a State Fund vehicle, since they would be able to work much longer in the field if allowed to personally commute. For these employees, production will almost certainly suffer if they are not permitted to personally commute with State Fund vehicles.

Even assuming that a State Fund employee’s use of a State Fund vehicle use does not meet the requirements qualifying use of the CVR, the IRS Code and Treasury Regulations do not require the application of the “Safe Harbor Fair Market Value Rule” or any other rule, as Jerome’s email erroneously implies. State Fund employees who do not meet the requirements for the CVR should nevertheless meet all of the requirements to use the cents-per-mile rule set forth in the IRS rules and regulations. Requiring employees to use the Safe Harbor Fair Market Value Rule to calculate the fringe benefit value of their use of State Fund vehicles is not only

labor-intensive, cumbersome, and legally unnecessary, it also requires the provision of information that only State Fund possesses (i.e. a vehicle's fair market value and annual lease value). We hope that State Fund is not intending to adopt a burdensome and misapplied income tax reporting rule to create a disincentive for employees to use a State Fund vehicle in the course of their employment.

IV. Under IRS rules, State Fund cannot legally elect to use a new valuation rule until January 31, 2011.

In the memo from State Fund's tax counsel Manatt, Phelps and Phillips, State Fund was specifically advised of the following:

*State Fund must notify affected employees of its election(s) to change the special valuation rule by January 31<sup>st</sup> of the calendar year for which the election will apply, or 30 days after the Fleet vehicle is received by the employee, whichever is later. Failure to do so could result in the IRS' disallowance of the special valuation rule(s).*

Jerome's email indicates that State Fund intends to force State Fund employees whose business mileage is less than 50% of total miles driven to use the Safe Harbor Fair Market Value Rule to report income for the 2010 tax year. This directly contradicts State Fund's own tax counsel's advice, and risks the IRS' disallowance of the special valuation rule for all State Fund employees. State Fund must cease and desist from imposing the Safe Harbor Fair Market Value Rule, due to failure to timely notify employees of its election to change the tax reporting rules.

We request that State Fund immediately postpone implementation of its proposed Fleet Policy, and formally notify the Union in writing of this proposal, so that we can request a meet and confer conference to discuss the issues outlined above. We also demand that State Fund cease and desist in its untimely attempt to elect a change the current CVR for the 2010 tax year. Critical discrepancies exist between IRS tax rules and Jerome's email and must be clarified, including State Fund employees' continued eligibility to use the CVR. Moreover, any change in IRS reporting procedures must be timely and properly noticed pursuant to IRS rules and

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regulations, so that our members' wages and employment are not unduly prejudiced. I look forward to hearing your response to the issues raised here, on or before May 28, 2010.

Very truly yours,



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SEIU Local 1000

**WORKERS' COMP**  
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