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September 4, 2008

BY OVERNIGHT DELIVERY

Hon. Nancy G. Groenwegen
President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, New York 12239



Re: Supplemental Submission of DCAS Pursuant to CSL § 65(5)

Dear President Groenwegen:

This firm represents Local 376, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 376"), a labor organization comprised of approximately 1,175 employees of the City of New York in the competitive Civil Service titles of Highway Repairer, Construction Laborer, and Watershed Maintainer. Local 376 submits these comments on the supplemental information submitted by the New York City Department of Citywide Administrative Services ("DCAS") on August 8, 2008, in response to the request of the Commission on June 11, 2008, regarding DCAS's initial submission on March 28, 2008, pursuant to New York Civil Service Law § 65(5) ("Section 65"). I will be unable to appear at the Commission's September meeting, where the DCAS plan will be on the agenda. Local 376 respectfully requests that this submission be entered into the record.

Local 376 recognizes that the Commission is not now reviewing the merits of any of the proposed jurisdictional classifications in the DCAS plan, and will not in these remarks offer the union's opinion on the merits of any specific proposed reclassification or consolidation. The union, however, would like to comment on DCAS's overall proposal, which remains inconsistent with the purpose of Section 65.

The Legislature, according to its statement of findings, intended the amendments to Section 65 to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as

far as practicable, shall be competitive.” DCAS’s proposal, however, eliminates the competitive examination requirement altogether for 261 titles, currently held by over 32,000 employees. The majority of the reduction in provisionals in the DCAS plan results from actions other than an increase in the number of examinations. See, Response to State Inquiry (“Response”), App. A.

DCAS’s plan, aside from being at odds with the Legislature’s intent, and aside from stripping away rights and privileges from tens of thousands of public employees, see, id., at 10-12, is simply impracticable on its own terms. It proposes the reclassification of 261 titles out of the competitive class. The agency estimates that it can handle “approximately eight to twelve reclassifications at the same time,” and that the “minimum time” for the total reclassification process to be 29 weeks. Id., at 9.

Therefore, if one assumes the lower end of DCAS’s capacity (eight simultaneous reclassifications), this process will take a minimum of 18 years. This calculation does not include the 93 competitive titles which DCAS proposes to be consolidated or broadbanded, for which DCAS offers an estimate of a minimum of 19 weeks each, without information as to how many the agency can work on at one time. This estimate also does not include the time required by the Commission to consider and rule on each proposal, proceedings pursuant to Article 78 of the Civil Practice Law and Rules challenging the final determination, or the certification process at the New York City Office of Collective Bargaining for union-represented titles, all of which easily could add years to the process.

DCAS apparently attempts to avoid this problem by indicating that hearings need not be held for each title, but only for each “project” or “group,” as defined by DCAS. With respect to the members of Local 376, the agency appears to suggest that reclassifications and consolidations of “competitive prevailing wage titles” will be handled “in several large proposals.” Id., App. C, at 7. The plan covers dozens of “prevailing wage titles,” i.e., positions--including Highway Repairer and Construction Laborer--for which the employee must be paid at the prevailing rate. Prevailing-wage titles significantly differ from each other, as shown in Local 376’s prior submissions. Each title must be treated separately. DCAS’s proposed short-cuts do not comport with the approval process mandated by the Civil Service Law for each proposed jurisdictional reclassification.

Local 376 would urge the Commission to require that any plan to reduce provisionals focus on additional examinations rather than reclassifications. DCAS plans on eliminating 18,000 provisionals, less than half of the total, by administering examinations, while at the same time downgrading the status of 32,000 competitive-class employees. More than likely, much of



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the DCAS plan either will not survive administrative or judicial review, or will significantly exceed DCAS's completion estimates. When asked about "contingency plans" to schedule additional competitive examinations, DCAS essentially responded that the agency has none, replying only that DCAS would "consider administering an exam" if any of the agency's reclassification proposals are blocked. That "contingency" should be imposed now, and DCAS should be compelled to plan additional examinations, in the spirit of the amendments to Section 65.

Respectfully,

Stuart Lichten



***FIRE ALARM DISPATCHERS
BENEVOLENT ASSOCIATION, INC.***

139 Fulton Street, Room 318
New York, NY 10038
212-779-2799 Fax 212-779-2499

June 18, 2008

Mr. Allen Jordan
CSC Staff Coordinator
NYS Civil Service Commission
Harriman Office Bldg. #1
New York, NY 12239

Dear Mr. Jordan:

I am the President of the Uniformed Fire Alarm Dispatchers Benevolent Association, the certified bargaining representative of Fire Alarm Dispatchers and Supervising Fire Alarm Dispatchers employed by the New York City Fire Department.

This brief letter will supplement my testimony at the June 10, hearing.

The NYC Department of Citywide Administrative Services ("DCAS") has submitted a plan which, among other things, would changed the jurisdictional classification of the fire alarm dispatchers from competitive to non-competitive.

Although the plan does not indicate any intention to hold the hearings required by Civil Service Law and the courts, the remarks made by the two Commissioners at the June 10 hearing make it abundantly clear that the Commission recognizes the need for individual factual hearings and determinations for each reclassification that DCAS proposes and that no plan can be approved without such hearings and any appeal that might ensue.


Therefore, I will not burden you with a recitation of why the proposed reclassification would be inappropriate as to fire alarm dispatchers since that issue is not yet before you. That information will be presented at any such hearing held by DCAS.

Suffice to say that it is our belief that in a situation such as this, where the titles have been tested for

more than half a century, the burden of proof would be on DCAS to show facts why the classification should be changed. Nor can expediency, which appears to be the underlying reason for the change, eliminate the need to comply with the requirement of the New York State Constitution and Civil Service Law that competitive examinations be given.

Please distribute the enclosed copies to the Commissioners. Thank you for giving me this opportunity.

Sincerely yours,


David Rosenzweig,
President

enclosures (4 copies of letter)

fadba/nyscsc.let

^{XX}**Social Service
Employees Union
Local 371**

XO: R. Dipriodae P. Hite
A. Jordan
J. Ratner



AFSCME, AFL-CIO 817 BROADWAY, 14TH FLOOR, NEW YORK, N.Y. 10003 • (212) 677-3900 FAX (212) 477-9161

May 9, 2008

Hon. Nancy G. Groenwegen, President
NYS Civil Service Commission
NYS Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, NY 11239

**RE: New York City Department of Citywide Administrative Services (DCAS) Civil Service
Law Section 65(5) Plan Submitted on March 28, 2008**

Dear President Groenwegen:

I am writing as President of Social Service Employees Union Local 371, AFSCME, AFL-CIO (Local 371), the labor organization representing over 18,000 employees of the City of New York in various civil service job classifications including Assistant Community Liaison Worker, Community Liaison Worker, Senior Community Liaison Worker, Principal Community Liaison Worker, Child Protective Specialist, Child Protective Specialist Supervisor, Counselor (Addiction Treatment).

We submit this Objection to the above-captioned DCAS CSL Section 65 Plan. As set forth below, the DCAS Plan constitutes an impermissible, unconstitutional application of the CSL Section 65 because it violates the constitutional requirement of merit and fitness testing.

BACKGROUND

The New York State merit in selection system required by Article 5, Section 6 of the Constitution of the State of New York was created to attract qualified employees for service. It states:

"Section 6. [Civil Service appointment and promotions;...]

"Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive;..."

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Pursuant to the constitutional mandate, Section 61 of the Civil Service Law requires that civil service appointments and promotions be made from a list of eligible employees.

This constitutional and statutory mandate establishes a rigid system of procedures for effectuating the merit and fitness requirements. In short, there must be eligibility requirements, an examination, certification of test scores, an eligibility list and appointments made solely based upon the results of the employment selection procedure (one-in-three rule).

The Legislature, acknowledging the mandatory nature of such a system, has provided that civil service appointments be made without complying with the strict testing and merit and fitness requirements only in special limited circumstances. For example, "provisional appointments" are temporary assignments which absolutely are needed and can be made only when qualified eligible individuals are not available. CSL Section 65.

Chief Judge Fuld wrote:

"If the beneficent merit system with competitive examinations is to be preserved, we must adhere strictly to the rule that only one who has passed the prescribed appropriate examination is entitled to a certificate of appointment... To rule otherwise would be tantamount to appointing unqualified persons, in the sense that they had not passed the required competitive examinations or has not received certificates of appointment as required by law. And not alone might incompetence be thus permitted, but favoritism or discrimination might thus be enabled to raise its ugly head."

CSL SECTION 65 AMENDMENTS

In response to the Court's decision in City of Long Beach, the State Legislature expressed its concern about the number of provisional appointments. It amended CSL Section 65 to further the constitutional mandate of making appointments and promotions according to merit and fitness which is to be ascertained competitively as far as practicable. The amendment sought to increase competitive examinations by requiring municipal and particularly DCAS employers to submit a plan to reduce provisional appointments to the State Civil Service Commission.

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OBJECTIONS TO THE CITY'S PLAN


On March 28, 2008, DCAS submitted its plan. However, while the CSL Section 65 amendments acknowledge different methods of reducing the number of provisional employees, the DCAS plan, instead of promoting the constitutional and legislative mandates of objectively testing merits and fitness, emphasizes reclassification, consolidation and broadbanding of job titles. In part, it relies upon changing employees from competitive to non-competitive status. Such a plan destroys merit and qualification, due process rights and other benefits of competitive status. It is an impermissible, unconstitutional application of CSL Section 65 and the Legislature's intent.

Non-competitive status leaves employees open to managerial whim and reduces their possibilities for promotion, due process rights, leave rights and layoff rights. For non-competitive employees, there is no such thing as a promotional path based on merit. In a layoff situation, workers do not have a prior title to return to. Senior staff would be in danger of layoff.

It is essential for the integrity of the City that workers be appointed and promoted by an objective measure of competence and not by managerial decision. Appointment by examination provides protection from outside influence, changes in management, and political or personal favoritism. That is the heart of civil service. Reclassification, consolidation and broadbanding are quick, cosmetic fixes with long lasting harm which when, as applied here, do not pass constitutional mandate.

For the foregoing reasons, we object to the DCAS Plan.

Very truly yours,


FARYCE B. MOORE

Social Service Employees Union Local 371

AFSCME, AFL-CIO



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June 2, 2008

BY OVERNIGHT DELIVERY

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, New York 12239

RE: Submission of DCAS Pursuant to CSL § 65(5)

Dear President Groenwegen:

I am writing on behalf of Social Service Employees Union Local 371, District Council 37, AFSCME, which represents approximately 18,000 social service employees, several thousand of whom will be negatively affected by the proposal put forth by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law § 65(5) (the "DCAS Plan").¹

We are requesting that you schedule public hearings prior to the Commission taking any action on this plan as we believe it is not consistent with the constitutional and statutory mandate of making appointments and promotions according to merit and fitness to be ascertained, as far as practicable, by examination. The plan submitted by DCAS on March 28, 2008 is not consistent with the Section 65, as amended on January 28, 2008, and defies the below-cited Constitutional statutory and case law by eliminating testing to determine merit and fitness by reclassifying over 20,000 competitive positions to non-competitive titles.

¹ By letter dated May 9, 2008, Union President Faryce B. Moore filed Objections to the Plan with the State Civil Service Commission. A copy is attached for your reference.

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Constitutional, Statutory and Case Law

The New York State merit in selection system required by Article 5, Section 6 of the Constitution of the State of New York was created to attract qualified employees for service. It states:

Section 6. [Civil Service appointment and promotions;...]

“Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as practicable, shall be competitive;...”

As the Court of Appeals has stated:

“If the beneficent merit system with competitive examinations is to be preserved, we must adhere strictly to the rule that only one who has passed the prescribed appropriate examination is entitled to a certificate of appointment... To rule otherwise would be tantamount to appointing unqualified persons, in the sense that they had not passed the required competitive examinations or has not received certificates of appointment as required by law. And not alone might incompetence be thus permitted but favoritism or discrimination might thus be enabled to raise its ugly head.” *Board of Education v. Nyquist*, 31 N.Y.2d 468, 341 N.Y.S.2d 441 (1973).

Clearly, the DCAS Plan does not comport with the Nyquist decision. DCAS’s plan will not preserve the merit system but rather deteriorate the system.

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Accordingly, we are requesting that the State Civil Service Commission schedule public hearings prior to the Commission taking any action on the DCAS plan. We contend that it is not impracticable to hire for the affected titles by competitive examination. Examinations have, in fact, been administered for these titles for decades. It is important to resolve questions regarding the necessity for a plan that would irreparably harm the New York City Civil Service System. SSEU Local 371 requests that the DCAS plan be revised by the City or rejected in whole or in part by the State.

Thank you for your immediate attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Faryce Moore", followed by a long horizontal line extending to the right.

Faryce Moore
President
SSEU Local 371, DC37, AFCME

Cc: Lillian Roberts, Executive Director, DC 37
Martha K. Hirst, Commissioner, DCAS

DISTRICT NO. 1-PCD, MEBA
(AFL-CIO)

DON KEEFE
PRESIDENT

BILL VAN LOO
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5/20/08

MAY 2008
CSC
Completed 5/20/08

New York State Dept. of Civil Service
State Civil Service Commission
Alfred E. Smith State Office Building
Albany, NY. 12239

RE: Department of City Wide Administrative Service's plan for Title Consolidation

Dear Sirs,

I am writing to you today to clearly state our opposition to DCAS's proposal to your commission regarding job title consolidation pursuant to section 65(5)(b) of the New York State Civil Service law. This plan not only consolidates titles but eliminates competitive status and the rights afforded under Article 78 for Incumbents and new Employees.

As a union of Marine Engineers and Marine Pilots we represent hundreds of NYC civil servants aboard the Staten Island Ferries, NYC Fire Boats and the Rikers Island Prison Barge. All of our members have built their lives with-in the structure of the New York State Civil Service system and this proposed consolidation plan is unjust, unfair and a slap in the face to the many thousands of working people and their families that keep this great city running. Title consolidation in this fashion not only erodes the quality of the title but it eliminates the concept of employment advancement based on merit.

Clearly, the issue of the excessive number of provisional employees needs to be addressed. We understand the logistics of administering small tests is challenging but gutting the system in this fashion will not achieve compliance with the Long Beach ruling. The heritage of generations of New York civil servants is now in great jeopardy. We ask you to recognize this fact and rule against the implementation of this proposal.

Thank You,

W. E. McHugh CM
Bill McHugh
Atlantic Coast Vice-President
MEBA-D1

PDF version sent
to U. Hiver
K. Lippman
J. R. H.
J. J. H.
S. L. H.
S. L. H.

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WILLIAM S. MASSEY *
ANJANA MALHOTRA
CHARLES W. HART, JR.

May 27, 2008

* ALSO ADMITTED IN NJ

Hon. Nancy G. Groenwegen, President
New York State Civil Service Commission
New York State Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, NY 12239

Re: NYC Department of Citywide Administrative Services application under
Civil Service Law 65(5)

Dear President Groenwegen:

I am writing on behalf of the Uniformed EMTs and Paramedics, Local 2507, AFSCME ("UEP"), a labor organization representing the EMTs and Paramedics employed by the City of New York in its 911 system. For the reasons set out below, UEP objects to the March 28 proposal of New York City's Department of Citywide Administrative Services ("DCAS"), submitted pursuant to Civil Service Law § 65(5), to reclassify the City's EMTs and Paramedics¹ from the competitive class to the non-competitive class.

For many years, the City of New York has failed to maintain compliance with Civil Service Law and Constitutional mandates requiring that appointments in the civil service be based on merit and fitness. With respect to a number of positions in the competitive class, provisional appointments were continued well in excess of the nine-month limit prescribed by Civil Service Law § 65. In fact, the City has frequently violated that nine-month time limit with respect to EMTs and Paramedics. On more than one occasion over the past three decades, litigation has been brought against the City to compel civil service examinations for these titles.

Within the past year, the Legislature enacted an amendment to § 65 intended to spur DCAS and other local civil service agencies to rectify their long-standing non-compliance with that law. The amendment provides that DCAS will be permitted to bring itself into compliance over a five-year period provided that it submits to the State Civil Service Commission a comprehensive plan with "a schedule for administration of examinations . . . , a determination of

¹ In its application, DCAS refers to the titles as Emergency Medical Specialist-EMT and Emergency Medical Specialist - Paramedic. DCAS application § 2 3.2, p. 14.

Hon. Nancy G. Groenwegen, President
May 27, 2008
Page 2

additional appropriate existing or planned eligible lists, consolidation of titles through appropriate reclassification, and any other lawful and appropriate means of implementation.” Civ. Serv. Law § 65(5)(b). The plan that DCAS has submitted does not meet this legislative standard, particularly in regard to its treatment of the EMT and Paramedic titles. Rather than providing for examinations for these titles, DCAS proposes to do away with examinations – it proposes to remove the EMT and Paramedic titles from the competitive class and include them in the non-competitive class. Its proposal is not a “lawful and appropriate means” of implementing the corrective action the Legislature had in mind.

DCAS offers two rationales for its proposal. First, it argues that the EMT and Paramedic titles have been “oversubscribed” – all qualified candidates were offered employment. This is a specious argument. Whether the pool of candidates exceeds the positions to be filled is essentially just a function of the number of positions to be filled. Because exams in these titles were held so infrequently – in fact, the infrequency itself was a violation of the time constraints prescribed by law – the number of vacancies to be filled after eligibles lists were certified was generally exceptionally large. The remedy for this problem is not to do away with exams, but to hold them with the frequency that employee turnover rates and the law require. Indeed, by its “oversubscription” argument, DCAS attempts to profit from its own non-compliance with the law.

The second rationale that DCAS offers for its proposed re-classification is that EMTs and Paramedics are already required to take State certification examinations. DCAS reasons that possession of the State certification insures that Paramedics and EMTs are competent to perform their jobs so that further testing, by way of a civil service exam, is not necessary.

This second rationale contravenes the very purpose of the merit and fitness provision of the Constitution. That purpose was “to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee.” *City of Long Beach v. Civil Service Employees Ass’n, Inc.*, 8 N.Y.3d 465, 470 (2007); *see also, Board of Educ. v. Nyquist*, 31 N.Y.2d 468 (1973). A system that permits unfettered discretion in choosing among candidates who meet the minimum qualifications for a job simply permits patronage and other insidious considerations to infect the hiring process. Holding the appropriate State certificate is a minimum qualification for the EMT and Paramedic position; but Civil service examinations insure that the best candidates for the job are hired, and that they are hired in the order of their performance on the examination. Meeting minimum qualifications may go some way to insuring fitness; but only the examination process insures that candidates will be selected on the basis of merit.

In any event, the Constitution *requires* that merit for appointment be determined by examination “as far as practicable.” N.Y. Const. Art. 5, § 6. DCAS makes no claim that holding examinations for the EMT and Paramedic positions is not practicable. Nor can it do so. It has held those examinations, however infrequently, for many years now. The skills and knowledge required to perform the job are readily ascertainable, even if these are ascertained by the a review of experience and education. Notably, the State itself classifies EMTs and Paramedics as part of

Hon. Nancy G. Groenwegen, President


May 27, 2008

Page 3

the competitive civil service and examines candidates using education and experience exams. *See* Exam Nos. 20-349 and 20-523. Examining candidates is the only way to insure that the best are hired first. It is the only way to meet the merit standard contained in the State Constitution.

For these reasons, UEP urges the Commission to reject DCAS's application, or, at the least, to require that its plan be modified to exclude the proposed reclassification of EMTs and Paramedics to the non-competitive class. Please notify me of any hearing that the Commission may schedule on DCAS's application and please be advised that a representative of UEP would like to appear and testify before the Commission at such hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Walter M. Meginniss, Jr.", with a stylized flourish at the end.

Walter M. Meginniss, Jr.

WMM/sh

cc: Patrick Bahnken, President

J:\TM\ems\dcas-applic-reclassification-opp-state-csc.ltr.wpd

LOCAL 376

xc: R. Cipriano
P. Hite
J. Rather
A. Jordan



NYC Construction Laborers, Highway Repairers & Watershed Maintainers

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Hon. Nancy G Groenwegen

President.

N.Y.S. Civil Service Commission

N.Y.S. Dept of Civil Service

Alfred G Smith Office Building

W.A. Harriman State Office Building Campus

Albany, NY 12239

Re: Submission of DCAS Pursuant to CSL – 65(5)

Dear President Groenwegen:

Local 376, dc37, American Federation of state county and municipal employees, AFL-CIO, (LOCAL 376) A labor Organization comprised of over 1150 employees of the city of New York in the competitive Civil Service titles of Highway Repairer , Construction Laborer, Watershed Maintainer. Local 376 submits these objections to the plan proposed by the New York city Dept of Citywide Administrative services (DCAS) pursuant to New York Civil Service Law s 65(5) section 65.

The amendments to section 65 signed into law on January 28 2008 were intended according to the statement of legislative findings to further the constitutional mandate of making appointments and promotions according to merit and fitness to be ascertained, as far as practicable, shall be competitive. The law sought to increase competitive examinations by requiring DCAS to submit to the Commission a plan to reduce provisional appointments, by efforts such as scheduling more frequent examinations.

On March 28 2008, DCAS submitted its plan which proposes exactly the opposite of the goal the Legislature was attempting to accomplish. DCAS's response to the problem of an excess of appointments without competitive examination is not to increase the number of tests, but to eliminate the competitive examination requirement altogether for over 30,000 city Employees, Including all Local 376 members. This arbitrary reclassification would not only harm the city of NY's efforts to hire and promote by merit and Qualification, but would strip thousands of employees of due process rights and other benefits of competitive status. DCAS's proposal is the equivalent of solving a problem of unlicensed driving by eliminating the License requirement. The commission must exercise its prerogative under section 65 to reject the plan.

Background

Decades of rampant corruption, patronage, job-selling, and cronyism, resulted in the addition in 1894 of a provision in the New York State Constitution which now reads, "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive . . ." N.Y. Const., Art. 5, § 6. Upon its adoption, the Court of Appeals declared:

The principle that all appointments in the civil service must be made according to merit and fitness, to be ascertained by competitive examinations, is expressed in such broad and imperative language that in some respects it must be regarded as beyond the control of the legislature, and secure from any mere statutory changes . . .

It is, therefore, apparent that a new principle, far reaching in its scope and effect, has been firmly imbedded in the Constitution. Like many other reforms, this work has not been accomplished without a long and persistent struggle. . . . That it must, if fairly and honestly administered, go far to suppress very grave evils and abuses that have become peculiarly rife and active in our political system few intelligent people who have given the subject much attention can doubt. In so far as its administration may depend upon the action of the judicial department, it is entitled to, and doubtless will, receive a fair and liberal construction, not only according to its letter, but its true spirit and the general purpose of its enactment.

McClelland v. Roberts, 148 N.Y. 360, 366-67, 42 N.E. 1082, 1084 (1896). The Court later reaffirmed, "In every civil service case we must start with the provision of the State Constitution which cannot be repeated too often, as it is the groundwork upon which all legislation on the subject is built. It steers the course which the Legislature must follow . . ." Andresen v. Rice, 277 N.Y. 271, 274, 14 N.E.2d 65, 66 (1938).

That constitutional provision "establishes a broad public policy that appointments in the State Civil Service must be made by competitive examination." Berkowitz v. Burstein, 133 Misc. 2d 323, 325, 507 N.Y.S.2d 117, 119 (Sup. Ct., Alb. Cty. 1986). "Non-competitive appointments are the exception and not the rule." Andresen, 277 N.Y., at 277, 14 N.E.2d, at 67 (citations omitted). In the case that prompted the Legislature to enact the law at issue here, the Court of Appeals explained, "The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee." This constitutional mandate "may not be blinked or avoided." City of Long Beach v. Civil Service Employees Ass'n, Inc., 8 N.Y.3d 465, 470, 835 N.Y.S.2d 538, 540, 867 N.E.2d 389, 391

(2007)(quoting Montero v. Lum, 68 N.Y.2d 253, 258, 508 N.Y.S.2d 397, 400, 501 N.E.2d 5, 8 (1986); Board of Educ. of City of New York v. Nyquist, 31 N.Y.2d 468, 472, 341 N.Y.S.2d 441, 445, 293 N.E.2d 819, 824 (1973)).

The Legislature has implemented this constitutional mandate by enacting Civil Service Law § 42(1) ("Section 42"), which provides that a position may not be classified as non-competitive if it is "practicable to ascertain the merit and fitness of applicants by competitive examination." The statute also requires, "Not more than one appointment shall be made to or under the title of any office or position placed in the non-competitive class pursuant to the provisions of this section, unless a different or an unlimited number is specifically prescribed in the rules."

Section 65(5)

In an effort to reduce non-permanent appointments, the Legislature earlier this year required DCAS to submit to the Commission a plan to lower the total of provisional employees to five percent of all competitive class positions. The plan may include, according to the law, an increased number of scheduled examinations, additional eligible lists, and consolidation of titles. Civil Service Law § 65(5)(b).

On March 28, 2008, DCAS submitted its plan. One of the plan's primary remedies for the excessive number of provisional appointments without competitive examination is to reclassify positions from competitive to non-competitive, so that no competitive examination is mandated. DCAS proposes reclassifying 294 titles, currently held by 30,487 employees, to non-competitive status. These employees constitute more than 20 percent of all competitive-class employees, excluding the Transit Authority and Triborough Bridge and Tunnel Authority, whose employees DCAS proposes be removed from its jurisdiction entirely.

The membership of Local 376 as a whole would be reclassified from competitive to non-competitive under the plan. This wholesale, arbitrary change in status is unconstitutional and violates not only Section 42 but the intent of Section 65(5) as well. It is certainly not impracticable to hire Highway Repairers, Watershed Maintainers, and Construction Laborers by competitive examination. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

Competitive examinations for these positions would include tests of knowledge of, for example, water flow and sewer system maintenance, the qualities of asphalt and concrete, the operation of motor-powered equipment, and the foundations of roads and watersheds. DCAS cannot establish that competitive examinations for these titles are impracticable. "Vague references to the ability to make permanent appointments or afford greater latitude in the selection process simply do not form a rational basis for abrogating the constitutional mandate of examination, in some form, to determine merit and fitness." Berkowitz, 133 Misc. 2d, at 325-26,

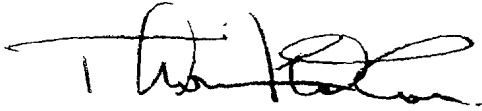
507 N.Y.S.2d, at 119 (annulling non-competitive classification). Rather, DCAS must "overcome the constitutional preference for competitive examinations." Levitt v. Civil Serv. Comm'n of State of New York, 150 A.D.2d 983, 985, 541 N.Y.S.2d 662, 664 (3d Dep't 1989)(citations omitted). DCAS, almost by definition, cannot make that showing when the agency is proposing reclassification en masse of hundreds of titles. In particular, the agency has not demonstrated that Highway Repairer, Construction Laborer, and Watershed Maintainer should be reclassified as non-competitive.

Conclusion

For all of the above reasons, Local 376 respectfully urges that the Commission reject the plan submitted by DCAS.

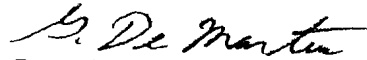
Respectfully

Treasurer



Thomas Kattou

President



Gene DeMartino

Ms. Ann Toia
96 Floral Blvd.
Floral Park, NY 11001
May 23, 2008

Dear Ms. Greenweger:

This letter is concerning the proposed changes in the Civil Service Code and the detrimental effects it would have on public safety.

I work for the NYC Health and Hospitals Corporation, and hiring unqualified carpenters would definitely have a negative impact on patient safety as well as public safety. Passing a difficult exam and proving at least five years prior experience insures that only qualified individuals obtain employment as a Civil Service Carpenter. If the Civil Service Code is changed, jobs will be filled with unqualified workers hired through nepotism, favoritism and corruption.

Yours truly,

Ann Toia

RECEIVED BY OFFICE

MAY 23 2008

1500 BROADWAY

Nancy G. Groenwegen, Commissioner
New York State Department of Civil Service
Alfred E Smith State Office Building
Albany, NY 12239

Dear Commissioner Groenwegen:

I write regarding the Department of Citywide Administrative Services plan to change to noncompetitive titles. I have been a union carpenter for more than 35 years. Thanks to the union, I have been trained in all aspects of carpentry and construction work. I have also received training in safety procedures so that necessary work can be completed safely and efficiently.

Union workers are not only well-trained, but pride themselves on doing their jobs well. We are not temporary workers; we are highly skilled in competitive trades. Our training, skills and experience should be valued highly. We have earned our jobs through extensive training and years of working in a fair competitive environment that ensures that the most skilled and dedicated workers perform the jobs that many people rely on. Our job security provides the stable work environment that encourages and ensures quality performance by union workers. It affords us the right to take pride in our jobs, raise our children in security and take our place in United States as honorable tax-paying citizens.

Skilled union workers have been the backbone of the American workforce. It is our strength that makes America great. I remind you that the Declaration of Independence was signed in Carpenters Hall, home of America's first Guild or "Union." **To maintain the standard of quality we are used to, I strongly oppose the DCAS's plan of noncompetitive title awarding.**

A handwritten signature in black ink, appearing to read "Homer Cusack". The signature is written in a cursive, flowing style with a large, sweeping initial 'H' and a long, trailing flourish at the end.

SCHWARTZ, LICHTEN & BRIGHT, PC
Attorneys at Law

275 Seventh Avenue, 17th Floor
New York, New York 10001
tel: 212 228 6320
fax: 212 358 1353

Arthur Z. Schwartz*
Stuart Lichten
Daniel R. Bright
*Also admitted in Pennsylvania

May 16, 2008

BY OVERNIGHT DELIVERY

Hon. Nancy G. Groenwegen
President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, New York 12239

RECEIVED

MAY 21 2008

COMMISSIONER'S OFFICE

Re: Submission of DCAS Pursuant to CSL § 65(5)

Dear President Groenwegen:

This firm represents Local 376, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 376"), a labor organization comprised of approximately 1,175 employees of the City of New York in the competitive Civil Service titles of Highway Repairer, Construction Laborer, and Watershed Maintainer. Local 376 submits these objections to the plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law § 65(5) ("Section 65").

The amendments to Section 65, signed into law on January 28, 2008, were intended, according to the statement of legislative findings, to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'" The law sought to increase competitive examinations by requiring DCAS to submit to the Commission a plan to reduce provisional appointments, by efforts such as scheduling more frequent examinations.

On March 28, 2008, DCAS submitted its plan, which proposes exactly the opposite of the goal the Legislature was attempting to accomplish. DCAS's response to the problem of an excess of appointments without competitive examination is not primarily to increase the number of tests, but to eliminate the competitive examination requirement altogether for over 20,000 City employees, including all of the members of Local 376. This arbitrary reclassification would not only harm the City's efforts to hire and promote by merit and qualifications, but would strip thousands of employees of due process rights and other benefits of competitive status. DCAS's

proposal is the equivalent of solving a problem of unlicensed driving by eliminating the license requirement. The Commission must exercise its prerogative under Section 65 to reject the plan.

Background

Decades of rampant corruption, patronage, job-selling, and cronyism, resulted in the addition in 1894 of a provision in the New York State Constitution which now reads, "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive . . ." N.Y. Const., Art. 5, § 6. Upon its adoption, the Court of Appeals declared:

The principle that all appointments in the civil service must be made according to merit and fitness, to be ascertained by competitive examinations, is expressed in such broad and imperative language that in some respects it must be regarded as beyond the control of the legislature, and secure from any mere statutory changes. . . .

It is, therefore, apparent that a new principle, far reaching in its scope and effect, has been firmly imbedded in the Constitution. Like many other reforms, this work has not been accomplished without a long and persistent struggle. . . . That it must, if fairly and honestly administered, go far to suppress very grave evils and abuses that have become peculiarly rife and active in our political system few intelligent people who have given the subject much attention can doubt. In so far as its administration may depend upon the action of the judicial department, it is entitled to, and doubtless will, receive a fair and liberal construction, not only according to its letter, but its true spirit and the general purpose of its enactment.

McClelland v. Roberts, 148 N.Y. 360, 366-67, 42 N.E. 1082, 1084 (1896). The Court later reaffirmed, "In every civil service case we must start with the provision of the State Constitution which cannot be repeated too often, as it is the groundwork upon which all legislation on the subject is built. It steers the course which the Legislature must follow . . ." Andresen v. Rice, 277 N.Y. 271, 274, 14 N.E.2d 65, 66 (1938).

That constitutional provision "establishes a broad public policy that appointments in the State Civil Service must be made by competitive examination." Berkowitz v. Burstein, 133 Misc. 2d 323, 325, 507 N.Y.S.2d 117, 119 (Sup. Ct., Alb. Cty. 1986). "Non-competitive appointments are the exception and not the rule." Andresen, 277 N.Y., at 277, 14 N.E.2d, at 67 (citations omitted). In the case that prompted the Legislature to enact the law at issue here, the Court of Appeals explained, "The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee."

This constitutional mandate ‘may not be blinked or avoided.’” City of Long Beach v. Civil Service Employees Ass’n, Inc., 8 N.Y.3d 465, 470, 835 N.Y.S.2d 538, 540, 867 N.E.2d 389, 391 (2007)(quoting Montero v. Lum, 68 N.Y.2d 253, 258, 508 N.Y.S.2d 397, 400, 501 N.E.2d 5, 8 (1986); Board of Educ. of City of New York v. Nyquist, 31 N.Y.2d 468, 472, 341 N.Y.S.2d 441, 445, 293 N.E.2d 819, 824 (1973)).

The Legislature has implemented this constitutional mandate by enacting Civil Service Law § 42(1) (“Section 42”), which provides that a position may not be classified as non-competitive if it is “practicable to ascertain the merit and fitness of applicants by competitive examination.” The statute also requires, “Not more than one appointment shall be made to or under the title of any office or position placed in the non-competitive class pursuant to the provisions of this section, unless a different or an unlimited number is specifically prescribed in the rules.”

Section 65(5)

In an effort to reduce non-permanent appointments, the Legislature earlier this year required DCAS to submit to the Commission a plan to lower the total of provisional employees to five percent of all competitive class positions. The plan may include, according to the law, an increased number of scheduled examinations, additional eligible lists, and consolidation of titles. Civil Service Law § 65(5)(b).

On March 28, 2008, DCAS submitted its plan. One of the plan’s primary remedies for the excessive number of provisional appointments without competitive examination is to reclassify positions from competitive to non-competitive, so that no competitive examination is mandated. DCAS proposes reclassifying 294 titles, currently held by 22,126 employees, to non-competitive status. These employees constitute approximately 15 percent of all competitive-class employees, excluding the Transit Authority and Triborough Bridge and Tunnel Authority, whose employees DCAS proposes be removed from its jurisdiction entirely.

At the same time, DCAS plans only a marginal increase in the number of examinations. While the agency currently administers 120 exams annually for a workforce of over 190,000 employees, DCAS’s proposal calls for only 16 more exams per year over the five-year duration of the plan. Paragraph 2.1.0. The majority of the reduction in provisionals in the DCAS plan results from actions other than an increase in the number of examinations. Table 1.3.0.

In Paragraph 3.3.3.2.06, DCAS proposes the reclassification of Highway Repairer and Construction Laborer, among many other titles, from competitive to non-competitive status. This arbitrary change is unconstitutional and violates not only Section 42 but the intent of Section 65(5) as well. It is certainly not impracticable to hire Highway Repairers and Construction Laborers by competitive examination. Indeed, competitive examinations have been administered by municipalities across the State for these titles for decades. These positions are not

confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

Highway Repairer

Highway Repairers maintain and repair roadways. The most recent job description is attached as Exhibit A. Highway Repairers lay asphalt, concrete, and other types of pavement, break surfaces, build foundations, fill potholes with tar, repair sidewalks, and perform other related tasks. No competitive title has a direct line of promotion to Highway Repairer. The title does not require any type of certification or educational background.

While the Highway Repairer title does not require any specific credentials, a significant amount of skill, ability, and knowledge is necessary to excel in the position. Therefore, any written competitive examination would cover areas such as methods, equipment, and materials, for reconstruction, repair, and maintenance of highways, drainage structures, and related facilities. The job also can be exceedingly dangerous. A prospective Highway Repairer therefore also should be tested on his knowledge of highway maintenance safety procedures.

Attached as Exhibit B are five sample competitive examinations for Highway Repairer. The subject areas cannot be described as encompassing general knowledge, but at the same time are not so esoteric as to be incapable of objective assessment. Highway Repairer is a title that is a perfect candidate for competitive examination.

Construction Laborer

Construction Laborers maintain and repair water supply distribution and sewer systems. The job description is attached as Exhibit C. Construction Laborers repair broken water mains, sewer pipes, hydrants, castings, and connections; excavate and refill trenches; and clean culverts, drains, and sewer basins. As with Highway Repairers, no competitive title directly promotes to Construction Laborer, and no specific education level or other credentials are prerequisites.

Also as with Highway Repairer, Construction Laborers must possess certain skills and knowledge to ably carry out their responsibilities. A competitive examination would include questions regarding construction, maintenance, and repair of sewer drainage and water supply systems; related tools and equipment; reading water and sewer maps; and safe working procedures. Five examinations which could serve as competitive Construction Laborer tests are attached as Exhibit D.

Any argument that competitive examinations for these titles are “impracticable” is plain nonsense. “Vague references to the ability to make permanent appointments or afford greater latitude in the selection process simply do not form a rational basis for abrogating the constitutional mandate of examination, in some form, to determine merit and fitness.” Berkowitz, 133 Misc. 2d, at 325-26, 507 N.Y.S.2d, at 119 (annulling non-competitive classification). Rather, DCAS must “overcome the constitutional preference for competitive examinations.” Levitt v. Civil Serv. Comm’n of State of New York, 150 A.D.2d 983, 985, 54.1 N.Y.S.2d 662,664 (3d Dep’t 1989)(citations omitted). DCAS, almost by definition, cannot make that showing when the agency is proposing reclassification en masse of hundreds of titles. In particular, the agency has not demonstrated that Highway Repairer, Construction Laborer, and Watershed Maintainer should be reclassified as non-competitive.

Conclusion

For all of the above reasons, Local 376 respectfully urges that the Commission reject the plan submitted by DCAS, particularly Paragraph 3.3.3.2.06 proposing the reclassification of Highway Repairer and Construction Laborer from competitive to non-competitive status.

Respectfully,

A handwritten signature in black ink, appearing to read "Stuart Lichten", written in a cursive style.

Stuart Lichten

Attachments

C-X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 92406

HIGHWAY REPAIRER

General Statement of Duties and Responsibilities

Under direct supervision, performs roadway maintenance and repair work with asphalt and concrete mixes; operates motorized vehicles and equipment; performs related work.

Examples of Typical Tasks

Lays sheet asphalt, asphaltic concrete and other types of asphaltic pavement by raking, tamping, smoothing, top shoveling or laboring.

Paints edges of cuts, curbs and manholes with hot asphaltic cement.

Using portland cement, epoxies, etc., performs sidewalk and other concrete construction and repair work, exclusive of finishing.

Cuts out defective areas for patching, utilizes hand or power driven tools to break surfaces, lays foundations, shores and sheets excavations, performs mud-jack operations, and fills or refills road depressions and excavations with tar, oils, and performs other related work.

Performs general laboring work unrelated to paving operations, such as snow removal, when weather conditions do not permit such operations.

Operates one or more types of motorized vehicles and various types of portable or towed power equipment and attachments as required in the above mentioned maintenance operations.

Performs routine, general maintenance of vehicles. Cleans interior and exterior of vehicles, changes wheels and tires, and checks oil and fuel levels, lights, horn and brakes. Reports mechanical defects and accidents in which vehicles may have been involved.

Responsible for all tools, supplies, materials and equipment transported by assigned vehicles. Loads and unloads all transported items.

May prepare trip reports. Keeps job records. Prepares requisitions for materials in accordance with job requirements.

May supervise assigned personnel.

Performs incidental laboring tasks as directed by the supervisor.

Performs such other general laboring tasks as required by the Commissioner of Transportation.

R 5.3.2000

C-X

CODE NO. 92406

THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

HIGHWAY REPAIRER (continued)

Qualification Requirements

1. Three years of full-time experience as an Assistant City Highway Repairer; or
2. Three years of full-time experience acquired within the last 5 years in roadway maintenance and repair using asphalt and concrete mixes, performing the functions of a Highway Repairer; or
3. Education and/or experience equivalent to **A1** or **A2** above.

License Requirement

At the time of appointment, candidates must possess a Class B Commercial Driver License valid for air brakes, valid in the State of New York. This license must be maintained for the duration of employment.

Direct Lines of Promotion

From: None
Repairer (92472)

To: Supervisor Highway

STUW

Exhibit C

C-X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE

CODE NO. 90756

CONSTRUCTION LABORER

Duties and Responsibilities

Under supervision, using a wide variety of heavy-duty, motor-powered equipment, performs work in construction, repair and maintenance of water supply distribution systems, drainage and sewer systems, buildings and plants, and related pavement; operates motor vehicles; performs related work.

Examples of Typical Tasks

Repairs broken water mains and leaking water services.

Engages in the removal and replacement of broken drainage and sewer pipes, appurtenances, castings and heads, gate boxes, broken water mains, broken hydrants, water boxes and heads and wet connections and taps.

Repairs drainage and sewer interiors of all kinds including brickwork and masonry.

Breaks pavements with hand or power driven tools.

Excavates and refills in the performance of the work herein.

Engages in the shoring and sheeting of excavations.

Mixes and uses concrete as part of the construction and repair work herein.

Flushes, cleans and excavates culverts, sewers, drains and sewer basins and appurtenances.

Operates various types of motor equipment, including specialized mounted equipment, towed or portable powered equipment and/or attachments.

May work from sketches and working drawings.

May keep records of work assignments and progress.

May weld in the performance of the duties herein.

Loads and unloads equipment and supplies as part of the duties herein.

R 8.14.91

Page 1 of 2

Doc. ID. No. 1175Y

C-X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE

CODE NO. 90756

CONSTRUCTION LABORER (Cont'd)

Qualification Requirements

1. Three years of satisfactory, full-time experience of a mechanical or construction nature, to qualify for the position herein; or
2. Completion of a two-year apprenticeship in which apprentices are trained to perform, and under direct supervision perform, work in repair and maintenance of water supply distribution systems and sewer systems, including the operation of motor vehicles and motor powered equipment.

License Requirement

Possession of a New York State Class B Commercial Driver License or a New York State Class D Motor Vehicle Driver License and a valid New York State Learner's Permit for a Class B Commercial Driver License. There may be certain age requirements to obtain the Class B Commercial Driver License. Serious moving violations, license suspension, or accident record may disqualify. Eligibles may be appointed subject to the receipt of a New York State Class B Commercial Driver License within six months of appointment. Employees must maintain the Class B Commercial Driver License during their employment.

Direct Lines of Promotion

From: None

To: Supervisor (91310)
Supervisor (Water and
Sewer Systems) (91303)
Supervisor (Watershed
Maintenance) (91314)

R 8.14.91

Page 2 of 2

Doc. ID. No. 1175Y

SCHWARTZ, LICHTEN & BRIGHT, PC

Attorneys at Law

275 Seventh Avenue, 17th Floor
New York, New York 10001
tel: 212 228 6320
fax: 212 358 1353

Arthur Z. Schwartz
Stuart Lichten
Daniel R. Bright
*Also admitted in Pennsylvania

May 23, 2008

BY OVERNIGHT DELIVERY

Hon. Nancy G. Groenwegen
President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, New York 12239

Re: Submission of DCAS Pursuant to CSL § 65(5)

Dear President Groenwegen:

This firm represents Local 983, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 983"), a labor organization comprised of approximately 2,500 employees of the City of New York in various titles, including the competitive class Civil Service titles of Associate Park Service Worker and Motor Vehicle Operator. Local 983 submits these objections to the plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law § 65(5) ("Section 65").

On May 16, 2008, this firm submitted objections to the DCAS plan on behalf of Local 376, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO (see attachment). Local 983 fully endorses that submission, and would like here to add the local's specific objections to the DCAS proposal.

In Paragraphs 3.3.3.2.08 and 3.3.3.2.13, DCAS proposes the reclassification, respectively, of Associate Park Service Worker and Motor Vehicle Operator, among many other titles, from competitive to non-competitive status. It is not impracticable to hire Associate Park Service Workers and Motor Vehicle Operators by competitive examination, and municipalities across the State have done so for decades. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

Associate Park Service Worker

Associate Park Service Workers perform maintenance and operational duties in parks. Workers in this title operate vehicles, landscape, garden, maintain tools and equipment, clean monuments, and perform general repair work to buildings and other facilities. No competitive title has a direct line of promotion to Associate Park Service Worker. The title does not require any type of certification. A job description is attached as Exhibit A.

A written competitive examination would include questions in areas such as safety and operation of heavy duty trucks and equipment; maintenance checks of trucks and equipment; cleaning of park grounds and facilities; transport, cutting, removal, planting, and pruning of trees; supervising subordinate staff and small mobile crews; dispatching vehicles and equipment from garages; inspecting and replacing park and playground equipment; horticultural duties in park areas; general repair work in park buildings and playgrounds; recordkeeping duties in facilities; safeguarding property; reporting unsafe conditions and unusual incidents; preparing requests and ordering equipment and supplies for facilities; setting up equipment for special events; and standards of employee conduct. Attached as Exhibit B are five sample competitive examinations for Associate Park Service Worker.

Motor Vehicle Operator

Motor Vehicle Operators drive passenger cars, ambulettes, vans, hearses, trucks, wreckers, forklifts, tractor-trailer trucks, sign-erecting trucks, and other motor vehicles. The job description is attached as Exhibit C. No title directly promotes to Motor Vehicle Operator, and no certifications are prerequisites. There are no formal education or experience requirements.

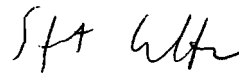
Motor Vehicle Operators must possess certain skills and knowledge to ably carry out their responsibilities. A competitive examination would include questions regarding the operation and maintenance of the various types of vehicles; vehicle and traffic laws; preparation of trip reports and other records; map reading; and safety measures. Attached as Exhibit D are five sample competitive examinations for Motor Vehicle Operator.

DCAS cannot overcome the constitutional presumption that these titles be filled by competitive examination. Associate Park Service Workers and Motor Vehicle Operators must remain in the competitive class.

Conclusion

For all of the above reasons, Local 983 respectfully urges that the Commission reject the plan submitted by DCAS, particularly Paragraphs 3.3.3.3.2.08 and 3.3.3.3.2.13 proposing the reclassification of Associate Park Service Worker and Motor Vehicle Operator from competitive to non-competitive status.

Respectfully,



Stuart Lichten

Attachments

C - X
THE PARKS OPERATION
AND MAINTENANCE SERVICE [063]

CODE NO. 81106

ASSOCIATE PARK SERVICE WORKER

General Statement of Duties and Responsibilities

Under supervision, performs, or supervises performance of, work in many areas of park maintenance and operations; performs related work.

Examples of Typical Tasks

Performs and/or supervises personnel, including temporary, seasonal and other subordinate employees, in park maintenance and operations duties, such as the following:

Operates vehicles and various other types of motorized equipment incidental to the performance of duties and/or operates heavy-duty motorized equipment on a full-time basis; checks vehicles to ensure they are in proper operating condition; changes tires and performs routine servicing.

Performs various aspects of landscape and gardening work and grounds maintenance; operates and cares for hand and power gardening tools and equipment.

Cleans dirt accumulation and debris from monuments.

Assists in or performs general repair work.

Assists in climbing and pruning work; may operate manual power-driven equipment in the performance of these duties.

C - X

CODE NO. 81106

THE PARKS OPERATION
AND MAINTENANCE SERVICE [063]

ASSOCIATE PARK SERVICE WORKER (continued)

Examples of Typical Tasks (continued)

Operates and maintains a chlorination, coagulation and/or filtration plant consisting of chlorine and/or coagulation machines and auxiliary equipment used in purification and chemical treatment of water.

Operates a low pressure heating system; cleans and lubricates the boiler parts.

Performs, and/or inspects, general maintenance and repair work done to buildings, equipment, facilities, and monuments and similar works of art.

Performs any necessary recordkeeping and report writing activities related to above functions of the Department of Parks and Recreation.

Qualification Requirements

1. A four-year high school diploma or its education equivalent and 6 months of full-time experience in gardening, grounds or tree maintenance, or in the building, construction or maintenance trades; or
2. One year of full-time experience in gardening, grounds or tree maintenance, or in the building, construction or maintenance trades; or
3. Education and/or experience equivalent to "1" or "2" above.

C - X
THE PARKS OPERATION
AND MAINTENANCE SERVICE [063]

CODE NO. 81106

ASSOCIATE PARK SERVICE WORKER (continued)

License Requirement

Possession of a Class B Commercial Driver License valid in the State of New York. There may be certain age requirements to obtain this license. Employees must maintain the Class B Commercial Driver License during their employment.

Direct Lines of Promotion

<u>From:</u>	* Park Service Worker (81105)	<u>To:</u>	Supervisor of Parks Maintenance and Operations (81113)
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* For present permanent incumbents only.

NOTE: Employees will be required to wear uniforms in accordance with the regulations of the Department of Parks and Recreation.

C - XI
MOTOR VEHICLE OPERATION
OCCUPATIONAL GROUP [197]

CODE NO. 91212

MOTOR VEHICLE OPERATOR

General Statement of Duties and Responsibilities

Under supervision, operates motor vehicles such as passenger cars, ambulettes, vans, hearses, trucks, wreckers, forklifts, tractor-trailer trucks and sign-erecting trucks; in a small garage, may dispatch personnel, motor vehicles and equipment; performs related work. Employees in this title may be required to work rotating shifts, including nights, Saturdays, Sundays and holidays.

Examples of Typical Tasks

Operates one or more types of motor vehicles such as passenger car, ambulette, van, hearse, truck, wrecker, forklift, tractor-trailer truck or sign-erecting truck.

May drive a truck carrying employees and material to and from work locations.

May act as a chauffeur to an official.

Checks the tires, oil and fuel of the vehicle, replenishes fluids as needed, and checks the vehicle to see that lights, horn and brakes appear to be operating properly.

Reports any noticeable mechanical defects in the vehicle.

Cleans the windows and interior and exterior of the vehicle.

Changes tires or wheels.

C - XI

CODE NO. 91212

MOTOR VEHICLE OPERATION

OCCUPATIONAL GROUP [197]

MOTOR VEHICLE OPERATOR (continued)

Examples of Typical Tasks (continued)

Assists in loading and unloading of materials, equipment, and passengers.

Reports any accidents in which the vehicle may have been involved.

Operates motor equipment mounted on, or transported by, the vehicle.

Watches for traffic hazards while labor force is engaged in making emergency repairs.

Transports collectors and cases of coin boxes to and from collection areas.

Is responsible for tools, supplies, materials, and equipment carried in or on the assigned vehicle.

Prepares trip reports.

In a small garage, may dispatch personnel, motor vehicles and equipment.

In the Police Department, may operate a vehicle which transports inmates to and from detention facilities, police stations and court locations.

When not driving, may be required to perform such additional duties as running errands, answering phones and delivering mail and/or small packages.

Qualification Requirements

There are no formal education or experience requirements. Candidates will be required to undergo a medical examination.

C - XI

CODE NO. 91212

**MOTOR VEHICLE OPERATION
OCCUPATIONAL GROUP [197]**

MOTOR VEHICLE OPERATOR (continued)

License Requirements

- A. Possession of a Motor Vehicle Driver License valid in the State of New York at the time of appointment.
- B. For appointment to certain positions in some agencies, possession of a Class A, B or C Commercial Driver License valid in the State of New York, or a combination of these licenses, or possession of a valid New York State Learner's Permit for a Class A, B or C Commercial Driver License, may be required. A candidate with a Learner's Permit must obtain the appropriate driver license within three months from the date of appointment.
- C. History of serious moving violations, license suspension or serious accidents may disqualify for appointment. Employees must maintain the appropriate driver license(s) for the duration of their employment.

Direct Lines of Promotion

From: None

To: Motor Vehicle Supervisor
(91232)
Basin Machine Operator
(91206)

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June 5, 2008

BY OVERNIGHT DELIVERY

Hon. Nancy G. Groenwegen
President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, New York 12239

Re: Submission of DCAS Pursuant to CSL § 65(5)

Dear President Groenwegen:

This firm represents Local 1157, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 1157"), a labor organization comprised of approximately 200 employees of the City of New York in various titles, including the competitive class Civil Service title of Supervisor Highway Repairer. Local 1157 submits these objections to the plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law § 65(5) ("Section 65").

On May 16, 2008, this firm submitted objections to the DCAS plan on behalf of Local 376, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO (see attachment). Local 1157 fully endorses that submission, and would like here to add the local's specific objections to the DCAS proposal.

In Paragraph 3.3.3.2.06, DCAS proposes the reclassification of Supervisor Highway Repairer, among many other titles, from competitive to non-competitive status. It is not impracticable to hire Supervisor Highway Repairers by competitive examination, and municipalities across the State have done so for decades. This position is not confidential, does not require the exercise of authority or discretion at a high level, and does not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for this position.

Supervisor Highway Repairers oversee other personnel in the maintenance and repair of roadways. They make decisions relative to work methods, prepare work schedules, assign work, inspect maintenance and repair work, observe and check work in progress, keep records, and make reports. The competitive class title of Highway Repairer is in a direct line of promotion to Supervisor Highway Repairer. The title does not require any type of certification. A job description is attached as Exhibit A.

While the Supervisor Highway Repairer title does not require any specific credentials, a significant amount of skill, ability, and knowledge is necessary to excel in the position. Therefore, any written competitive examination would cover areas such as observation and inspection of work in progress, direction and training of subordinates, emergency and safety guidelines, and preparation of administrative paperwork.

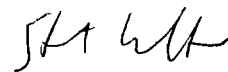
Attached as Exhibit B are five sample competitive examinations for Supervisor Highway Repairer. The subject areas cannot be described as encompassing general knowledge, but at the same time are not so esoteric as to be incapable of objective assessment. Supervisor Highway Repairer is a title that can easily be filled by competitive examination.

DCAS cannot overcome the constitutional presumption that a competitive examination be administered for this title. Supervisor Highway Repairers must remain in the competitive class.

Conclusion

For all of the above reasons, Local 1157 respectfully urges that the Commission reject the plan submitted by DCAS, particularly Paragraph 3.3.3.3.2.06 proposing the reclassification of Supervisor Highway Repairer from competitive to non-competitive status.

Respectfully,



Stuart Lichten

Attachments

SUPERVISOR HIGHWAY REPAIRER

General Statement of Duties and Responsibilities

Under general supervision, supervises Highway Repairers and other assigned personnel in the laying and grading of all types of paving materials, in the construction, maintenance and repair of walks, roadways, fences and other structures, gutters and curbs, and in maintaining the security of facilities and equipment; performs related work.

Examples of Typical Tasks

Makes decisions relative to work methods.

Prepares schedules and makes work assignments.

Makes inspections of the laying and grading of all types of paving materials in order to insure that work is being performed properly.

Makes inspections; observes and checks work in progress.

Controls and supervises the proper use of tools and equipment to complete the work assigned.

Keeps records and makes reports.

Supervises the maintenance and repair of roads, streets and highways, the repair and laying of sidewalks, the restoration of plumb lines and utility cuts, and the installation and repair of fences, guide rails and related structures.

May operate motor vehicles in the performance of assigned duties.

May act in place of District Supervisor (Highway Maintenance) in the absence of that person.

Qualification Requirements

Three years of full-time satisfactory experience as a working member of a roadway maintenance and repair crew using asphalt and concrete mixes, at least one year of which must have been in a supervisory capacity.

C-X
THE SKILLED CRAFTSMAN AND
OPERATIVE SERVICE [038]

CODE NO. 92472

SUPERVISOR HIGHWAY REPAIRER (cont.)

License Requirement

At the time of appointment, candidates must possess a Class B Commercial Driver License valid in the State of New York, valid for air brakes. Employees must maintain this license for the duration of employment.

Direct Lines of Promotion

To: Highway Repairer (92406)

To: District Supervisor (Highway
Maintenance) (91337)

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June 6, 2008

BY OVERNIGHT DELIVERY

Hon. Nancy G. Groenwegen
President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, New York 12239

Re: Submission of DCAS Pursuant to CSL § 65(5)

Dear President Groenwegen:

This firm represents Local 1087, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 1087"), a labor organization comprised of approximately 400 employees of the City of New York in various titles, including the competitive class Civil Service titles of Locksmith, Supervisor Locksmith, Exterminator, Supervisor Exterminator, Printing Press Operator, Supervisor of Radio Repair Operations, Furniture Maintainer (Finisher), Compositor (Job), and Telephone Service Technician. Local 1087 submits these objections to the plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law § 65(5) ("Section 65").

On May 16, 2008, this firm submitted objections to the DCAS plan on behalf of Local 376, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO (see attachment). Local 1087 fully endorses that submission, and would like here to add the local's specific objections to the DCAS proposal.

In Paragraph 3.3.3.2.06, DCAS proposes the reclassification of Locksmith, Supervisor Locksmith, Exterminator, Supervisor (Exterminators), and Printing Press Operator, among many other titles, from competitive to non-competitive status. In Paragraph 2.3.3, DCAS proposes the reclassification of Supervisor of Radio Repair Operations, Furniture Maintainer (Finisher), Compositor (Job), and Telephone Service Technician, in addition to 174 other titles, from competitive to non-competitive status.

Local 1087 objects to these proposals. It is not impracticable to fill these titles through competitive examination, and many jurisdictions, including the City, have administered such examinations for many years. The job descriptions for these titles are attached as Exhibit A. DCAS has not overcome the constitutional presumption that applicants for Civil Service positions must take a competitive examination.

Locksmith and Supervisor Locksmith

Locksmiths and Supervisor Locksmiths install, maintain, and repair locks and locking devices. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions. No competitive class title is in a direct line of promotion to Locksmith, and no type of certification or educational background is a prerequisite.

While the Locksmith and Supervisor Locksmith titles do not require any specific credentials, a significant amount of skill, ability, and knowledge is necessary to excel in the positions. A written competitive examination, therefore, would include questions in areas such as locks and locksmithing; installing, repairing, and maintaining locks; making keys with and without the use of a master key; and picking locks open. Attached as Exhibit B are five sample competitive examinations for Locksmith and Supervisor Locksmith.

Exterminator and Supervisor Exterminator

Exterminators and Supervisor Exterminators perform work regarding the prevention, control, and elimination of insects, vermin, and other pests from public buildings and park areas. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No competitive class title is in a direct line of promotion to Exterminator, and no type of educational background is a prerequisite.

Exterminators and Supervisor Exterminators must possess certain skills and knowledge to ably carry out their responsibilities. A competitive examination would include questions regarding poisonous insecticides, rodenticides, baits, traps, and other aspects of exterminating

operations. Attached as Exhibit C are five sample competitive examinations for Exterminator and Supervisor Exterminator.

Printing Press Operator

Printing Press Operators set up and operate large-scale cylinder-type printing presses. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions. No type of certification or educational background is a prerequisite.

While the Printing Press Operator title does not require any specific credentials, a significant amount of skill, ability, and knowledge is necessary to excel in the position. A written competitive examination, therefore, would include questions in areas such as offset printing press operation and maintenance; safety; sizes, weights, grades, and cutting of paper; and colors, mixing, and types of ink for offset printing presses. Competitive examinations have long been administered by DCAS for this title. A copy of a Notice of Examination for Printing Press Operator is attached as Exhibit D.

Supervisor of Radio Repair Operations, Furniture Maintainer (Finisher),
Compositor (Job), and Telephone Service Technician

DCAS contends that competitive testing is impracticable for these titles for the following reasons: (1) Twenty or fewer positions are currently allocated for these titles. According to DCAS, “the investment required to develop an exam for such a limited number of positions cannot be justified.” (2) DCAS claims it “is difficult to identify individuals with the subject matter expertise necessary to develop examinations . . .” (3) The City’s situation is “strikingly similar” to the circumstances addressed by the Legislature in Civil Service Law § 42(2), which governs jurisdictions with a population of less than 5,000. None of these arguments is persuasive.

DCAS exaggerates the cost of administering examinations for these titles. If so few individuals are hired in these titles, then very few examinations over the years will be necessary. The agency claims that reclassifying the 178 titles with less than 20 incumbents will “eliminate

the need to administer 178 exams.” Of course, that does not mean 178 exams per year. Indeed, DCAS has not held an examination in many of these titles for decades. If the past five years is any guide, Local 1087 expects that over the course of the five-year DCAS plan, reclassification of these titles will probably not eliminate the need to administer any examinations.

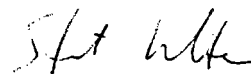
It is hard to imagine that it would be difficult to find experts, particularly in the private sector, in the areas of radio and television repair, furniture surfacing, typesetting, and telephone maintenance. DCAS’s contention that the City’s resources are “strikingly similar” to the budgets of rural villages in upstate New York needs no response. Finally, in all four of the titles in this category represented by Local 1087, a total of 21 provisionals are currently working for the City. The City currently employs 36,855 provisional competitive employees, and Section 65 requires that number to be reduced to less than 6,000. Elimination of competitive-class rights for all employees in these four titles, merely to reduce the total number of provisionals by 21, is not a proper balancing of considerations.

In the final analysis, DCAS cannot overcome the constitutional presumption that these nine titles be filled by competitive examination. It is not impracticable to offer competitive examinations. These titles must remain in the competitive class.

Conclusion

For all of the above reasons, Local 1087 respectfully urges that the Commission reject the plan submitted by DCAS, particularly Paragraphs 3.3.3.3.2.06 and 2.3.3 proposing the reclassification of the titles of Locksmith, Supervisor Locksmith, Exterminator, Supervisor Exterminator, Printing Press Operator, Supervisor of Radio Repair Operations, Furniture Maintainer (Finisher), Compositor (Job), and Telephone Service Technician, from competitive to non-competitive status.

Respectfully,



Stuart Lichten

Attachments

Exhibit A

LOCKSMITH

General Statement of Duties and Responsibilities

Under supervision, does work relating to installation, maintenance and repair of locks and locking devices; performs related work.

Examples of Typical Tasks

Supervises and is responsible for the work of assigned personnel.

Removes, replaces, maintains, repairs and adjusts all types of locks and locking devices, including panic locks, vertical rod locking devices, cell block and prison cell locks, locker and cabinet locks, and safe and other combination locks.

Installs locks and locking devices on wood and metal doors, kalamein doors, classroom doors, steel file cabinets and lockers, and on cell doors, gates, corridors, enclosures, etc., in prisons and detention areas.

Repairs lock stile in wood, metal and kalamein doors, and makes necessary repairs to jambs and hanging stiles to reinforce hinges for proper operation of doors and locks.

Opens, repairs and drills safes, and changes combinations.

Makes keys with or without duplicate and key change numbers; picks locks open and changes keys, if required; sets up and changes key combinations; changes cylinders; makes keys to fit grand master, group master and floor master combinations.

Instructs designated personnel in the operation of the key control system.

Keeps inventory records and prepares materials requisitions.

Keeps job and other records.

Qualification Requirements

1. Five (5) years of recent, satisfactory, full-time, paid experience as a locksmith; or
2. A satisfactory equivalent.

Direct Lines of Promotion

From: None

To: Foreman Locksmith (90763)

FOREMAN LOCKSMITH

General Statement of Duties and Responsibilities

Under general direction supervises, directs and is responsible for the work of locksmiths; performs related work.

Examples of Typical Tasks

Assigns and lays out jobs for locksmiths.

Supervises locksmiths engaged in the installation, maintenance, and repair of locks and locking devices.

Plans and estimates the cost of work.

Supervises the maintenance of inventory records.

Keeps production, cost and time records.

Orders materials, supplies and equipment needed in locksmith work.

Supervises and instructs locksmiths in the proper use, care and maintenance of power and hand tools and equipment.

Inspects locksmith work during its various stages and inspects finished work.

Supervises, directs and is responsible for the proper operation of the departmental locksmith shop.

Maintains tight security of issuing of keys.

Makes field trips to analyze special problems and check on jobs.

Maintains adequate supply of key blanks.

Maintains copies of all keys.

Reads drawings, plans and specifications relating to locks and locking devices.

Qualification Requirements

One year of permanent service in the title of Locksmith (90723).

Direct Lines of Promotion

From: Locksmith (90723)

To: None

10.29.75

EXTERMINATOR OCCUPATIONAL GROUP

CODE NO. 90510

EXTERMINATORGeneral Statement of Duties and Responsibilities

Under general supervision, performs work in the prevention, control and elimination of insects, vermin and other pests from buildings and surrounding areas; performs related work.

Examples of Typical Tasks

Inspects areas of infestation.

Selects and uses the most effective insecticides, rodenticides, baits, traps, etc., for exterminating pests as required.

Prepares poisonous insecticides, rodenticides, etc., used in exterminating.

May prepare reports as required, including records of equipment usage, work schedules, and exterminating operations performed.

Reports to superiors those conditions considered to be sufficiently dangerous so as to require the omission or postponement of exterminating activities on a premises.

Qualification Requirements

Possession of an exterminator permit, fumigant permit, employee-exterminator permit, employee-fumigant operator permit, an owner operator permit (fumigant or exterminator) or a qualifying certificate in pest control issued by the Department of Health of the City of New York.

Direct Lines of Promotion

From: None

To: Foreman (Exterminators) (90535)

FOREMAN (EXTERMINATORS)

CODE NO. 90535

SALARY GRADE NO. 900 72.7
PO-411General Statement of Duties and Responsibilities

Under direction, supervises the work of Exterminators engaged in the prevention, control and elimination of insects, vermin and other pests from public buildings and park areas.

Examples of Typical Tasks

Inspects premises and investigates complaints of infestation.

Determines the appropriate method of extermination to be used.

Supervises and makes assignments to Exterminators engaged in preparing and using baits, traps, rodenticides, insecticides, etc.

Supervises the cleaning and repair of equipment.

Orders necessary supplies and equipment, and keeps related records.

Is responsible for the safe storage and cautious use of the various poisons employed in exterminating operations.

Supervises the preparation of the various substances used in exterminating.

Makes recommendations for improving exterminating methods.

Keeps records of exterminating operations and makes reports thereon.

May be required to perform exterminating duties.

Performs related work as required.

Qualification Requirements

1. A current exterminator permit, or employee-exterminator operator permit issued by the Department of Health of the City of New York; and at least two (2) years of satisfactory practical experience in the preparation and use of insecticides, rodenticides, baits, traps, etc., for the extermination of insects, vermin and other pests.

Direct Lines of Promotion

From: Exterminator

To: Senior Foreman (Exterminators)

PRINTING PRESS OPERATOR

General Statement of Duties and Responsibilities

Under direction, performs journey-level printing press operator tasks in setting up an operating large scale cylinder-type printing presses including web presses; performs related work.

Examples of Typical Tasks

Sets-up press for printing.

Starts up press.

Monitors operation of running presses, making necessary adjustments to meet job specifications.

Maintains machines.

Makes routine repairs.

Selects and loads paper.

Mixes ink to produce desired colors and shades.

May supervise subordinate printing press operators.

Qualification Requirements

1. Five years of recent, satisfactory, full-time experience as a press operator on a cylinder-type printing press using the letter-press or offset-press printing process; or
2. Education and/or experience equivalent to "1" above.

Direct lines of Promotion

From: Assistant Printing Press
Operator (92122)

To: Administrative Printing Services
Manager (M10096)

FURNITURE MAINTAINER (FINISHER)

General Statement of Duties and Responsibilities

Under supervision, finishes surfaces and makes repairs to finished surfaces of all kinds of school and office furniture, such as desks, cabinets and wardrobes, used by the City of New York; performs related work.

Examples of Typical Tasks

Refinishes and matches old woodwork; mixes colors, both aniline and pigment stains.

Grains wood and metal.

Does polishing, padding, varnishing, rubbing, and glazing in connection with the finishing of furniture, cabinets, etc.

● Sprays and applies lacquer, paint and other material.

Keeps records.

Qualification Requirements

● Three (3) years of recent, satisfactory, practical experience as a cabinet maker and finisher in the manufacture and repair of furniture for wholesale or retail furniture houses, department stores, large hotels, or large public institutions, or the equivalent.

Direct Lines of Promotion

From: Furniture Maintainer's Helper

To: Foreman Furniture Maintainer

COMPOSITOR (JOB)

General Statement of Duties and Responsibilities

Under supervision, sets type by hand or machine; makes up forms; performs related work.

Examples of Typical Tasks

Operates hot metal line casting machine or photo type-setting systems or sets type by hand.

Does makeup and copy preparation.

Makes author's corrections.

Types and proofreads copy.

Prepares layout to conform to specifications.

Uses tools and equipment such as saw, light table, Ludlow machine, proof press, etc.

Qualification Requirements

1. Five years of full-time satisfactory experience, acquired within the past 10 years, as a compositor or typesetter; or
2. A combination of experience and vocational training totalling five years, including at least three years of experience as described in "1" above. Six months of acceptable experience will be credited for each school year of satisfactory vocational training.

Direct Lines of Promotion

From: None

To: Administrative Printing Services
Manager (M10096)

SPECIAL CRAFTS AND OPERATIONAL
OCCUPATIONAL GROUP (251)

CODE NO. 92590

TELEPHONE SERVICE TECHNICIAN

Duties and Responsibilities

This position encompasses responsible work in performing or supervising the installing, inspecting, maintaining, testing, altering and repairing of telephone communications systems equipment and low voltage electronic systems equipment, including associated cable and wiring. There are two assignment levels within this class of positions. All personnel perform related work, work both indoors and outdoors and may be required to drive agency vehicles to various sites.

Assignment Level I

Under general supervision, maintains, installs, inspects, tests, moves, alters, and repairs telephone communications systems and low voltage electronic systems and related equipment including automatic call sequencers, master cable television systems, closed circuit TV systems, emergency, security, and burglar alarms, intercom and PA systems, electric door openers (bell and buzzer systems), time clocks, and associated cable and wiring. Determines the nature of the problem and notifies appropriate vendors for necessary maintenance or repair.

Surveys site locations, performs on-site inspections, and estimates time and material factors involved. Coordinates telephone communications needs for newly constructed, existing, and rehabilitated agency buildings. Creates appropriate posters and charts to delineate planned projects, and ensures preparation of final proof. Updates floor plans and equipment records as necessary for all telephone communications and low voltage electronic equipment needs.

Reviews and evaluates all emergency repair requests, determines priorities, and estimates response time. Specifies equipment to be utilized and orders material necessary for project completion. Processes and coordinates requests for immediate installation of temporary communications service for all special events and for the installation of data lines.

Inspects highway construction and field locations to ensure proper maintenance of all systems, including cellular systems. Removes old call box systems and poles and splices and seals off multi-conductor telephone cables.

Prepares necessary work orders for outside vendors such as NY Telephone and AT&T. Maintains necessary paperwork, inventory records, files, correspondence, etc. Maintains stock inventory of equipment and parts.

Assignment Level II (See special note under Qualification Requirements)

Under administrative direction, supervises and directs the activities of a group of Telephone Service Technicians and support personnel engaged in the installation and repair of telephone communications and low voltage electronic systems and related equipment. Performs work as described in Assignment Level I, and may perform more complex work requiring a higher degree of technical expertise.

SPECIAL CRAFTS AND OPERATIONAL
OCCUPATIONAL GROUP (251)

CODE NO. 92590

TELEPHONE SERVICE TECHNICIAN (continued)

Assignment Level II (See special note under Qualification Requirements)
(continued)

Plans and prepares work schedules and assignments for subordinate technical personnel. Supervises, directs, coordinates, and reviews final work product.

Conducts periodic inspections to determine proper utilization of agency telephone communications and low tension electronic equipment to ensure complete compliance with work orders and proper installation of equipment by telephone and various other vendors. Maintains liaison with field sites to verify location and operability of equipment and compliance with specific work orders.

Reviews legally mandated highway plans submitted by the New York City Department of Transportation and other public and private agencies to identify if any agency facilities will be affected by projected work whereby equipment wiring may be damaged through construction work (Industrial Code 53).

Qualification Requirements

1. Four years of full-time, satisfactory journey-level experience, acquired within the last ten years, in the maintenance, installation, or repair of telephone communications systems and equipment; or
2. Three years of full-time experience as described in "1" above, plus graduation from a recognized vocational or trade high school, with a major sequence of courses in electrical or electronic technology; or
3. Two years of full-time experience as described in "1" above, plus an A.A.S. degree from a community college or 60 college credits in a major sequence of courses in electrical or electronic technology.
4. Education and/or experience equivalent "1", "2" or "3" above.

License Requirement

A Motor Vehicle Drivers License valid in the State of New York. Employees must maintain the license for the duration of their employment.

Special Note

To be eligible for placement in Assignment Level II, candidates must have, in addition to the minimum requirements, at least one year of experience in Assignment Level I or in a supervisory capacity.

Direct Lines of Promotion

From: None

To: To be determined

Law Offices

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ROBERT L. ROSENTHAL, ESQ., OF COUNSEL

STEVEN J. GABE, ESQ., OF COUNSEL

MELVIN M. HURWITZ, ADMITTED WASH. D.C. ONLY

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June 6, 2008

Hon. Nancy G. Groenwegen
President & Commissioner
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, NY 12239

Re: Local 1549 Objection to Submission of DCAS Pursuant to CSL § 65 (5)
Opposition of Local 1549 DC37 to DCAS Proposed Plan

Dear President and Commissioner Groenwegen:

This firm represents Local 1549, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 1549"), a labor organization comprised of approximately 17,000 employees of the City of New York in the competitive Civil Service titles of NYPD Police Communication Technician, and Supervising Police Communication Technician (911 Emergency Telephone Operators).

Local 1549 submits these objections to "the plan" proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law § 65(5) ("Section 65").

These amendments to Section 65, signed into law on January 28, 2008, were intended to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'" Sect. 65 was intended to increase competitive examinations by requiring DCAS to submit to the Commission a plan to reduce provisional appointments, by efforts such as scheduling more frequent examinations.

On March 28, 2008, DCAS submitted the plan. Its proposal is exactly the opposite of the goal the Legislature was attempting to accomplish: reducing provisional employees by increasing competitive civil service exams for permanent civil service titles.

DCAS's response to the problem of an excess of provisional appointments without competitive examination is not to increase the number of merit exams.. Instead, DCAS seeks to eliminate the competitive examination requirement altogether for over 20,000 City employees, including many of the members of Local 1549.

This arbitrary reclassification would not only harm the City's efforts to hire and promote by merit and qualifications, but would strip thousands of employees of disciplinary and other due process rights and other legal benefits of competitive status.

DCAS's proposal ignores the daily contribution to New York City public safety as well as the special of heroism of NYPD PCTs and SPCTs on Sept. 11, 2001. These Local 1549 members were all hired by competitive examination.

DCAS also fails to acknowledge the factual history of corruption, racial and other discrimination that led to the creation of the competitive titles of NYPD PCT and SPCT. The City simply cannot lawfully manage these titles as non competitive. Proof of this is the litigation history of examined below: For example there is a pending L. 1549 Class Action against NYPD claiming Family Medical Leave Violations under Federal Law, and the 1985-1991 Equal Pay Discrimination Federal settlement that set pay parity between white Fire Dept. dispatchers and the largely female minority PCTs and SPCTs. Recall also the 2008 \$24,000,000 discrimination settlement between Minority Workers and Henry Stern and the NYC Parks Dept., SDNY Judge Chin, where promotions were discriminatory, and not based upon merit examination.

The Commission must exercise its prerogative under Section 65 to reject the plan for the reasons stated herein.

BACKGROUND THE HISTORY OF CIVIL SERVICE LAW

The Necessity of competitive merit examinations and Civil Service status for City Government Workers.

In 1849 after decades of rampant corruption, patronage, job-selling, and cronyism, the New York State Constitution was amended so as to now read: "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive..." N.Y. Const., Art. 5 § 6.

Upon its adoption the, the Court of Appeals declared:

"The principle that all appointments in the civil service must be made according to **merit and fitness, to be ascertained by competitive examinations**, is expressed in such broad and imperative language that in some respects it must be regarded as beyond the control of the legislature, and secure from any mere statutory changes...McClelland v. Roberts, 148 N.Y. 360, 366-67, 42 N.E. 1082, 1084 (1896).

The Court later reaffirmed. "In every civil service case we must start with the provision of the State Constitution as it is the groundwork upon which all legislation on the subject is built. It steers the course which the Legislature must follow..." Andersen v. Rice, 277 N.Y. 271,274, 14 N.E. 2d 65,66 (1938).

The New York State Constitution “establishes a broad public policy that appointments in the State Civil Service must be made by competitive examination.” *Berkowitz v. Burstein*, 133 Misc. 2d 323, 325, 507 N.Y.S. 2d 117, 119 (Sup. Ct., Alb. Cty. 1986). “Non-competitive appointments are the exception and not the rule.” *Andresen*, 277 N.Y., at 277, 14 N.E. 2d, at 67 (citations omitted).

In 2007 the Court of Appeals held the purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee.

This concept is especially relevant and applicable to public safety titles as NYPD PCTs and SPCTs.

This constitutional mandate ‘may not be blinked at or avoided.’” *City of Long Beach v Civil Service Employees Ass’n, Inc.*, 8 M.Y.3d 465, 470, 835 N.Y.S.2d 538, 540, 867 N.E.2d 389, 391 (2007) (quoting *Montero v Lum*, 68 N.Y.2d 253, 258, 508 N.Y.S.2d, 397, 400, 501 N.E.2d, 5, 8 (1986); *Board of Educ. of City of New York v. Nyquist*, 31 M.Y.2d 468, 472, 341 N.Y.S.2d 441, 445, 293 N.E.2d 819, 824 (1973).

The New York State Legislature has implemented this constitutional mandate by enacting Civil Service Law § 42(1) (“Section 42”), which provides that a position may **not be classified as non-competitive if it is “practicable to ascertain the merit and fitness of applicants by competitive examination.”** The statute also requires, “Not more than one appointment shall be made to or under the title of any office or position place in the non-competitive class pursuant to the provisions of this section, unless a different or an unlimited number is specifically prescribed in the rules.”

Section 65 (5) The 2008 Civil Service Law N.Y. Legislative Mandate

In an effort to reduce non-permanent appointments, the Legislature earlier this year required DCAS to submit to the Commission a plan to lower the total of provisional employees to five percent of all competitive class positions. The plan may include, according to the law, an increased number of scheduled examinations, additional eligible lists, and consolidation of titles. Civil Service Law § 65 (5)(b). The DCAS plan fails to comply with the New York Legislative mandate of 2008.

One of the DCAS plan’s primary remedies for the excessive number of provisional appointments without competitive examination is to reclassify positions from competitive to non-competitive, so that no competitive examination is mandated.

DCAS proposes reclassifying 294 titles, currently held by 22126 employees, to non-competitive status. These employees constitute approximately 15 percent of all competitive class employees, excluding the Transit Authority, and Triborough Bridge and Tunnel Authority , whose employees DCAS proposes be removed from its jurisdiction entirely.

At the same time, DCAS plans only a marginal increase in the number of examinations. While the agency currently administers 120 exams annually for a workforce of over 190,000 employees, DCAS’s proposal calls for only 16 more exams

per year over the five-year duration of the plan. Paragraph 2.1.0. The majority of the reduction in provisionals in the DCAS plan results from actions other than an increase in the number of examinations. Table 1.3.0.

DCAS proposes the reclassification of NYPD 911 PCTs and SPCTs among many other titles, from competitive to non-competitive status.

This arbitrary change is unconstitutional and violates not only Section 42 but the intent of Section 65(5) as well. It is certainly not impracticable to hire New York City 911 Police Department by competitive examination. Indeed, competitive examinations have been administered by New York City and other municipalities across the State for these titles for decades, since the creation of these titles.

Recall the honors and heroism of the NYPD PCTs and SPCTs in their response to the Sept. 11, 2001 terror attacks upon New York City.

These merit examinations avoid corruption within the Police Dept. in appointments to these positions. Recall Serpico and the Knapp Commission testimony regarding the internal sale of positions within the NYPD 40 years ago.

Further civil service protection is important for these Local 1549 workers given a history of discrimination litigation between the workers and the City.

There is a pending FMLA class action L. 1549 v NYPD alleging denial of FMLA rights. The pay scale of PCTs was settled in a 1984-1991 federal class action seeking pay parity for the minority L. 1549 members with the white Fire Dept. dispatchers. In 2008 a \$ 24,000,000. settlement between Minorities and NYC Parks Dept. and Henry Stern when promotions were not based upon merit exams but rather were “non competitive” but discriminatory. There are 2 pending and one settled Article 78 appeals in Supreme Court N.Y. County alleging unlawful discipline of L. 1549 employees by the NYPD after successful employee OATH and NYC Civil Service Commission decisions that the NYPD refuses to honor or acknowledge. There a 2005 successful reverse out of title arbitration award in favor of L. 1549 v NYPD halting the assignment of NYPD police officers working in Local 1549 clerical titles positions, see attached.

These NYPD PCT and SPCT and 311 positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

To the contrary, all positions have been filled by competitive examinations in these titles since the creation of the title years ago. Recall the Sept. 11, 2001 heroic terrorism response by the L. 1549 PCTs and SPCTs hired by the present competitive civil service exams.

RECLASSIFICATION IS NOT WARRANTED FOR NYPD 911 DCT & SPCT

For DCAS to claim that competitive examinations for these titles are impracticable” is simply “wrong” and contrary to the present status and decades old history of these titles as presented herein.

The New York Courts have held, “vague references to the ability to make permanent appointments or afford greater latitude in the selection process simply do not form a rational basis for abrogating the constitutional mandate of examination, in some form, to determine merit and fitness.” Berkowitz, 133 Misc. 2d, at 325-26, 507 N.Y.S.2d, at 119 (annulling non-competitive classification). Rather, DCAS must “overcome the constitutional preference for competitive examination.” Levitt v Civil Serv. Comm’n of the State of New York, 150 A.D. 2d 983, 985, 54.1 N.Y.S.2d 662,664 (3d Dep’t 1989)(citations omitted). DCAS, almost by definition, cannot make that showing when the agency is proposing reclassification en masse of hundreds of titles.

In particular, DCAS has not demonstrated that PCTs, SPCTs, or 311 DOITT employees should be reclassified as non-competitive, especially in light of the facts the avoidance of cronyism, nepotism, anti corruption, as well as concerns for public safety and terrorism response presented herein.

CONCLUSION

For all the above reasons, and reasons to be testified to in person, and for reasons to be submitted in the future, Local 1549 respectfully urges that this Commission reject the plan submitted by DCAS, particularly Paragraphs proposing the reclassification of NYPD PCT and SPCT (911 Operators)and NYC 311 Operators from civil service competitive status to non-competitive, non-civil service status.

Respectfully,

MARTIN DRUYAN ESQ.
Counsel for Local 1549.

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co
UNION

EDDIE RODRIGUEZ, *PRESIDENT*
LENORA D. GATES, *EXECUTIVE V.P.*
RALPH PALLADINO, *2ND V.P.*
ALVIN WILLIAMS, *3RD V.P.*
JOSE LUIS CRUZ, *SECRETARY-TREASURER*
LORETTA Y. JONES, *RECORDING SECRETARY*



Sergeant-At-Arms
PAMELA BLOUNT ALVIN CARTER
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CARMEN FLORES MARY RUTH KELLY
PAMELA RODRIGUEZ

★ DC37 ★ AFSCME ★ AFL-CIO ★

Local 1549 DC37 AFSCME

Eddie Rodriguez, President

- **Opposition and Objection to DCAS Civil Service Sect. 65(5)(b) Proposal of Reclassification**
- **Existing Civil Service Competitive Titles Appropriate & Necessary for NYPD 911 PCT & SPCT & NYC DOITT 311**
- **DCAS Reclassification of NYPD 911 PCT and SPCT and NYC DOITT 311 *Does Not Comply* with Civil Service Sect. 65(5)(b) Mandate**
- **DCAS Proposal Imperils NYPD 911 & NYC DOITT 311 Public Safety Function by Patronage, Cronyism, Nepotism and Discrimination**
- **DCAS Proposal Violates NYS Constitution Article V Sect.6**
- **Local 1549 Requests NYS Civil Service Commission CSL Sect. 6.3 Investigation and Hearing as to Legality of DCAS Proposal as to All Issues Raised by Union Opposition**
- **The DCAS Reclassification Proposal Omits Any Mention of the Successful, Heroic Response to September 11, 2001 Terror Attack by Civil Service NYPD PCTs and SPCTs**

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- **Statistical Analysis in Opposition to DCAS Reclassification**
- **NYPD 911 Emergency Call Center for Catastrophes and Acts of Terrorism**
- **The PCTs and SPCTs in FY2007 Responded to 11,689,000 Calls Resulting in 4,498,000 Total Radio Runs by the NYPD with a NYC Citywide Average Response Time to Crime in Progress (Minutes) of 6.9 Minutes (All Categories)**
- **The DCAS Reclassification Proposal Omits Any Detailed Public Safety Benefit or Impact Analysis for NYS/NYC Citizens**

INDICATOR NAME	FISCAL YEAR TO DATE	PREVIOUS FYTD	FYTD VARIANCE	MOST RECENT MONTH	SAME MONTH LAST YEAR	MONTH VARIANCE	DATA THROUGH
Average response time to all crimes in progress - Citywide (minutes)	7.2	6.9	4.3%	N/A	N/A		2008 / 01

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NYC Clerical-Administrative Employees Local 1549, District Council 37, AFSCME, AFL-CIO

June 10, 2008

**Local 1549 Opposition and Objections and Response to
NYC Department of Citywide Administrative Services
Report of March 28, 2008 Submitted to be in Substantial
Compliance with Section 65(5)(b) of the New York State
Civil Service Law**

INTRODUCTION

Local 1549 NYC Clerical Administrative Employees' DC 37 American Federation of State County and Municipal Employees respectfully submits its response to **NYC Department of Citywide Administrative Services (DCAS)** Commissioner Martha K. Hirst's letter and Report, dated, March 28, 2008 to Lillian Roberts, Executive Director, **District Council 37** pursuant to **Section 65(5)(b) of the New York State Civil Service Law** as it relates to Local 1549. That DCAS report was also sent to the New York State Civil Service Commission for approval, which L.1549 opposes.

This proposal violates the **NYS Constitution, Article V, Section 6**, which provides that: "Appointment and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive..."¹ It is Local 1549's position that the Competitive Class is appropriate and necessary for the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) (911) within the New York Police Department and the Call Center Representatives, (CCR) within the Department of Information Technology and Telecommunications (DoITT) (311).

These titles have had merit and fitness ascertained by examination since their establishment decades ago. Recall the heroism of the PCTs AND SPCTs on Sept. 11, 2001 in responding emergency calls during the terrorism attack on New York City and the United States.

All the facts presented herein lead to a conclusion that the present Competitive Class merit system should not be changed for these titles as DCAS Proposes. The Remedy for DCAS to be in compliance with Section 65(5) (b) in this instance is to give civil service examinations and appointments and not to seek the reclassification of NYPD emergency response PCT and SPCT public safety communications titles out of the Competitive Class.

Local 1549 strenuously objects to the personnel actions DCAS proposed in the Plan regarding the following Local 1549 titles:

- (1) The consolidation of the **Police Communications Technician (PCT)** and **Supervising Police Communications Technician (SPCT)** titles to Police Communications Technician–Assignments Levels I and II (See Attached Job Specifications);
- (2) The Reclassification of the PCT and SPCT titles from Competitive to Non-Competitive and
- (3) The **Call Center Representative** Title Reclassified from Competitive to Non-Competitive and renamed Customer Service Representative (State Title). See Attached Job Specification);

PRESENTATION AND ANALYSIS OF OBJECTIONS AND OPPOSITION

Local 1549 represents approximately [124] Supervising Police Communications Technicians and [1,101] Police Communications Technicians within the New York Police Department's 911 Public Safety Answering Center (PSAC) and [305] Call Center Representatives within the Department of Information Technology and Telecommunications (DoITT)'s 311 Customer Service Center based on the March 14, 2008, NYC Comptroller's payroll run.

THE DCAS PROPOSAL VIOLATES NY CIVIL SERVICE LAW

It is Local 1549's position that DCAS proposes to come into compliance with **Section 65(5)(b)** of the New York State Civil Service Law by violating other Sections of the law namely, the Classification and Consolidation Sections of the Civil Service Law as it launches its Provisional Reduction Plan.

LOCAL 1549 REQUEST FOR INVESTIGATION AND HEARING.

Local 1549 requests that the NYS Civil Service Commission conduct an immediate investigation under **CSL § 6.3** to determine the legality of this proposal as to all issues and objections presented to the Commission by DCAS Local L. 91549 and any other Local or Counsel.

It is our position that DCAS is required by NYS Civil Service Law and the Rules and Regulations to implement the mandate of the **NYS Constitution, Article V, Section 6**, which provides that:

"Appointment and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, **by examination which, as far as practicable, shall be competitive...**" ¹ (emphasis added)

RECLASSIFICATION IS NOT APPROPRIATE OR NEEDED FOR THE LOCAL THESE PUBLIC SAFETY CIVIL SERVICE TITLES

Local 1549's position that the Reclassification is not appropriate for either the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) within the New York Police Department nor the Call Center Representatives, (CCR) within the Department of Information Technology and Telecommunications (DoITT).

Because both services are highly critical Public Safety Call Center Operations (911 and 311)) emergency calls where merit and fitness are exercised in every task, 24 hours a day, performed to the benefit of the citizens of New York City, New York State and the United States. Like Police Officer titles in New York City and State only the existing competitive merit civil service titles can protect NYPD PCTs and SPCTs from the corruption, patronage, cronyism and nepotism such as job selling (recall Serpico and the Knapp Commission 40 years ago) and prohibit discrimination.

Additionally, the criteria of **CSL § 42** and **CSR § 2.2** (impractical to conduct civil service merit examinations) are not met, see below.

**DCAS OMITS ANY STATISTICAL ANALYSIS TO SUPPORT
RECLASSIFICATION THESE PUBLIC SAFETY EMERGENCY
RESPONSE TITLES**

NYPD 911

The PCTs and SPCTs in FY 2007 handled 11,689,000 calls resulting in 4,498,000 Total Radio Runs by the NYPD with a Citywide Average Response Time to Crime-in-Progress (Minutes) of 6.9 minutes (all categories).²

Indicator Name	Fiscal Year To Date	Previous FYTD	FYTD Variance	Most Recent Month	Same Month Last Year	Month Variance	Data Through:	Late?
<u>Average response time to all crimes in progress - Citywide (minutes)</u>	<u>7.2</u>	6.9	4.3%	<u>N/A</u>	<u>N/A</u>		2008 / 01	N

Recall the heroic performance of these PCTs and SPCTs in response to the terror attacks of Sept. 11, 2001.

There is no possible argument or justification to change the present competitive merit class of these titles given their excellent performance and competence on Sept. 11 and on a daily 24-hour basis up and including the present.

**DCAS MAKES NO VALID ARGUMENT TO CHANGE THE EXISTING
COMPETATIVE MERIT CLASS OF THIS TITLE**

311 DOITT

According to a recent Mayor's Management Report ⁴ the CCRs: "In the 311 Customer Service Center provides non-emergency government information and services. In order to improve the transparency of services being provided to the public, the Office of Operations and the Department of Information Technology and Telecommunications regularly report 311-generated information to the public through on its website. All data reported is for the referenced reporting period and fiscal year (July through June) to date".

Recent 311 Information reported on this site includes ³ :

Performance Measure	Performance Goal	Fiscal 2008 Year-to- Date	March 2008
Total Incoming Calls	*	11,482,411	1,155,545
Average Weekday Call Volume	*	49,048	44,698
Average Wait Time	30 seconds	7 seconds	4 seconds
Percent of Calls Answered within 30 seconds	90%	97%	98%
Percent of Language Assisted Calls	*	2.1%	2.1%

** No performance goal available*

Non-Competitive Class Is Not Applicable to 911 and 311 Titles

According to the Sources of the Law Governing Civil Service the non-competitive class, **CSL § 42** and **CSR § 2.2** consists of those positions for which it is not practicable to conduct examinations on a competitive basis. Appointments to non-competitive positions are to be made after a non-competitive examination, such as a review of training and experience, as prescribed by the Department.

For the most part, this class consists of skilled trades positions. However, it does include some higher-level administrative, scientific or technical positions, positions that are confidential in nature, or involve making or influencing policy... do not obtain tenure under Section 75 of the Civil Service Law.

It is important to note: The difference between the exempt and the non-competitive classes, insofar as appointment is concerned, is that for positions in the exempt class, the appointing officer is free to select whomever he/she pleases and the agency, rather than the Department of Civil Service, sets any educational, experience or other qualification requirements. If the position is in the non-competitive class, the appointing officer still has the power of selection, but the appointee must meet such educational, experience and other qualification requirements as may be fixed by the Department of Civil Service...

Generally, no written or oral tests are required for non-competitive class appointments.⁴

Local 1549 feels the Non-Competitive class is not appropriate for the either the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) within the New York Police Department nor the Call Center Representatives, (CCR) and within the Department of Information Technology and Telecommunications (DoITT) because these Titles do not met the criteria of **CSL § 42** and **CSR § 2.2**.

**CIVIL SERVICE PROTECTION AND DUE PROCESS ARE ESSENTIAL
AND IMPORTANT FOR NYPD PCT AND SPCT TITLES
THE NON COMPETITIVE TITLES DO NOT HAVE THESE RIGHTS**

Historically the City has had a pattern of discrimination in the NYPD with regard to civilian PCT and SPCT titles. There is a pending 2008 class action FMLA case in the Southern District Court claiming a denial of FMLA leave. The pay scale of these titles was elevated after a class action in 1984 to 1991 claiming discrimination against the minority female workforce when compared to the white male Fire Dispatchers.

There were 3 Article 78 Supreme Court actions claiming unlawful discipline filed in 2008, one settled, after the NYPD refused to comply with OATH and NYC Civil Service Commission decisions. Recall Serpico and the Knapp Commission 40 years ago, which described the insular police culture, and the sale of job positions within the NYPD.

The City of NY recently settled a \$24,000,000 discrimination class action suit against the Parks Dept. and former Commissioner Henry Stern because promotions were not based upon open competitive examination and were discriminatory against black employees.

The existing civil service open competitive NYPD PCT and SPCT titles seek to prevent these discriminatory abuses that existed in the past and the Local claims exist today. There is no possible justification to reclassify these titles given this history of racial and other discrimination against minorities and residents of the City of New York.

Competitive Class

According to the Sources of the Law Governing Civil Service the competitive class **CSL § 44** consists of all offices and employments in the classified service that are not in the exempt, non-competitive or labor class. Positions in the competitive class are not listed in the rules or regulations. No action is required to place a position in the competitive class. Every position in the classified service is automatically in the competitive class unless and until it is specifically classified in another jurisdictional class.⁵

Reclassification

Permanent incumbents of positions that have been reclassified from the competitive to the non-competitive jurisdictional class are immediately accorded the same protection afforded to tenured non-competitive employees.

Employees so affected are entitled to the disciplinary protections of **Section 75**, and to exercise the same vertical bumping and retreat rights they would have been entitled to had their positions remained in the competitive class.

Local 1549 has filed 3 NYPD Article 78 Supreme Court proceedings to make certain there is compliance with Civil Service Law Sect 75 rights of its members by the NYPD. One case was settled with the member returned to work at NYPD. It is essential the L. 1549 employees not be reclassified to lose their Civil Service Rights.⁶

"Bumping" and "Retreating"

CSR § 80.7, [5.5(a)], [5.5(a)(1)] and [5.5(a)(3)] states that Competitive class employees may often have an opportunity to displace other less senior employees in the layoff unit through either bumping or retreat. Exactly what may occur in the case of bumping varies with each situation, but generally, the employee will displace the least senior employee, provided he/she has greater retention standing, in the next existing lower occupied title in direct line of promotion. Non-competitive and labor class employees do not bump since there are no direct promotion lines in these classes. L. 1549 members must keep these civil service rights.⁷

Summary of Objections

1. **The NYS Constitution, Article V, Section 6**, provides that: "Appointment and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive..."¹ Local 1549 feels the Competitive class is appropriate for the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) within the New York Police Department and the Call Center Representatives, (CCR) Department of Information Technology and Telecommunications (DoITT).
2. We feel that DCAS proposals to come into compliance with **Section 65(5)(b)** of the New York State Civil Service Law by violating other Sections of the law namely, the Classification and Consolidation Sections of the Civil Service Law as it launches its Provisional Reduction Plan.
3. New SPCT, PCT and CCR will not obtain tenure under Section 75 of the Civil Service Law this will establish two classes of employees within these critical Public Safety Communication Centers. The effect of this personnel dichotomy on the chain of command and efficiency are unknown but the local's position is that there exists a significant likelihood it will be negative. Once the stress of this important and under appreciated work is factored-in we do not believe this proposal is good for public policy. It might indeed have ramification of a very serious nature that could border on national security responsiveness. Both services combined to handle about 22 million calls a year.
4. Local 1549 opposes the reclassification of the PCTs and SPCTs and 311 DOITT titles into the non-competitive class, for the appointing officer still has the power of selection, but the appointee must meet such educational, experience and other qualification requirements as may be fixed by the Department of Civil Service. Generally, no written or oral tests are required for non-competitive class appointments.⁴ Local 1549 states that this reclassification would lead to discrimination against its minority New York City members.

5. It is Local 1549's that position the Non-Competitive class is not appropriate for either the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) within the New York Police Department nor the Call Center Representatives, (CCR) and within the Department of Information Technology and Telecommunications (DoITT) because these Titles do not met the criteria of **CSL § 42** and **CSR § 2.2. No analysis or justification is made by DCAS as to these public safety positions and the requirements of New York City and New York State Homeland Security and terror response planning. DCAS ignores the heroic response of Local 1549 NYPD members on Sept. 11, 2001**

Notes:

¹ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Sources of the Law Governing Civil Service www.cs.ny.us/pio/summaryofcsl.htm, page 1.

² Mayor's Office of Operations, Mayor's Management Report, NYPD and Citywide Performance Reporting <http://www.nyc.gov/html/ops/cpr/html/home/home.shtml>.

³ Mayor's Office of Operations, Mayor's Management Report and Citywide Performance Reporting 311, <http://www.nyc.gov/html/ops/cpr/html/home/home.shtml>.

⁴ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Non Competitive Class, www.cs.ny.us/pio/summaryofcsl.htm, page 4.

⁵ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Competitive Class. www.cs.ny.us/pio/summaryofcsl.htm, page 5.

⁶ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Reclassification. www.cs.ny.us/pio/summaryofcsl.htm,

⁷ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Bumping and Retreating. www.cs.ny.us/pio/summaryofcsl.htm,



THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

NOTICE OF EXAMINATION

REQUIRED FORMS

APPLICATION FORM

PROMOTION TO SUPERVISING POLICE COMMUNICATIONS TECHNICIAN

Exam. No. 8503

WHEN TO APPLY: From: February 6, 2008
To: February 26, 2008

APPLICATION FEE: \$45.00
Payable by mail by money order to D.C.A.S. (EXAMS) or
payable online by credit card, bank card, or debit card.

THE TEST DATE: The multiple-choice test is expected to be held on **Saturday, June 7, 2008.**

WHAT THE JOB INVOLVES: In the Police Department, under general supervision, with some latitude for the exercise of independent judgement, action and initiative, Supervising Police Communications Technicians supervise and direct E-911 call-takers, radio dispatchers and personnel performing clerical, administrative and other duties related to the provision of emergency service; perform difficult and responsible work in the evaluation of priority designations; interact with the public, other agencies and Police Department personnel; perform training as required; make roll call changes and monitor operations during tour changes; initiate alerts or backlogs when supervising radio operations; evaluate subordinates and monitor their performance; and perform related tasks.

Supervising Police Communications Technicians will be required to work various tours around the clock, including Saturdays, Sundays and holidays, and will be required on occasion to work overtime tours depending on the needs of the Department.

Some of the physical activities performed by Supervising Police Communications Technicians and environmental conditions experienced are: periodically wearing a headset while monitoring call-takers and dispatchers; typing information into the computer using a computer keyboard; giving instructions to a continuous flow of call-takers and dispatchers under stress; listening carefully to clearly understand emergency information; making responsible judgements where timing is critical; speaking with the public, when required, and making continuous telephone notifications to units within the Department and outside agencies.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$40,355 per annum. This rate is subject to change.

HOW TO APPLY: If you believe you are eligible to take this examination, there are two ways to apply for this examination:

1. **Online at the DCAS WEBSITE:** If you wish to apply online, go to the Online Application System (OASys) at www.nyc.gov/examsforjobs and follow the onscreen application instructions for electronically submitting your application and completing any required forms. The following methods of payment are acceptable: major credit card, bank card associated with a bank account, or prepaid debit card which you may purchase online or at various retail outlets.
2. **By mail:** Refer to the "Required Form" section below for the form that you must fill out. Return the completed form and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007.

DCAS will not accept applications in person from candidates.

ELIGIBILITY TO TAKE EXAMINATION: This examination is open to each employee of the Police Department who on the date of the multiple choice test:

- (1) is permanently (not provisionally) employed in or appears on a Preferred List (see Note, below) for the title of Police Communications Technician; and
- (2) is not otherwise ineligible.

(Note: A "Preferred List" is a civil service list which is only for certain former permanent incumbents of the eligible title who have rehiring rights.)

If you do not know if you are eligible, check with **your agency's personnel office.**

You may be given the test before we verify your eligibility. You are responsible for determining whether or not you meet the eligibility requirements for this examination prior to submitting your application. If you are marked "Not Eligible," your application fee will not be refunded and you will not receive a score.

ELIGIBILITY TO BE PROMOTED: In order to be eligible for promotion, you must have completed your

READ CAREFULLY AND SAVE FOR FUTURE REFERENCE

probationary period in the eligible title as indicated in the above "Eligibility To Take Examination" section, and you must be permanently employed in the eligible title or your name must appear on a Preferred List for the eligible title at the time of promotion. Additionally, you must have served permanently in the eligible title for at least eighteen months.

REQUIRED FORM:

Application for Examination: Make sure that you follow all instructions included with your application form, including payment of fee. Save a copy of the instructions for future reference.

THE TEST: You will be given a multiple-choice test. You must achieve a score of at least 70% to pass this test. Your score on this test will determine 85% of your final score. Your seniority will determine the remaining 15%. You must pass the multiple-choice test to have your seniority credited. Your seniority score will be 70 plus ½ point for each three months of completed, permanent, continuous service with an agency under the jurisdiction of the Commissioner, Department of Citywide Administrative Services in competitive class titles. Your service will be credited through the date of the test, up to a maximum of 15 years. Time served prior to a break in service of more than one year will not be credited.

The multiple-choice test may include questions on: routine administrative paperwork; functioning, operation and inspection of equipment; interactions with other supervisors, other City agencies and other departments; policies and procedures contained in the E-911 Call-takers Guide and the Radio Dispatchers Guide; evaluation, counseling and discipline of personnel; supervising and instructing subordinates and responding to unforeseen emergencies which occur during a tour of duty; standards of proper employee ethical conduct, including the provisions of Mayor's Executive Order No. 16 of 1978, as amended; and other related areas.

ADMISSION CARD: You should receive an Admission Card in the mail about 10 days before the date of the test. If you do not receive an Admission Card at least 4 days before the test date, you must go to the Examining Service Section, 1 Centre Street, 14th floor, Manhattan, to obtain a duplicate card.

THE TEST RESULTS: If you pass the multiple-choice test and are marked eligible, your name will be placed in final score order on an eligible list and you will be given a list number. You will be notified by mail of your test results. If you meet all requirements and conditions, you will be considered for promotion when your name is reached on the eligible list.

ADDITIONAL INFORMATION:

Selective Certification for Spanish: If you possess the ability to speak Spanish, you may be considered for promotion to positions requiring this ability through a process called Selective Certification. If you pass a qualifying test, you may be given preferred consideration for positions requiring this ability. Follow the instructions given to you in the multiple-choice test booklet on the day of the test to indicate your interest in such Selective Certification.

SPECIAL ARRANGEMENTS:

Late Filing: Consult your agency's personnel office to determine the procedure for filing a late application if you meet one or more of the following conditions:

- (1) you are absent from work for at least one-half of the application period and cannot apply for reasons such as vacation, sick leave or military duty; or
- (2) you become eligible after the above application period but on or before the date of the multiple-choice test.

Special Test Accommodations: If you plan to request special testing accommodations due to disability or an alternate test date due to your religious belief, and you are applying:

- (1) **online**, follow the onscreen instructions; or
- (2) **by mail**, follow the instructions included with the "Application for Examination."

Make-up Test: You may apply for a make-up test if you cannot take the test on the regular test date for any of the following reasons:

- (1) compulsory attendance before a public body;
- (2) on-the-job injury or illness caused by municipal employment;
- (3) absence for one week following the death of a spouse, domestic partner, parent, sibling, child or child of a domestic partner;
- (4) absence due to ordered military duty; or
- (5) a clear error for which the Department of Citywide Administrative Services or the examining agency is responsible.

To request a make-up test, contact the Examining Service Section, 1 Centre Street, 14th floor, New York, NY 10007, in person or by certified mail as soon as possible and provide documentation of the special circumstances.



THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

NOTICE OF EXAMINATION

REQUIRED FORMS

APPLICATION FORM
EDUCATION AND EXPERIENCE
TEST PAPER
FOREIGN EDUCATION
FACT SHEET
(IF APPLICABLE)

POLICE COMMUNICATIONS TECHNICIAN

Exam. No. 6036

WHEN TO APPLY: From: September 6, 2006
To: September 26, 2006

APPLICATION FEE: \$30.00
Payable only by money order to D.C.A.S. (EXAMS)

THE TEST DATE: The multiple-choice test is expected to be held on Saturday, December 9, 2006.

WHAT THE JOB INVOLVES: Police Communications Technicians, working under direct supervision in the Police Department Communications Section, serve as 911 emergency call-takers; obtain necessary information from callers in order to initiate emergency assistance; serve as radio dispatchers of police resources; perform clerical, administrative and other duties related to the provision of emergency service; and perform related work.

You will be required to work various tours around the clock, including Saturdays, Sundays and holidays, and you will be required on occasion to work overtime tours depending on the needs of the Department.

Some of the physical activities performed by Police Communications Technicians and environmental conditions experienced are: sitting for extended periods of time with headset on while monitoring a computer screen; typing information into the computer using a computer keyboard; coordinating eye/hand movements while handling emergency calls for the efficient use of console and computer; speaking calmly and clearly in order to elicit information and giving instructions to a continuous flow of callers under stress; listening carefully to clearly understand emergency information; making responsible judgments where timing is critical; and sitting within hearing distance of other call-takers working under similar conditions.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$27,637 per annum. This rate is subject to change.

HOW TO APPLY: If you believe that you meet the requirements in the "How to Qualify" section, refer to the "Required Forms" section below for the forms that you must fill out. Return all completed forms and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007 by mail only. DCAS will not accept applications in person from candidates.

HOW TO QUALIFY:

Education and Experience Requirements: By the last day of the Application Period you must have a four-year high school diploma or its educational equivalent; plus

1. One year of satisfactory full-time experience performing clerical, typing, or secretarial work; or
2. One year of satisfactory full-time experience dealing with the public, including the obtaining of information from persons; or
3. The successful completion of 30 semester college credits from an accredited college or university; or
4. Two years of active U.S. military duty with honorable discharge; or
5. A satisfactory combination of education and/or experience that is equivalent to 1, 2, 3, or 4 above. However, all candidates must have a four-year high school diploma or its educational equivalent.

You may be given the test before we review your qualifications. You are responsible for determining whether or not you meet the qualification requirements for this examination prior to submitting your application. If you are marked "Not Qualified," your application fee will not be refunded and you will not receive a score.

Medical and Psychological Requirements: Medical and psychological guidelines have been established for the position of Police Communications Technician. Candidates will be examined to determine whether they can perform the essential functions of the position of Police Communications Technician. Where appropriate, a reasonable accommodation will be provided for a person with a disability to enable him or her to take the medical and/or psychological examination, and/or perform the essential functions of the job.

Drug Screening Requirement: You must pass a drug screening in order to be appointed.

READ CAREFULLY AND SAVE FOR FUTURE REFERENCE

Residency Requirement: You must be a City resident within ninety days of the date you are appointed to this position if:

- (1) You begin City service as a result of this examination; or
- (2) You are currently a City employee and you began City service on or after September 1, 1986.

If you are required to be a City resident, you must maintain City residency as a condition of employment.

English Requirement: You must be able to understand and be understood in English.

Proof of Identity: Under the Immigration Reform and Control Act of 1986, you must be able to prove your identity and your right to obtain employment in the United States prior to employment with the City of New York.

REQUIRED FORMS:

1. **Application for Examination:** Make sure that you follow all instructions included with your application form, including payment of fee. Save a copy of the instructions for future reference.
2. **Education and Experience Test Paper:** Write your social security number in the box at the top right side of the cover page, and the examination title and number in the box provided. Fill out Sections A, A.1, A.2, and B. This form must be filled out completely and in detail for you to receive your proper rating. Keep a copy of your completed Education and Experience Test Paper for your records.
3. **Foreign Education Fact Sheet (Required only if you need credit for your foreign education to meet the education and experience requirements):** If you were educated outside the United States, you must have your foreign education evaluated to determine its equivalence to education obtained in the United States. The services that are approved to make this evaluation are listed on the Foreign Education Fact Sheet included with your application packet. When you contact the evaluation service, ask for a "document-by-document" (general) evaluation of your foreign education. You must have one of these services submit its evaluation of your foreign education directly to the Department of Citywide Administrative Services no later than eight weeks from the last date for applying for this examination.

THE TEST: You will be given a multiple-choice test. Your score on this test will be used to determine your place on an eligible list. You must achieve a score of at least 70% to pass the test. The multiple-choice test may include questions on understanding written information; communicating written information to another person; remembering new information; recognizing the existence of a problem; combining separate pieces of information to form a general conclusion; applying general rules to a specific situation; understanding the order in which things should be done; combining information into a meaningful pattern quickly; identifying an object in its surroundings; recognizing where you are in relation to the space you are in; using a map or diagram to get from one position to another; knowledge of the basic geography of New York City, including major roadways and landmarks, bridges, tunnels, parks, etc.; and other related areas.

ADMISSION CARD: You should receive an Admission Card in the mail about 10 days before the date of the test. If you do not receive an Admission Card at least 4 days before the test date, you must go to the Examining Service Section, 1 Centre Street, 14th floor, Manhattan, to obtain a duplicate card.

THE TEST RESULTS: If you meet the education and experience requirements and pass the multiple-choice test, your name will be placed in final score order on an eligible list and you will be given a list number. You will be notified by mail of your test results. If you meet all requirements and conditions, you will be considered for appointment when your name is reached on the eligible list.

ADDITIONAL INFORMATION:

Selective Certification for Spanish: If you can speak Spanish, you may be considered for appointment to positions requiring this ability through a process called Selective Certification. If you pass a qualifying test, you may be given preferred consideration for positions requiring this ability. Follow the instructions given to you in the multiple-choice test booklet on the day of the test to indicate your interest in such Selective Certification.

Investigation: This position is subject to investigation before appointment. At the time of investigation, you will be required to pay a \$99.00 fee for fingerprint screening.

Probationary Period: The probationary period for Police Communications Technician is 18 months. You will be required to pass a 911 emergency call-taker training course and a radio dispatcher training course. In accordance with the Personnel Rules and Regulations of the City of New York, probationers who fail to successfully complete such training courses will be terminated.

SPECIAL TEST ACCOMMODATIONS: If you plan to request special testing accommodations due to disability or an alternate test date due to your religious belief, follow the instructions included with the "Application for Examination."

The General Examination Regulations of the Department of Citywide Administrative Services apply to this examination and are part of this Notice of Examination. They are posted and copies are available in the Applications Center of the Division of Citywide Personnel Services, 18 Washington Street, NY, NY.

The City of New York is an Equal Opportunity Employer.
Title Code No. 71012; Police Communications Technician Occupational Group.

For information about other exams and your exam or list status, call 212-669-1357.
Internet: nyc.gov/dcas



MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

NOTICE OF EXAMINATION

REQUIRED FORMS

APPLICATION FORM
EDUCATION AND EXPERIENCE
TEST PAPER
FOREIGN EDUCATION
FACT SHEET
(IF APPLICABLE)

CALL CENTER REPRESENTATIVE

Exam. No. 5060
SECOND AMENDED NOTICE - November 22, 2006

WHEN TO APPLY: From: August 2, 2006 **APPLICATION FEE:** \$30.00
To: August 22, 2006 Payable only by money order to D.C.A.S. (EXAMS)
THE TEST DATE: The multiple-choice test is expected to be held on Saturday, April 14, 2007.

The Notice of Examination is amended to change the date of the multiple-choice test from May 19, 2007 to April 14, 2007.

WHAT THE JOB INVOLVES: Call Center Representatives, under supervision in the New York City 3-1-1 Call Center, provide a single point of contact for all non-emergency City services utilizing state-of-the-art telephone and interactive computer systems; respond to phone inquiries from the public, provide customer service and information to callers, take complaints and service requests and forward them for further action, enter inquiries, complaints and requests into appropriate computer systems and perform related clerical and computer support work. All Call Center Representatives perform related work.

Special Working Conditions: Call Center Representatives will be required to work shifts including nights, Saturdays, Sundays and holidays.

Some of the physical activities performed by Call Center Representatives and environmental conditions experienced are: sitting for extended periods of time with headset on while monitoring two computer screens; typing information into the computer using a computer keyboard; coordinating eye/hand movements while handling calls and operating a console and computer; speaking calmly and clearly in order to elicit information and give instructions to a continuous flow of callers under stress; listening carefully to clearly understand information; making responsible decisions where timing is critical; and sitting within hearing distance of other call takers working under similar conditions.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$24,994 per annum. This salary increases to a minimum of \$27,138 upon completion of Call Center Representative training and one year of satisfactory service. This rate is subject to change.

HOW TO APPLY: If you believe that you meet the requirements in the "How to Qualify" section, refer to the "Required Forms" section below for the form(s) that you must fill out. Return all completed form(s) and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007 by mail only. DCAS will not accept applications in person from candidates.

HOW TO QUALIFY:

Education and Experience Requirements: By the last day of the Application Period you must have:

1. A baccalaureate degree from an accredited college; or
2. An associate degree from an accredited college and one year of satisfactory, full-time experience in providing information or customer services to the public; or
3. A four-year high school diploma or its educational equivalent, and two years of satisfactory, full-time experience as described in "2" above. One year of satisfactory, full-time experience working for New York City government in providing information or customer services to the public may be substituted for the two years of experience described above. College credit may be substituted for experience on the basis of 60 semester credits for each year of experience as described in "2" above.

You may be given the test before we verify your qualifications. You are responsible for determining whether or not you meet the qualification requirements for this examination prior to submitting your application. If you are marked "Not Qualified," your application fee will not be refunded and you will not receive a score.

READ CAREFULLY AND SAVE FOR FUTURE REFERENCE

Residency Requirement: You must be a City resident within ninety days of the date you are appointed to this position if the appointing agency requires City residency and:

- (1) You begin City service as a result of this examination; or
- (2) You are currently a City employee and you began City service on or after September 1, 1986.

English Requirement: You must be able to understand and be understood in English.

Proof of Identity: Under the Immigration Reform and Control Act of 1986, you must be able to prove your identity and your right to obtain employment in the United States prior to employment with the City of New York.

REQUIRED FORM(S):

1. **Application for Examination:** Make sure that you follow all instructions included with your application form, including payment of fee. Save a copy of the instructions for future reference.
2. **Education and Experience Test Paper:** Write your social security number in the box at the top right side of the cover page, and the examination title and number in the box provided. Fill out Sections A, A.1, A.2, and B. This form must be filled out completely and in detail for you to receive your proper rating. Keep a copy of your completed Education and Experience Test Paper for your records.
3. **Foreign Education Fact Sheet (Required only if you need credit for your foreign education to meet the education and experience requirements):** If you were educated outside the United States, you must have your foreign education evaluated to determine its equivalence to education obtained in the United States. The services that are approved to make this evaluation are listed on the Foreign Education Fact Sheet included with your application packet. When you contact the evaluation service, ask for a "document-by-document" (general) evaluation of your foreign education. You must have one of these services submit its evaluation of your foreign education directly to the Department of Citywide Administrative Services no later than eight weeks from the last date for applying for this examination.

THE TEST: You will be given a multiple-choice test. Your score on the multiple-choice test will be used to determine your place on an eligible list. You must achieve a score of at least 70% to pass the test. The multiple-choice test may include questions on understanding written information; combining separate pieces of information to form a general conclusion; applying general rules to a specific situation; understanding the order in which things should be done; written communication (including spelling); ability to create accurate records of information exchanged with caller; and other related areas.

If you pass the multiple-choice test, you will be given a qualifying practical test on a date to be announced. This test will assess your proficiency in navigating multiple computer systems using a computer keyboard and mouse. You will be given a call taking scenario and you will be required to navigate a web-based computer application. In order to pass this test, you may be required to do the following within a specified period of time, to be announced on the day of the test: obtain the appropriate information from the simulated caller, navigate to the correct web page, access the requested information from the web page, and transmit the correct information to the simulated caller.

ADMISSION CARD: You should receive an Admission Card in the mail about 10 days before the date of the test. If you do not receive an Admission Card at least 4 days before the test date, you must go to the Examining Service Section, 1 Centre Street, 14th floor, Manhattan, to obtain a duplicate card.

THE TEST RESULTS: If you meet the education and experience requirements and pass both the multiple-choice test and the qualifying practical test, your name will be placed in score order on an eligible list and you will be given a list number. You will be notified by mail of your test results. If you meet all requirements and conditions, you will be considered for appointment when your name is reached on the eligible list.

APPOINTMENT INFORMATION:

Selective Certification for Spanish: If you can speak Spanish, you may be considered for appointment to positions requiring this ability through a process called Selective Certification. If you pass a qualifying test, you may be given preferred consideration for positions requiring this ability. Follow the instructions given to you in the multiple-choice test booklet on the day of the test to indicate your interest in such Selective Certification.

Probationary Period: You will be required to pass a calltaker training course. In accordance with the Personnel Rules and Regulations of the City of New York, probationers who fail to successfully complete such training courses will be terminated.

SPECIAL TEST ACCOMMODATIONS: If you plan to request special testing accommodations due to disability or an alternate test date due to your religious belief, follow the instructions included with the "Application for Examination."

The General Examination Regulations of the Department of Citywide Administrative Services apply to this examination and are part of this Notice of Examination. They are posted and copies are available in the Applications Center of the Division of Citywide Personnel Services, 18 Washington Street, NY, NY.

The City of New York is an Equal Opportunity Employer.
Title Code No. 10260; Call Center Occupational Group

For information about other exams, and your exam or list status, call 212-669-1357.
Internet: nyc.gov/dcas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SCOTTI, et al.,

Plaintiffs,

-against-

84 Civ. 3503 (JSM)

THE CITY OF NEW YORK, et al.,

Defendants.
-----x

AFSCME, et al., and CHAPPELLE, et al.,

Plaintiffs,

-against-

84 Civ. 4529 (JSM)

THE CITY OF NEW YORK, et al.,

Defendants.
-----x

SCOTTI, et al.,

Plaintiffs,

- against -

84 Civ. 5462 (JSM)

THE CITY OF NEW YORK, et al.,

Defendants.
-----x

CONSENT DECREE

LITIGATION HISTORY

This Decree is in full and final resolution of the three
above-captioned actions.

Scotti et al. v. City of New York, et al. ("Scotti I") was commenced on May 18, 1984 by filing a class action complaint alleging wage discrimination on the basis of sex in violation of the Equal Pay Act of 1963, ("EPA") 29 U.S.C. 206(d), the Civil Rights Act of 1871, 42 U.S.C. §§ 1981 and 1983, and New York Labor Law § 194. Chappelle and AFSCME et al. v. The City of New York, et al. ("Chappelle and AFSCME") was commenced on June 27, 1984 with the filing of a class action complaint alleging sex, race and national origin discrimination in wages, job assignments, promotions and other terms and conditions of employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(e) et seq. (Title VII). Scotti et al. v. The City of New York, et al. ("Scotti II") was commenced on August 4, 1984 by filing a class action complaint alleging sex, race, and national origin discrimination in the establishment of wages in violation of Title VII and the New York State Executive Law § 296.

In their answers in all three actions, defendants denied the material allegations of the complaints and raised numerous defenses to plaintiffs' claims. In their answer in Chappelle and AFSCME, defendants counterclaimed against the plaintiff union for indemnification or contribution should defendants be found to be liable for discrimination. On December 27, 1984, the court granted plaintiffs' motion to dismiss the counterclaim, without prejudice to defendants' right to seek leave to amend their answer to assert pendant state law claims for contribution.

By order dated April 15, 1985 the Court provisionally certified each of the cases as class actions under Federal Rule of Civil Procedure 23(b)(2). The class was defined as:

All Police Communications Technicians (PCTs) and Supervising Police Communications Technicians (SPCTs) employed by the City of New York since May 18, 1981 and all those who will be employed in those positions in the future.

In 1985, court-approved notice of the three actions was mailed to members of the class informing them of the pendency of the actions. Among other things, the notice informed members of the class that they would be represented by plaintiffs' counsel, but that they could retain counsel of their own choosing.

Prior to the filing of the Joint Pre-Trial Order, the plaintiffs in the Scotti actions withdrew claims of violations of the New York State Labor Law § 194, and the Chappelle and AFSCME plaintiffs withdrew claims of discrimination in job assignment, promotion, and all other terms and conditions of employment other than wage discrimination.

On January 10, 1989, defendants moved for summary judgment on all claims of plaintiffs in the three actions. In a Report and Recommendation dated February 28, 1990, Magistrate Buchwald recommended denial of defendants' motion, concluding that, viewed in the light most favorable to plaintiffs, there were genuine issues of fact for trial. The Magistrate further recommended that summary judgment be granted to plaintiffs on the issue of whether white males have standing to raise a wage discrimination claim pursuant to Title

VII. In an order dated May 18, 1990, the Court adopted Magistrate Buchwald's Report and Recommendation. On July 24, 1990, this Court denied defendants' motion to reargue.

On November 15, 1990, the Court continued the class action certification, except that by agreement of the parties two sub-classes were established, one for PCTs and one for SPCTs.

Since the filing of these actions, the parties have engaged in extensive discovery. Plaintiffs have responded to 1 set of interrogatories and 9 sets of document demands. All but two of the named plaintiffs have been deposed, and three representatives of the union plaintiffs have been deposed. Twenty-three City employees and officials have been deposed by plaintiffs. Defendants have produced thousands of documents. In addition, both parties have retained experts. Reports of those experts have been exchanged and each has been deposed for several days.

Counsel for plaintiffs and defendants have engaged in lengthy and extensive discussions concerning settlement of this lawsuit. As a result of these discussions, the parties have reached the agreement set forth herein in full and final resolution of all charges, claims and issues raised, or which might have been raised in these actions, subject to approval of the Court. The parties have agreed that in order to avoid the burden, expense and disruption of further protracted litigation, it is mutually desirable and in their respective best interests to settle the actions on the basis of the terms and conditions set forth herein.

Consistent with the foregoing, the Court being fully apprised, now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

SECTION I
JURISDICTION

1. This Court has jurisdiction of the subject matter of these actions and the parties hereto. The complaints allege claims which, if timely and proven, would authorize the Court to grant relief pursuant to federal statute.

2. The parties consent to the entry of this Consent Decree in the form submitted herein and all of the terms and conditions hereof as a final judgment of the Court.

3. This Court shall retain jurisdiction to interpret, enforce and implement this Decree.

SECTION II
EFFECTIVE DATE OF DECREE

4. This Decree shall become effective upon the fifth day following the day on which an Order approving this Decree becomes final beyond all possibility of appeal (the "effective date").

SECTION III
EFFECT OF THE DECREE

5. Once effective, this Decree shall be final and binding upon the named plaintiffs and upon all individual members of the following class (the "Class"), which has been certified in these actions under Federal Rule of Civil Procedure 23(b)(2):

All Police Communications Technicians ("PCTs") and Supervising Police Communications Technicians ("SPCTs") employed by the City of New York at the New York City Police Department since May 18, 1981 and all those who will be employed by the City of New York at the New York City Police Department in those positions in the future.

6. This Decree resolves in full any and all claims of the named plaintiffs against the City of New York, or any of its departments, agencies, employees or agents (collectively the "City"), for damages, attorneys fees, costs, back pay, benefits, injunctive, declaratory or other relief, relating to or arising out of any alleged sex and/or race and/or national origin discrimination in connection with any acts, conduct, status, salary or other compensation, or any other terms or conditions of employment, of PCTs and/or SPCTs, predicated in any way on conduct or events occurring at any time up to and including the effective date of this Decree. The named plaintiffs are hereby precluded from pursuing, prosecuting, initiating or commencing any action, proceeding or arbitration, and from filing

any complaint, charge or grievance against the City relating to or arising out of any such claims.

7. This Decree resolves in full any and all claims of wage discrimination as asserted in these actions, of the unnamed members of the Class against the City for damages, attorneys' fees, costs, back pay, benefits, injunctive, declaratory or other relief, predicated in any way on conduct or events occurring at any time up to and including the effective date of this Decree. The unnamed members of the class are hereby precluded from pursuing, prosecuting, initiating or commencing any action, proceeding, arbitration, and from filing any complaint, charge or grievance against the City relating to or arising out of any such wage discrimination claims.

SECTION IV

NON-ADMISSION AND NON-DETERMINATION

8. No findings of any kind have been issued by the Court concerning the merit or lack of merit of any of the allegations made by plaintiffs in these actions. This Decree does not and shall not be deemed to constitute an adjudication or finding on the merits of any claims or an admission by any party as to the validity or accuracy of any of the allegations, defenses, assertions or claims made in these actions by any other party.

SECTION V

NOTICE TO CLASS

9. Within 21 days of preliminary approval of this Decree by the Court, defendants shall mail notice of this proposed Decree and of the hearing on whether the Court should grant final approval (the "final-approval hearing"), in the form approved by the Court (the "Court-approved notice"), to class members who can be identified through reasonable effort from Police Department records, at the last address reflected in such records. The cost of notification shall be borne by defendants. Within 10 days of the date of such mailing, defendants shall serve on plaintiffs' counsel and file under seal with the Court an affidavit attesting to the mailing of such notices and listing the names and addresses of all persons to whom notice was mailed.

10. Defendants shall arrange and pay for publication and dissemination of the Court-approved notice together with a claim form for persons who did not receive mailed notice, during the period between preliminary approval of this Decree and the final approval hearing as follows: (1) publication in 3 consecutive issues of The Chief; (2) posting on the bulletin board in the Police Department Communications Sections; and (3) distribution to each new PCT and SPCT hired.

11. District Council 37 shall publish the Court-approved notice together with the claim form in any issues of "The Public Employees' Press" published between preliminary approval of this Decree and the final approval hearing.

SECTION VI
LIST OF ENTITLEMENTS

12. Within 10 days after the effective date of this Decree, defendants' counsel shall give plaintiffs' counsel a list of the names, addresses, service dates, credited years of service and proposed back pay entitlements of all class members who have been identified pursuant to the notice procedures set forth in Section V above. Defendants shall update this list as new information is received.

13. Within 10 days after receipt of the list of class members and their entitlements and any updates thereof as provided in paragraph 12 above, plaintiffs' counsel shall notify defendants' counsel of any objections corrections or additions to the list. Plaintiffs' counsel's failure to raise an objection does not preclude any class member from individually objecting to his or her entitlement.

SECTION VII
RELEASES

14. Within 40 days after the effective date of this Decree, the Office of the New York City Comptroller (the "Comptroller's Office") shall mail a release to each current PCT and SPCT and to each former PCT and SPCT who has been identified from Police Department records as set forth in paragraph 9 above and who is entitled to receive back pay, with instructions to execute and return the release to the Comptroller's Office. The releases shall be held in

escrow until defendants implement any salary increase and send any required back pay to which the releasee is entitled. For those class members who were not initially identified through Police Department records but who subsequently identify themselves by submitting a claim form, releases will be mailed within 30 days of defendants' receipt of the claim form or within 40 days of the effective date of this Decree, whichever is later.

15. Within 30 days after mailing releases as provided in paragraph 13 above, defendants' counsel shall serve and file under seal with the Court affidavits of mailing stating the name and address of each class member to whom a release has been sent, whether the release has been returned undelivered or whether the release has been executed and returned. Defendants' counsel shall update this information every 30 days to the extent necessary.

16. All counsel shall cooperate in making a reasonable effort to locate and obtain executed releases from class members. If the Comptroller's Office has not received an executed release or claim form from a class member (or her estate or beneficiary as provided by paragraph 22) within one year of the date on which the first releases are mailed as provided by paragraph 14 above, the class member(or his estate or beneficiary) shall not be entitled to any compensation pursuant to this Decree.

SECTION VIII
BACK PAY FOR CLASS MEMBERS

17. Class members who have executed releases in accordance with Section VII above shall be entitled to back pay for years of service between January 1, 1982 and December 31, 1990 in accordance with the following schedule:

- (1) Less than one year of service -- no entitlement
- (2) One year of service, but less than two -- \$500
- (3) Two years of service, but less than three
-- \$1,100
- (4) Three years of service, but less than four
-- \$1,800
- (5) Four years of service, but less than five
-- \$2,600
- (6) Five years of service, but less than six
-- \$3,400.
- (7) Six years of service, but less than seven
-- \$4,300
- (8) Seven years of service, but less than eight
-- \$5,200
- (9) Eight years of service, but less than nine
-- \$6,100
- (10) Nine years of service, but less than ten
-- \$7,000.

18. Twelve months of service in a pay status as a PCT and/or SPCT, whether or not continuous, shall constitute one year of service for the purpose of establishing a class member's back pay entitlement under paragraph 17 above. If a class member is on pay status on the first day of a given month, she shall receive credit for being employed for that month.

19. Within 90 days after the effective date of this Decree, or within 30 days after receipt of an executed release, whichever is later, the Comptroller's Office shall mail a back pay check to each class member who is entitled to back pay and has returned an executed release to the Comptroller's Office as provided in Section VII above.

20. Within 30 days after mailing back pay checks to class members as provided by paragraph 19 above, defendants' counsel shall serve and file with the Court affidavits stating the name and address of each class member to whom a back pay check has been sent and, for each such class member, the amount of the check, and whether the check has been returned undelivered.

21. Counsel for all parties shall make a reasonable effort to locate any class member whose back pay check is returned undelivered.

22. If a class member entitled to receive back pay under this Decree is deceased, her back pay shall be payable to her estate, if it is still open. If the estate has been closed, the back pay shall be payable to the decedent's executor, administrator or personal representative. Any person making a claim under this paragraph

shall be required to give notice of such claim to defendants' counsel in accordance with Section XIV below, to present to defendants' counsel with the notice a certified death certificate and certified copies of letters testamentary or letters of administration and to deliver an executed release on behalf of the decedent and his estate. Defendants' counsel shall provide written notice to plaintiffs' counsel of any claims by a decedent's beneficiary within ten business day of receipt of such.

23. Any class member who believes that the amount of her back pay entitlement is incorrect must give notice of her objection in accordance with this paragraph. Within ninety days of receipt of a release specifying the back pay entitlement, any class member who believes that the amount of the back pay is incorrect shall give written notice of her complaint to plaintiffs' counsel, who shall give notice of the dispute to defendants' counsel within five business days; however, if a class member is separately represented, her counsel shall give written notice of the dispute directly to defendants' counsel within the ninety-day period. Failure to give notice within the 90-day period shall constitute a waiver of any objection to the amount of back pay. Defendants' counsel shall meet with counsel for the class member within seven business days after receiving notice of the dispute in an attempt to resolve the dispute. All counsel shall provide such information as may be required to resolve the matter, including the information on which defendants' back pay calculation was based. If no agreement on the correct amount of the class

member's back pay allotment can be reached, the class member may submit her complaint to the Court for final resolution.

SECTION IX

NEW PAY SCHEDULE FOR SPCTS

24. Effective as of January 1, 1991 the annual base pay rates for SPCTs shall be:

- Less than one year service in title -- \$29,690
- One year of service but less than two -- \$31,090
- Two years of service but less than three -- \$32,500
- Three years or more of service -- \$33,900

Any increases granted to PCTs and/or SPCTs pursuant to the October 1, 1990-December 31, 1991 DC 37 Economic Agreement and any amendments thereto (the "1990 Agreement") shall be added to the above amounts in accordance with the terms of the 1990 Agreement. For purpose of the above base pay rates, years of service shall be calculated in accordance with the current practice of the New York City Police Department for PCTs and SPCTs based on time in pay status.

25. SPCTs' paychecks shall reflect the new base pay rates within 60 days after the effective date of this Decree; provided, however, that any incumbent SPCT who has not delivered a release in accordance with Section VII above shall not receive her pay increase until she delivers such release.

26. Retroactive pay owed from January 1, 1991 to the date that an SPCT's paycheck reflects her new base pay rate shall be paid within 30 days after her paycheck first reflects the new base pay rate.

27. Any disputes regarding a class member's base pay rate or retroactive base pay shall be resolved in accordance with the procedures set forth in paragraph 23 above and shall be raised within 90 days of the class member's receipt of her first paycheck reflecting her new base pay rate or her receipt of her check for retroactive base pay.

SECTION X

NEW PAY SCHEDULE FOR PCTS

28. Effective as of January 1, 1991 the annual base pay rate for PCTs shall be:

- Less than one year of service -- \$22,250
- One year of service but less than two -- \$23,000
- Two years of service but less than three -- \$24,500
- Three years or more of service for those PCTs who refuse a Police Department request to be trained to perform the radio dispatching function--\$24,500.
- Three years or more of service for those PCTs who have not been radio trained, but have not refused to be trained--\$25,250.
- Three years or more service for those PCTs who have been radio trained--\$26,250

Any increases granted to PCTs and SPCTs pursuant to the 1990 Agreement shall be added to the above amounts in accordance with

the terms of the 1990 Agreement. For purposes of the above base pay rates, years of service shall be calculated in accordance with the current practice of the New York City Police Department for PCTs and SPCTs based on time in pay status.

29. PCT's paychecks shall reflect the new base pay rates within 60 days after the effective date of this Decree; provided, however, that any incumbent PCT who has not delivered a release in accordance with Section VII above shall not receive her pay increase until she delivers such release.

30. Retroactive pay owed from January 1, 1991 to the date that a PCT's paycheck first reflects her new base pay rate shall be paid within 30 days after the paycheck first reflects the new base pay rate.

31. In addition to base pay, radio-trained PCTs who perform radio dispatch duties shall be entitled to an annual assignment bonus calculated in accordance with the following schedule:

<u>Years of Service in PCT Title</u>	<u>60% or more of full schedule on dispatch</u>	<u>40%-59.99% of full schedule on dispatch</u>	<u>20%-39.99% of full schedule on dispatch</u>
Less than 1 yr.	\$ 1,250	\$ 830	\$ 420
1 year but less than 2 years	2,000	1,330	670
2 years but less than 3 years	2,500	1,670	830
3 years and over	2,750	2,330	1,170

32. The above bonus amounts shall be subject to the terms of the 1990 Agreement.

33. A PCT shall be deemed "radio-trained" and shall be eligible to receive an assignment bonus after she completes all required radio training.

34. For purposes of determining the assignment bonus a PCT has earned for the preceding year, the number of tours per year constituting a "full schedule" shall be calculated individually for each PCT as follows: 261 tours minus paid holidays, minus paid annual leave days and paid sick days earned during the preceding year, whether used or not. For example: A PCT with three years of service is presently entitled to 15 days of vacation, 12 days of sick leave and 12 holidays. Therefore, that PCT's individual schedule will have a maximum number of tours of 222 in any given year. If she works 134 tours (60%) or more of her individual schedule as a radio dispatcher, she will be entitled to the maximum bonus of \$2,750. When the percentage of tours on dispatch results in a fraction, the fraction shall be treated as follows: .5 and below will be rounded down to the next lower whole number, and over .5 will be rounded to the next higher whole number.

35. Night differential pay shall apply to assignment bonus payments as well as to base pay.

36. Bonuses shall be calculated on a calendar year basis, provided however that if a PCT leaves the PCT title before the end of the calendar year or completes radio training during the year, she will receive a pro-rated bonus based on the percentage of her pro-rated full schedule that she performed the radio dispatch function. For example: If a PCT leaves the PCT title after six

months of the calendar year and spent over 20% of the tours she actually worked during those six months performing the radio dispatch function, she shall be entitled to 1/2 of the bonus payable to PCTs at her seniority level who work 20%-39.99% on radio. Similarly, if a PCT completes radio training on June 30 and thereafter spends 20% of the tours she actually works performing the radio dispatch function, she shall be entitled to 1/2 of the bonus payable to PCTs at her seniority level who work 20% to 39.99% on radio.

37. Bonuses shall be paid annually within 60 days after the end of the calendar year.

38. The bonus shall be paid for all functions that are now designated to receive a "radio differential", in lieu of the radio differential. A list of positions which are eligible for the assignment bonus is attached as Exhibit A.

39. A PCT with three years or more of in-title service who refuses the Police Department's request that she take radio training shall revert to the salary level of a PCT with two years of service but less than three years of service, effective the pay period first following the date of refusal. Nothing herein precludes a PCT who previously refused radio training or who failed radio training from later becoming eligible for radio training. Nothing herein precludes the Police Department from taking appropriate disciplinary action, if any, under the Civil Service Law, or other applicable rules and regulations, against any PCT who refuses or fails radio training or who refuses to perform the radio dispatch function. Plaintiffs do not hereby waive any right to contest the disciplinary action in a

particular case as improper or inappropriate under Civil Service Law, applicable collective bargaining agreements or other applicable rules and regulations.

40. At the time that the PCT title was established certain PCTs were "grandfathered" into the new title, and were told that they would be assigned only to the radio dispatch function. These grandfathered PCTs shall be assigned to a radio dispatch function at least 60% of their time. A list of these PCTs is attached as Exhibit B.

41. There are certain PCTs who, as a consequence of seniority and merit increases, now earn base salaries that exceed the newly established pay schedules. The base salaries of these individuals shall be "red circled." A list of these PCTs and their current base salaries is attached as Exhibit C. These PCTs' base salaries shall remain at the higher "red circled" rates, provided, however that these PCTs shall continue to be eligible for collective bargaining, merit and longevity increases. The red-circling of base salary in no way affects a PCT's entitlement to her bonus according to the schedule set forth in paragraph 31 above.

SECTION XI

COMPENSATION TO NAMED PLAINTIFFS

42. In recognition of the time, effort and expenses contributed by the named plaintiffs (excluding AFSCME, District Council 37 and Local 1549), defendants shall, within 60 days following

the effective date of this Decree, pay each named plaintiff who was deposed in these actions the sum of \$4,000 and pay each named plaintiff who was not deposed the sum of \$2,000. A list of the named plaintiffs and the amount each will receive is attached as Exhibit D. As consideration for these payments, within 30 days of the effective date of this Decree each named plaintiff shall provide defendants' counsel with an executed release to be held in escrow until those payments are made.

SECTION XII

ATTORNEYS FEES AND DISBURSEMENTS

43. Subject to the Court's approval, in full satisfaction of all claims for attorneys fees, defendants agree to pay Janice Goodman \$400,000 and District Council 37, AFSCME, \$400,000. In addition, subject to the Court's approval, for disbursements paid in connection with this litigation, defendants have agreed to reimburse Janice Goodman an amount not to exceed \$25,500, and District Council 37, AFSCME an amount not to exceed \$100,250. Subject to the Court's approval, defendants shall pay such sums to counsel within 60 days following the effective date of this Decree.

SECTION XIII
DISPUTE RESOLUTION

44. It is the intent of the parties that every good faith effort will be made to resolve any disputes relating to the implementation or enforcement of this Decree through informal conciliation. To that end the following procedure for dispute resolution is adopted. In the event that any party has reason to believe that any other party is not in compliance with any provision of this Decree, or has taken action the effect of which will undermine this Decree, counsel for the complaining party (or any one of them) shall give notice of the complaint to counsel for the other parties in writing within a reasonable time in light of the facts and circumstances of the complaint. Counsel shall meet within seven business days of their receipt of such notification, or on a later date agreed upon by all counsel who must attend. The parties shall make good faith efforts to resolve the dispute. If counsel for the complaining party has a good faith belief that irreparable harm may occur absent immediate action, then upon written notice to counsel for the other parties (including telefax notice), the parties shall meet within 48 hours (not including weekends) to make a good faith effort to resolve the dispute. All counsel shall make available to other counsel upon request, such information as may be reasonably required to investigate and conciliate the dispute. In the event that the parties are unable to resolve the matter through informal conciliation, any party may petition the court for relief.

SECTION XIV
NOTICES TO COUNSEL

45. Notices to counsel required by this Decree shall be given in writing by first-class mail, telefax or hand delivery. All such notices shall clearly reflect on the first page that they relate to "the 911 Settlement." Notices to plaintiffs' counsel shall be addressed to the following persons or to such other persons as they shall designate in writing:

Janice Goodman, Esq.
500 Fifth Avenue, Suite 5225
New York, New York 10110

and

Audrey A. Browne, Esq.
District Council 37
125 Barclay Street
New York, New York 10007

Notices to defendants' counsel shall be addressed to:

Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007
Attn: Chief, General Litigation Division

SECTION XV
TREATMENT OF PAYMENTS

46. Payments made under this Decree shall be without interest, except if the payments required by Section VIII (back pay), Section XI (compensation to named plaintiffs) and Section XII (attorneys fees and disbursements) are not made by the dates

specified in those sections of the Decree, defendants shall pay interest at 6% from the date the payment should have been made to the date of payment. The City shall treat payments made, except payments made pursuant to Sections XI and XII, as ordinary income for purposes of federal, state and local income tax reporting and withholding, and any other legally-required deductions and garnishment laws. The City shall treat payments made to the named plaintiffs pursuant to Section XI as compensatory damages and no deductions shall be made. The City shall not treat back pay payments made pursuant to Section VIII as wages, salary or compensation for purposes of any employee benefits, public employee retirement systems and/or pension plans, irrespective of the pension tier status of the employee, and no credit or benefit will accrue under such benefits, systems or plans by reason of these payments. The City shall treat payments made pursuant to Sections IX and X as compensation for purposes of employee benefits and pension plans.

Consented and agreed to this 19th day of April, 1991 by counsel representing the following parties.

JANICE GOODMAN, ESQ.

Attorney for Individual Named
Plaintiffs and the Classes.
They Represent
500 Fifth Avenue
Suite 5225
New York, New York 10110

AUDREY A. BROWNE, ESQ.

Attorney for Individual Named
Plaintiffs and the Classes They
Represent and for AFSCME,
D.C. 37 and Local 1549
District Council 37
125 Barclay Street
New York, New York 10007

WINN NEWMAN, ESQ.

Attorney for Individual Named
Plaintiffs and the Classes They
Represent and for AFSCME, D.C.
37 and Local 1549
Newman & Newell
1920 N Street, NW, Suite 430
Washington, D.C. 20036

VICTOR A. KOVNER
Corporation Counsel of the
City of New York

By:

Attorney for Defendants
100 Church Street
New York, New York 10007

SO ORDERED:

Dated: New York, New York

, 1991

United States District Judge

**911 POSITIONS ELIGIBLE
FOR PAYMENT OF RADIO
ASSIGNMENT DIFFERENTIAL**

1. Precinct Activated Response Program (P.A.R.)
2. P.A.R. Pilot Project
3. Quality Control
4. 8th Floor Training
5. 9th Floor Training (includes entry level SPRINT and radio training)
6. Temporary Assignment to Fire Department (if working as a radio dispatcher at the time of assignment to the Fire Department).

**"GRANDFATHERED" OR "RED TAGGED"
PCTs WHO ARE FULL-TIME
RADIO DISPATCHERS**

1. Barisic, Michael
2. McKnight, Thomas
3. Melot, Richard
4. Crevatas, Raymond
5. Gonsalves, Jose
6. Cahill, Debra
7. Ferris, William
8. Gomez, Gabriel
9. Green, Louise
10. Braxton, Elaine
11. Covington, Nathaniel
12. Williams, Ellen
13. Durr, William
14. Roberts, Stanley
15. Ducalo, Mary (MELD)
16. Rostock, Michael (MELD)
17. Maiorano, Guy (MELD)

**PCTs PRESENTLY
EARNING BASE SALARIES
THAT EXCEED THOSE
IN THE NEWLY
ESTABLISHED PAY SCHEDULE**

1. Susan Amatuzio
2. Joseph Annao
3. Charles Faison
4. Carl Flood
5. Franklin Ford
6. Alvin Gibbs
7. Gabriel Gomez
8. Edward Gopaulsingh
9. John Jones
10. Lenore Kaufman
11. Emmett McPherson
12. Francisco Rodriguez
13. John Sutherland
14. Herbertson Williams
15. George Wright

NAMED PLAINTIFFS

Scotti, et al. v. City of New York, et al.

<u>Name</u>	<u>Amount to Be Paid</u>
Linda Scotti	\$4,000
Sheila Randle	\$4,000
Diana Witkowski	\$4,000
Jon Ng	\$4,000
Pedro Morales	\$4,000
Velma Boone	\$4,000
Carol Johnson	\$4,000
Raymond Lira	\$4,000
Richard Liuzzi	\$4,000
Howard Tompkins	\$4,000
Reginia Tobin	\$4,000
Jean Brett	

AFSCME, et al. v. City of New York, et al.

<u>Name</u>	<u>Amount to be Paid</u>
Yvonne Chapelle	\$4,000
Edward Gopaulsingh	\$2,000
Sharan Harding	\$4,000
Geraldine Martin	\$4,000
Mary McCarthy	\$2,000
Barbara Whyte	\$4,000

CITY OF NEW YORK
Office of Collective Bargaining

In the Matter of the Arbitration between

District Council 37, AFSCME, AFL-CIO
(Police Administration Aides, Senior
Police Administrative Aides)

and

City of New York
(Police Department)

Opinion and Award

of

Arbitrator

Case Number: A-6683-97

Arbitrator: Maurice C. Benewitz

Appearances:

For the Union: Audrey A. Browne, Esq., Of Counsel

For the City: Robert Hershkowitz, Esq., Associate General Counsel

Eleven hearings were held before the undersigned arbitrator between July 12, 2002 and February 26, 2004 to consider a controversy in which the parties were unable to agree upon a submission. The arbitrator ruled that, pursuant to the Civil Practice Law and Rules, he would select the question to be decided. District Council 37 submitted the following issue which the arbitrator has selected as the question to be decided.

Did the NYPD assign the duties of the Police Administrative Aide and Senior Police Administrative Aide titles, as described in the job specifications of such titles, to other titles, including the police officer titles. If so, are these duties substantially different from the duties of such other titles described in the job specifications of such other titles? If so, what shall be the remedy for the alleged New York City Police Department's violation of Article VI, Section 14 of the Clerical Administrative Unit Contract?

(The City proposed the following submission - which the arbitrator has decided was not the issue to be decided:

Did the New York City Police Department assign the duties of the police Administrative Aide and Senior Police Administrative Aide titles, as described in the job specifications of such titles to Police Officers? If so, are these duties substantially different than the duties of Police Officers and therefore a violation of Article VI, Section 14 of the Clerical Contract? If so, what shall the remedy be?)

The reason for this difference arose because, according to the City, the Demand for Arbitration referred only to "Police Officers." However, the evidence set forth in this lengthy proceeding showed that police personnel in a number of titles were assigned to and performed the job duties in dispute. If violations occurred, those violations involved sergeants, lieutenants and police personnel in a number of titles. The dispute can be decided dispositively only by considering whether all of the personnel identified engaged in reverse out-of-title duties. Otherwise, similar arbitrations concerning titles other than police officers would arise in the future. The issues and evidence presented in such potential proceedings would be identical to the issues and evidence relating to police offers only. Limiting the question only to alleged performance of reverse out-of-title work by police officers would not finally resolve the issue. In deciding to rule on the question of whether alleged activities of all titles constituted a breach of the District Council 37 contract, the arbitrator would bring finality to the controversy. Therefore, he selected the broader question submitted by District Council 37 as the question before him.

These proceedings were transcribed, and the arbitrator has read the record as he prepared this decision. There was an initial question of whether the dispute substantively was arbitrable. The arbitrator issued an interim award finding that neither the doctrine of res judicata nor that of collateral estoppel could be presented before him as reason(s) for finding the issue non-arbitrable. Pursuant to the New York City Collective Bargaining Law, the Board of Collective Bargaining, and not the arbitrator, is empowered to decide whether, pursuant to the Law, application of either the doctrine or res judicata or the doctrine of collateral estoppel may require that an arbitration on an issue can be estopped.

In seeking to estop the arbitration, the City alleged that prior awards by Arbitrator Benjamin Wolf and by the instant arbitrator had decided the identical issue being presented. The arbitrator shall later discuss whether the Wolf and Benewitz awards require application of the doctrine of stare decisis or whether those awards are at least persuasive with regard to the issues here at stake. Briefs were presented by the parties, and the instant proceeding was closed.

The Contract

At the time this grievance was filed, DC 37 and the City were bound by a collective bargaining agreement covering the period 1992 to 1995.

Article VI, Section 1, read in relevant part:

The term "Grievance" shall mean

...

(c) A claimed assignment of employees to duties substantially different from those stated in their job specifications.

Article VI, Section 14 read:

Notwithstanding any other provision of this agreement, the parties agree that Section 1 (c) of this Article VI shall be available to any employee who claims to be aggrieved by an alleged assignment of any City employee, whether within or without the collective bargaining unit defined in Article I, Section 1 of this Agreement, to clerical duties which are stated in the aggrieved employee's job specifications but are substantially different from the duties stated in the job specifications for the title held by such other City employee." Light duty assignments of permanent City employees, within or without the collective bargaining unit defined in Article I, Section 1 of this Agreement, who have been certified by the appropriate procedures, shall be excluded from this provision. Grievances arising pursuant to this provision may be taken directly to Step IV of Section 2 of Article VI upon election by the Union.

Stipulations

In the course of the proceedings, the parties entered into a number of stipulations.

They read:

Joint Stipulations of Fact (Entered 1/9/01)

1. Police Officer recruits are not required to pass a typing test to become a Police Officer.
2. PAAs must pass a typing test where they type 35wpm with no more than 3 errors.
3. Candidates for the PAA title are not required to pass a trigger pull test, have a valid driving license, run any distances, lift any weights, be tested for body fat composition or be below the legal age to be appointed to the PAA title.
4. PAAs and SPAAAs must serve a one-year probationary period.
5. Police Officers must serve a two-year probationary period.

Joint Stipulations of Fact (Entered 11/27/02)

1. Police Officers must pass a firearms' test before graduating from the Police Academy and they are required to remain qualified for firearms' usage and possession as a condition of their continued employment.
2. Police Officers must pass physical performance tests consisting of running, physical strength and agility before graduating from the Police Academy.
3. Police Officers must pass a driving test before graduating from the Police Academy.

Joint Stipulations of Fact (Entered 2/9/04)

1. Currently, in order to be eligible for appointment to the civil service title of Police Officer (title code 70210), by the date of appointment, a candidate must be a U.S. citizen, be between the ages of 22 and 35, possess a valid New York State Driver License, have successfully completed 60 semester credits at an accredited college or university with a 2.0 cumulative Index or its equivalent, or completed a four-year high school diploma or its educational equivalent and have completed two years of honorable full-time U.S. military service.
2. In order to be eligible to sit for the competitive civil service examination for the title of Police Officer, a candidate is required to possess the minimum qualifications listed on the Notice of Examination for the Police Officer title (title code 70210).
3. In order to become eligible for appointment to the title of Police Officer (title code 70210), a candidate must first take and pass a written multiple-choice competitive civil service examination.
4. Appointees to the title of Police Officer (title code 70210) must pass the Police Academy firearms, academic, physical performance, and driving tests before being graduated from the Police Academy.

5. As part of the academic portion of their training at the Police Academy, Police Officers must also pass an academic test, which includes taking information and filling out reports as part of their patrol duties.
6. On the date of appointment as a Police Officer, a valid unrestricted New York State Driver License is required. Such license must be maintained throughout a Police Officer's employment with the NYPD.
7. Besides passing all of the courses offered in the Police Academy, a candidate is also required to pass medical and psychological examinations, a drug test and a background check in order to be appointed as a Police Officer.
8. Police Officers must remain qualified for firearms' usage and possession as a condition of employment for the duration of their tenure. The ability to qualify, and remain qualified, in the use of firearms is essential for all uniformed positions, including Police Officer.
9. Firearms qualification tests are administered annually. Failure to qualify and remain qualified for firearms' usage and possession may result in termination of the police officer, regardless of rank.
10. While attending the Police Academy, candidates for the title of Police Officer are not required to take and pass courses in English grammar, spelling, punctuation, vocabulary, proofreading, math, typing or word processing, data processing, or the operation of business machines, telephone switchboard techniques, processing of payroll records, preparing time and leave reports and inquiries in order to become a Police Officer.

Joint Stipulations of Fact (Entered 2/9/04)

1. The parties agree that Roll Call Offices exist throughout the Department.
2. The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the Roll Call Office all perform the same functions and fill out the same forms.
3. The parties agree that Payroll Offices exist throughout the Department.
4. The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the Payroll Office all perform the same functions and fill out the same forms.
5. The parties agree that Crime Analysis/COMPSTAT Offices exist throughout the Department.
6. The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the Crime Analysis/COMPSTAT Office all perform the same functions and fill out the same forms.
7. The parties agree that Communications Offices exist throughout the Department.

- 8 The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the Communications Office all perform the same functions and fill out the same forms.
- 9 The parties agree that the Captain's Lead/Clerical function exists throughout the Department.
- 10 The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the Captain's Lead/Clerical function all perform the same functions and fill out the same forms.
- 11 The parties agree that 124/Complaint Rooms exist throughout the Department.
- 12 The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the 124/Complaint Room all perform the same functions and fill out the same forms.
- 13 The parties agree that the position of Telephone Switchboard exists throughout the Department.
- 14 The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the position of Telephone Switchboard all perform the same functions and fill out the same forms.
- 15 The parties agree that the position of Integrity Control Office - Clerical exists throughout the Department.
- 16 The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the position of Integrity Control Office - Clerical all perform the same functions and fill out the same forms.
- 17 The parties agree that the position of Community Policing Unit - Clerical, as distinguished from Community Policing Unit - Coordinator exists throughout the Department.
- 18 The parties agree that Police Officers and Police Administrative Aides and Senior Police Administrative Aides assigned full time to the position of Community Policing Unit - Clerical, as distinguished from Community Policing Unit - Coordinator, all perform the same functions and fill out the same forms.
- 19 Members in the positions identified above may be assigned to perform additional duties as directed by competent authority.

The Controversy

District Council 37 has initiated this proceeding by filing a group grievance on behalf of Police Administrative Aides (PAA) and Senior Police Administrative Aides (SPAA) who have been hired to perform clerical and ministerial non-law-enforcement functions in the New York City Police Department. The stipulations show that these functions also are being performed by sworn personnel in the Department. The question presented is whether these duties can be assigned to such officers and senior officers in the Department by the Police Commissioner.

Three matters of fact and/or of law are issue here. First, do the duties assigned to sworn personnel overlap duties assigned to and required by the job descriptions of the aides and senior aides? Secondly, are these duties substantially different from the duties which may be assigned to sworn personnel (in the absence of any formal job description for such personnel)? Can the Police Commissioner, under his Charter authority, assign police personnel to perform tasks which arguably invade the job jurisdiction of DC 37 personnel?

The job specifications of the DC 37 personnel show, and the adopted stipulations reinforce, that PAA/SPAA employees must possess typing, grammer and other skills and knowledge for which sworn officers are not trained or tested. (See 1/9/01 stipulations 1, 2 and 2/9/04 stipulation 10).

The City asserts that no proof can be found to prove that in doing the tasks at issue officers have engaged in duties substantially different from those in the Officers' job specifications. That is due to the fact that

[a] job specification was never issued for the title [Police Officer] or its predecessor, because of the Commissioner's authority to assign duties to Police Officers as he deems appropriate and necessary.

Notices of Examination promulgated prior to civil service examinations for the positions include "a general description of duties, [but] it is in no way a complete list of the duties of a Police Officer," the City contends.

The Union asserts that this allegation is incorrect. Section 22 of the Civil Service Law allegedly requires a formal job specification:

[B]efore any new position shall be created, the proposal for such shall include a statement of the duties of the position.

Chapter 35, §815 of the New York City Charter, the Union submits, authorizes the Commissioner of the Department of Citywide Administrative Services (DCAS), among other powers, to "classify positions". And §815 empowers each agency head, including the Police Commissioner, to manage his/her agency "subject to the civil service law and applicable provisions of the City Charter." Pursuant to §817 of the Charter "appointments, promotions and changes in status" must be in accordance with the Civil Service Law and may not be inconsistent with laws or the City Charter.

DC 37 notes that Sherry Schultz, Director of DCAS, testified that the Police Officer title has no official job specification. But if true, the Union asserts, this status ignores the requirements of the Civil Service Law and of the City Charter.

Nevertheless, when the Police Department requested the creation of the PAA and SPAA titles, the DCAS procedure would have required a check with the Office of Labor Relations and a finding that the two titles did not have a impact on existing collectively bargained titles. That would mean that "DCAS was not of the view that the duties described [for PAA and SPAA] could be performed by any existing title"; DC 37 argues.

If indeed no job specification exists for the Police Officer title so that it cannot be determined from one whether PAA/SPAA duties are also assigned to sworn personnel, then other City documents can be consulted to find an answer, the Union contends.

DC 37 submits:

It has been a long-standing practice of the Department of Citywide Administrative Services ("DCAS" formerly DOP) that a Notice of Examination ("NOE") supersedes a job specification to the extent that the NOE contains new duties or qualifications.

This allegedly is supported by the ruling of Arbitrator Jonathan Leibowitz in City of New York Department of Environmental Protection and Local 375 (A6621-91).

Arbitrator Leibowitz noting the testimony of Ms. Schultz, wrote:

The City cited the testimony of Ms. Sherry Schultz, Director of Classification and Compensation, Bureau of Examinations, Department of Citywide Administrative Services (DCAS), that when a notice of examination supersedes a job specification, the notice governs because it is based on incumbent interviews and field observations. Ms. Schultz stated that DCAS tries to update the job specification, but it is not always done.

Union Exhibit 52 is a directive to agencies which states that the most recent NOE will supercede the last job specification. According to Business Representative Ron Arnero, DCAS personnel told him that the Notice of Examination was the job specification for the Police Officer title, code 70210. So the job duties of Police Officers, Sergeants, Lieutenants and Captains can be determined from the Notices of Examination for these titles (Exs. J-6, 15, 16 and 17), the Union contends. None of these documents specifically state that the sworn personnel will be tested for ability to perform clerical duties.

However, the NOEs for Police Officer, Sergeant, and Lieutenant, after listing a number of specific duties which include preparing forms and reports; reviewing of reports, forms and logs; and similar functions include the words "and perform related work." Sergeants and Lieutenants must also "perform special assignments" as directed by the Police Commissioner. Apparently, it is these words upon which the City depends in arguing that the Police Commissioner may assign these sworn ranks to perform clerical duties included in the job descriptions of the PAAs and the SPAAAs.

DC 37 acknowledges that Article VI, Section 14 of the clerical contract permits the assignment of the duties at issue to police personnel who have been certified as requiring light duty assignments. Furthermore, the Union does not dispute the testimony of Lt. James O'Connor

that P.O.s are required to make certain written records of their activities, including making daily entries in their memo books, preparing Monthly Activity Reports, tallying summonses they have issued and turning in complaint reports and various other forms for processing. Lt. O'Connor testified that P.O.s are generally required to sign, complete and submit such reports and forms either at the completion of their tour and/or during their meal breaks.

No claim is presented that such work invades the jurisdiction established by the PAA/SPAA job specifications or the clerical agreement.

What is at issue is work to which the parties stipulated. The stipulations show that PAAs, SPAAAs and police personnel performed in the following locations and did identical work:

1. Roll Call Offices
2. Payroll Offices
3. Crime Analysis/COMPSTAT Offices
4. Communication Offices
5. Captain's Lead/Clerical
6. 124/Complaint Room
7. Telephone Switchboard
8. Integrity Control Office-Clerical
9. Community Policing Unit-Clerical

In addition, there were, and are, other clerical duties performed by sworn personnel which cannot be grouped or identified so specifically.

That such duties are performed by police personnel is not disputed by the City.

Its brief states:

The record establishes that Police Officers are presently performing clerical functions and have been doing so for more than thirty years.

But, it is argued in the same paragraph,

The record also establishes that the Union has not met its burden of proving that such clerical duties are substantially different from the duties in the Police Officer job description.

This is the crux of the issue. For the Union to prevail here, it not only must show that the clerical duties at issue are covered by the PAA/SPAA job descriptions and the clerical contract, it also must show that the duties performed by the Police Officers are substantially different from those in the [allegedly non-existent] job specifications.

Since the City has conceded and stipulated that Police Officers perform the clerical duties at issue, it is unnecessary to examine the voluminous Union proof entered to show that police personnel are performing such duties. It is necessary to investigate whether the assignment of the duties to the police personnel amounts to assignment of work substantially different than the job duties in their specifications and, if so, whether the Police Commissioner has the authority to make such assignments.

As noted, the City argues that the Union has not met its burden of showing that the functions involved are substantially different from the regular job duties of the sworn personnel. That is because, according to the City,

[a] job specification
was never issued for
the title [Police
Officer], or its
predecessor, because
of the Commissioner's
authority to assign
duties to Police Officers
[and, presumably, to
higher ranking personnel]
as he deems appropriate
and necessary.

The DCAS description of duties in the various Notices of Examination are not complete lists of the duties of the officers in various ranks. Previous awards by Arbitrators Wolf and Benewitz have recognized the "Commissioner's statutory authority to assign duties to Police Officers."

The Union, it is contended, has not established that the PAA and SPAA titles "were created to replace the uniformed force rather than supplement it."

If there are no job descriptions for the uniformed force, it is argued, there can be no assignment differing from those non-existent descriptions. Therefore, the City contends, Article VI, Section 14 cannot have been violated.

DC 37 submits that sworn personnel obviously perform duties covered by the PAA and SPAA job descriptions. Indeed, that has been stipulated in this proceeding.

Since the Civil Service Law requires that every civil service position must have a job description, the NOEs, as Arbitrator Leibowitz ruled, serve as descriptions. The listed duties in these NOEs never specify the functions here at issue, it is noted, and the training of police personnel at the Academy does not deal with the clerical skills necessary to perform the contended activities. DC 37 writes:

That P.O.s fill out various forms is not at issue here. In the main, what is at issue, is whose full-time duty it is to type, correct, finalize, copy, input data, record, tally, file, distribute, forward and otherwise process and, in some areas, to analyze such documents once they have been handed in by the police officers.

The Union concedes that different job titles can have overlapping duties, as Ms. Schultz testified. That, allegedly, is not the case in this matter.

The PAA and SPAA titles were created to provide clerical/administrative support to P.O.s throughout the NYPD. The P.O. titles were created to perform "general police duties".

This means, it is asserted,

that the titles at issue in this case are classified in different occupational groups, that the duties described in their job descriptions [or duties set forth in the various police NOEs] are substantially different and that such duties do not overlap.

The testimony of Executive Deputy Comptroller Roger Liwer about the process which determined whether certain police activities could be civilianized is cited. The audit which was undertaken led to the establishment of the PAA/SPAA titles. The criteria used by the auditors, Mr. Liwer testified, were:

whether there was any statute or regulation or law that required a position to be occupied by a uniformed officer, whether any contract, labor contract, required a uniformed officer to be involved, or prohibited a civilian from being involved, whether the position required the skills of a law enforcement officer, and the fourth was related to the duties themselves. [If the answers to these questions were no, the auditors determined] whether the position was occupied by a person more than half time. If the answer to that final question was yes, his auditors concluded that the position could be civilianized.

The Union does not challenge the authority of the NYPS to manage its work force. The Collective Bargaining Law allows such authority unless the right has been limited by the parties in a collective bargaining agreement. When the arbitrator asked Ms. Schultz whether this language in the CBL limited the Police Commissioner's power to assign duties, the DCAS Director said:

the Police Commissioner can define the work that will be performed by uniformed employees of the police department and he can include in that work anything.

DC contends, however, that

except in a temporary emergency [the Commissioner] does not have the unrestricted authority to assign P.O.s to the duties of other titles in contravention of the law.

Furthermore, the Mayor's Office of Labor Relations and DC 37

placed limits on such
authority when they
agreed upon the clear
and unambiguous language
of Article VI, Section
14 of the Clerical
Unit Contract.

Aside from "light duty" assignments, Section 14, it is argued,

unmistakably limits the
Police Commissioner's
authority to assign
police officers to the
substantially different
clerical duties of
PAAs and SPAAs.

Section 434 of Chapter 18 of the New York City Charter does not give the Commissioner the authority to assign the clerical duties to uniformed personnel, the Union submits. What §434 says is

The Commissioner shall
have the cognizance and
control of the government
administration, disposition
and discipline of the
department, and of the
police force of the
department.

The Courts, in cited cases, have not read §434 as expansively as the City does in the instant matter, the Union contends.

The NYPD Patrol Guide, an unilaterally issued document, also is cited by the City in some arguments. But the rules issued by a department cannot take precedence over bargained limitations, DC 37 asserts.

In summarizing its argument on the authority of the Commissioner to assign duties, the Union asserts:

As is clear from the
decisions cited herein,
neither the courts nor
the BCB nor any arbitrator

have found laws or regulations that give the Police Commissioner the authority to violate the parties' negotiated agreement. To the contrary, the Board has specifically indicated that the parties can, as they have here, place limits on management's rights.

The Union argues that the doctrine of stare decisis should not apply to support the City position because no similar award on precisely the same issues has issued. It is contended that because the prior Wolf and Benewitz awards were on different, if similar issues, the awards should not be considered persuasive either. On the other hand, allegedly, there are court, BCB, and arbitration decisions which should lend persuasive weight to DC 37's position.

In defending "civilianization" against PBA unfair practice charges before the BCB, the City asserted that it was trying to deploy its police force in a way which would maximize delivery of police services, it is noted. Civilian personnel, the City said, were being used to perform operational functions as opposed to the delivery of police services. The Board denied the improper practice claim and found that use of civilians was

a valid exercise of statutory
management right...

It was not an improper practice.

Other BCB decisions are cited. DC 37 noted that the Board has ruled that management rights can be limited at collective bargaining. Supporting court and arbitral decisions are noted and discussed at length,

The reasons why the Wolf and Benewitz awards should not apply are specified by the Union. The statements of job duties are much more detailed today than at the time of the Wolf award. Those enumerations today include specific clerical/administrative

duties. The omission of such duties from a detailed list (set forth in the NOEs) indicates that the officers were not expected to perform the duties, DC 37 submits. In the Wolf arbitration, the question of whether officers were performing duties substantially different from those in the duty list contained in the NOE was never raised.

In the prior case before the instant arbitrator, the Union contends, the matter

did not violate the present
disputed contract provision,
the same job descriptions at
issue in this matter, the
systemic assignment of P.O.s
to clerical duties throughout
the NYPD, nor did it involve
the same parties to this
dispute.

The arbitrator finds these two awards sufficiently different from the present case that the doctrine of stare decisis shall not be applied.

In summary the Union contends:

The record is clear that the
Employer regularly assigns
duties stated in the job
specifications of the PAA
and SPAA titles to P.O.s
of various ranks, which
duties are substantially
different from the duties
of these uniformed titles
in violation of [Article VI,
Section 14] of the Clerical
Unit Contract.

District Council 37 requests the arbitrator, pursuant to Article VI, Section 2 of the contract,

to order Employer to immediately
cease assigning the clerical
duties of the PAA/SPAA titles
to P.O.s throughout the
Department [and to order]
Employer to assign said
clerical duties to appropriate
titles.

The Union also has requested the arbitrator, if he finds for DC 37, to

retain jurisdiction over
this matter in order to
provide any necessary
guidance on the inter-
pretation or implementation
of his award.

Discussion

The arbitrator is certain that the Police Commissioner, the Office of Labor Relations, and the City would not consciously and specifically violate the jurisdiction agreed upon by the City in the Clerical Unit Contract. Nevertheless, the assignment of Police Officers, Sergeants, Lieutenants and Captains to perform clerical/administrative duties for a substantial portion of their work day is a breach of jurisdiction and one which is covered by Article VI, Section 14. Officers have been assigned to duties substantially different from those in their [established] job descriptions.

The City's position is based on two fundamental errors. The first is the belief that there are no job specifications for the various police ranks and that, therefore, the Police Commissioner can assign officers to do "anything", as Ms. Schultz testified on cross. The second fundamental error is the belief that the Commissioner, pursuant to §815 of the City Charter, has authority to assign uniformed personnel to work which has been ceded in collective agreements to other groups of employees.

The City position that there exists no job specifications for the various ranks - through Captain at least, flies in the face of requirements in the Civil Service Law and other basic documents. Existence of a job specification is a legal condition precedent to the creation of any civil service position. If there were no job descriptions, the police positions legally could not have been established. Thus, even if the City has refused to provide a description to the PBA when demanded at bargaining, a description - under another name - does exist. Not only have arbitrators

found that functions listed in a NOE can replace earlier job descriptions, but according to information given to Mr. Arnero by classifier's in Ms. Schultz's agency, a NOE can take the place of a non-existent job specification. This must be true because otherwise every police position in the City of New York would represent a violation of the Civil Service Law, an impossible situation. The arbitrator finds and rules that in the absence of an issued job description for the four police ranks involved, the NOEs provide such descriptions and are the promulgations required by the Civil Service Law.

In such case, the duties set forth in the NOEs can be consulted to determine whether the full-time assignment of sworn personnel to clerical/administrative jobs - as stipulated by the parties and as admitted in the City brief - represents a direction for police personnel to perform duties substantially different from their NOE - listed functions. Since no specific language about clerical/administrative duties is included in any NOE list, the argument that such duties are required must rest on the words on the NOE lists such as "and performs related duties."

An invasion of the bargained jurisdiction of another union cannot be based on such non-specific words. Even if in the end the NYPD is found to be incorrect in its assignment of clerical/administrative duties to police ranks, it at least would have had an argument if such clerical/administrative duties were listed in the NOE duty list. In such case, an arbitrator might have been called upon to determine whether such duties could be listed. In the instant case, there was no specific language in the NOEs concerning the duties in dispute.

The arbitrator finds and rules that the assignment of police personnel to the sort of clerical/administrative functions set forth in the stipulations is a violation of Article VI, Section 14 of the Clerical Unit Contract. The duties covered by the stipulations are substantially different from the job duties set forth in the NOEs.

Can the Police Commissioner pursuant to §815 of the City Charter nevertheless direct a performance of duties which is in violation of Article VI, Section 14 of the Clerical Unit Contract? The arbitrator finds and rules that the Police Commissioner cannot do so. Section 815 itself recognizes that the powers of the Commissioner - or of any agency head - can be limited by collectively bargained agreements entered into by the City with various Unions. As noted, the City did enter into the Clerical Unit Contract with District Council 37 which established clerical/administrative jurisdiction. The power to assign administrative/clerical duties is limited by that jurisdiction of the Clerical Unit agreed upon with DC 37, and the Commissioner does not have the authority to breach that jurisdiction - except in emergency or with regard to the assignment of "light duty" Police Officers.

In light of this determination, the arbitrator shall grant the Union request to order Employer immediately to cease assigning the clerical duties of the PAA/SPAA titles to Police Officers throughout the Department. The arbitrator also shall order the assignment of the clerical duties to appropriate titles.

The parties shall be directed to devise an efficient and rapid procedure for identifying officers assigned to the clerical/administrative duties. Pursuant to the other orders noted above, such officers must be returned to police duties and persons in the PAA/SPAA titles must be assigned to the work.

The Union has asked the arbitrator to retain jurisdiction so that he can guide interpretation and administration of this award. The arbitrator does not retain jurisdiction upon the request of one party. If the City also joins in this request, the arbitrator shall retain - or rather reassume - jurisdiction.

In light of the foregoing discussion, I, the undersigned arbitrator, having been designated in accordance with the arbitration agreement executed by the parties, and having received the testimony and evidence of the parties at a hearing at which each was ably represented by counsel, issue the following

AWARD

1. The City (Police Department) has violated Article VI, Section 14 of the Clerical Unit Agreement by assigning job duties of PAA/SPAA employees to members of the Police Department although these duties are substantially different from the duties of police personnel set forth in Notices of Examination for Police Officer, Sergeant, Lieutenant and Captain.

2. The Police Commissioner shall immediately cease and desist from assigning the duties at issue (clerical/administrative) to police personnel of various ranks.

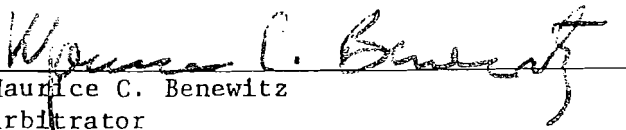
3. The Police Commissioner shall forthwith assign PAAs and SPAAs to perform those duties.

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

I, Maurice C. Benewitz, do affirm upon my oath as arbitrator that I am the individual described in and who executed this statement, which is my award.


Maurice C. Benewitz
Arbitrator

Dated: September 2, 2004
Manhasset, New York

EDDIE RODRIGUEZ, *PRESIDENT*
LENORA D. GATES, *EXECUTIVE V.P.*
RALPH PALLADINO, *2ND V.P.*
ALVIN WILLIAMS, *3RD V.P.*
JOSE LUIS CRUZ, *SECRETARY-TREASURER*
LORETTA Y. JONES, *RECORDING SECRETARY*



Sergeant-At-Arms
PAMELA BLOUNT ALVIN CARTER
CYNTHIA HILL GLADIS RIVERA
Officers-At-Large
GWENDOLYN BEVERLY DERRICK DAVIS
CARMEN FLORES MARY RUTH KELLY
PAMELA RODRIGUEZ

NYC Clerical-Administrative Employees Local 1549, District Council 37, AFSCME, AFL-CIO

June 10, 2008

**Local 1549 Opposition and Objections and Response to
NYC Department of Citywide Administrative Services
Report of March 28, 2008 Submitted to be in Substantial
Compliance with Section 65(5)(b) of the New York State
Civil Service Law**

INTRODUCTION

Local 1549 NYC Clerical Administrative Employees' DC 37 American Federation of State County and Municipal Employees respectfully submits its response to **NYC Department of Citywide Administrative Services (DCAS)** Commissioner Martha K. Hirst's letter and Report, dated, March 28, 2008 to Lillian Roberts, Executive Director, **District Council 37** pursuant to **Section 65(5)(b) of the New York State Civil Service Law** as it relates to Local 1549. That DCAS report was also sent to the New York State Civil Service Commission for approval, which L.1549 opposes.

This proposal violates the **NYS Constitution, Article V, Section 6**, which provides that: "Appointment and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive..." ¹ It is Local 1549's position that the Competitive Class is appropriate and necessary for the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) (911) within the New York Police Department and the Call Center Representatives.(CCR) within the Department of Information Technology and Telecommunications (DoITT) (311).

These titles have had merit and fitness ascertained by examination since their establishment decades ago. Recall the heroism of the PCTs AND SPCTs on Sept. 11, 2001 in responding emergency calls during the terrorism attack on New York City and the United States.

All the facts presented herein lead to a conclusion that the present Competitive Class merit system should not be changed for these titles as DCAS Proposes. The Remedy for DCAS to be in compliance with Section 65(5) (b) in this instance is to give civil service examinations and appointments and not to seek the reclassification of NYPD emergency response PCT and SPCT public safety communications titles out of the Competitive Class.

Local 1549 strenuously objects to the personnel actions DCAS proposed in the Plan regarding the following Local 1549 titles:

- (1) The consolidation of the **Police Communications Technician** (PCT) and **Supervising Police Communications Technician** (SPCT) titles to Police Communications Technician—Assignments Levels I and II (See Attached Job Specifications);
- (2) The Reclassification of the PCT and SPCT titles from Competitive to Non-Competitive and
- (3) The **Call Center Representative** Title Reclassified from Competitive to Non-Competitive and renamed Customer Service Representative (State Title). See Attached Job Specification);

PRESENTATION AND ANALYSIS OF OBJECTIONS AND OPPOSITION

Local 1549 represents approximately [124] Supervising Police Communications Technicians and [1,101] Police Communications Technicians within the New York Police Department's 911 Public Safety Answering Center (PSAC) and [305] Call Center Representatives within the Department of Information Technology and Telecommunications (DoITT)'s 311 Customer Service Center based on the March 14, 2008, NYC Comptroller's payroll run.

THE DCAS PROPOSAL VIOLATES NY CIVIL SERVICE LAW

It is Local 1549's position that DCAS proposes to come into compliance with **Section 65(5)(b)** of the New York State Civil Service Law by violating other Sections of the law namely, the Classification and Consolidation Sections of the Civil Service Law as it launches its Provisional Reduction Plan.

LOCAL 1549 REQUEST FOR INVESTIGATION AND HEARING.

Local 1549 requests that the NYS Civil Service Commission conduct an immediate investigation under **CSL § 6.3** to determine the legality of this proposal as to all issues and objections presented to the Commission by DCAS Local L. 91549 and any other Local or Counsel.

It is our position that DCAS is required by NYS Civil Service Law and the Rules and Regulations to implement the mandate of the **NYS Constitution, Article V, Section 6**, which provides that:

"Appointment and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, **by examination which, as far as practicable, shall be competitive...**" ¹ (emphasis added)

RECLASSIFICATION IS NOT APPROPRIATE OR NEEDED FOR THE LOCAL THESE PUBLIC SAFETY CIVIL SERVICE TITLES

Local 1549's position that the Reclassification is not appropriate for either the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) within the New York Police Department nor the Call Center Representatives, (CCR) within the Department of Information Technology and Telecommunications (DoITT).

Because both services are highly critical Public Safety Call Center Operations (911 and 311)) emergency calls where merit and fitness are exercised in every task, 24 hours a day, performed to the benefit of the citizens of New York City, New York State and the United States. Like Police Officer titles in New York City and State only the existing competitive merit civil service titles can protect NYPD PCTs and SPCTs from the corruption, patronage, cronyism and nepotism such as job selling (recall Serpico and the Knapp Commission 40 years ago) and prohibit discrimination.

Additionally, the criteria of **CSL § 42** and **CSR § 2.2** (impractical to conduct civil service merit examinations) are not met, see below.

**DCAS OMITTS ANY STATISTICAL ANALYSIS TO SUPPORT
RECLASSIFICATION THESE PUBLIC SAFETY EMERGENCY
RESPONSE TITLES**

NYPD 911

The PCTs and SPCTs in FY 2007 handled 11,689,000 calls resulting in 4,498,000 Total Radio Runs by the NYPD with a Citywide Average Response Time to Crime-in-Progress (Minutes) of 6.9 minutes (all categories). ²

Indicator Name	Fiscal Year To Date	Previous FYTD	FYTD Variance	Most Recent Month	Same Month Last Year	Month Variance	Data Through:	Late?
<u>Average response time to all crimes in progress - Citywide (minutes)</u>	<u>7.2</u>	6.9	4.3%	<u>N/A</u>	N/A		2008 / 01	N

Recall the heroic performance of these PCTs and SPCTs in response to the terror attacks of Sept. 11, 2001.

There is no possible argument or justification to change the present competitive merit class of these titles given their excellent performance and competence on Sept. 11 and on a daily 24-hour basis up and including the present.

**DCAS MAKES NO VALID ARGUMENT TO CHANGE THE EXISTING
COMPETATIVE MERIT CLASS OF THIS TITLE**

311 DOITT

According to a recent Mayor's Management Report ⁴ the CCRs: "In the 311 Customer Service Center provides non-emergency government information and services. In order to improve the transparency of services being provided to the public, the Office of Operations and the Department of Information Technology and Telecommunications regularly report 311-generated information to the public through on its website. All data reported is for the referenced reporting period and fiscal year (July through June) to date".

Recent 311 Information reported on this site includes ³ :

Performance Measure	Performance Goal	Fiscal 2008 Year-to- Date	March 2008
Total Incoming Calls	*	11,482,411	1,155,545
Average Weekday Call Volume	*	49,048	44,698
Average Wait Time	30 seconds	7 seconds	4 seconds
Percent of Calls Answered within 30 seconds	90%	97%	98%
Percent of Language Assisted Calls	*	2.1%	2.1%

** No performance goal available*

Non-Competitive Class Is Not Applicable to 911 and 311 Titles

According to the Sources of the Law Governing Civil Service the non-competitive class, **CSL § 42** and **CSR § 2.2** consists of those positions for which it is not practicable to conduct examinations on a competitive basis. Appointments to non-competitive positions are to be made after a non-competitive examination, such as a review of training and experience, as prescribed by the Department.

For the most part, this class consists of skilled trades positions. However, it does include some higher-level administrative, scientific or technical positions, positions that are confidential in nature, or involve making or influencing policy... do not obtain tenure under Section 75 of the Civil Service Law.

It is important to note: The difference between the exempt and the non-competitive classes, insofar as appointment is concerned, is that for positions in the exempt class, the appointing officer is free to select whomever he/she pleases and the agency, rather than the Department of Civil Service, sets any educational, experience or other qualification requirements. If the position is in the non-competitive class, the appointing officer still has the power of selection, but the appointee must meet such educational, experience and other qualification requirements as may be fixed by the Department of Civil Service...

Generally, no written or oral tests are required for non-competitive class appointments.⁴

Local 1549 feels the Non-Competitive class is not appropriate for the either the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) within the New York Police Department nor the Call Center Representatives, (CCR) and within the Department of Information Technology and Telecommunications (DoITT) because these Titles do not met the criteria of **CSL § 42** and **CSR § 2.2**.

**CIVIL SERVICE PROTECTION AND DUE PROCESS ARE ESSENTIAL
AND IMPORTANT FOR NYPD PCT AND SPCT TITLES
THE NON COMPETITIVE TITLES DO NOT HAVE THESE RIGHTS**

Historically the City has had a pattern of discrimination in the NYPD with regard to civilian PCT and SPCT titles. There is a pending 2008 class action FMLA case in the Southern District Court claiming a denial of FMLA leave. The pay scale of these titles was elevated after a class action in 1984 to 1991 claiming discrimination against the minority female workforce when compared to the white male Fire Dispatchers.

There were 3 Article 78 Supreme Court actions claiming unlawful discipline filed in 2008, one settled, after the NYPD refused to comply with OATH and NYC Civil Service Commission decisions. Recall Serpico and the Knapp Commission 40 years ago, which described the insular police culture, and the sale of job positions within the NYPD.

The City of NY recently settled a \$24,000,000 discrimination class action suit against the Parks Dept. and former Commissioner Henry Stern because promotions were not based upon open competitive examination and were discriminatory against black employees.

The existing civil service open competitive NYPD PCT and SPCT titles seek to prevent these discriminatory abuses that existed in the past and the Local claims exist today. There is no possible justification to reclassify these titles given this history of racial and other discrimination against minorities and residents of the City of New York.

Competitive Class

According to the Sources of the Law Governing Civil Service the competitive class **CSL § 44** consists of all offices and employments in the classified service that are not in the exempt, non-competitive or labor class. Positions in the competitive class are not listed in the rules or regulations. No action is required to place a position in the competitive class. Every position in the classified service is automatically in the competitive class unless and until it is specifically classified in another jurisdictional class.⁵

Reclassification

Permanent incumbents of positions that have been reclassified from the competitive to the non-competitive jurisdictional class are immediately accorded the same protection afforded to tenured non-competitive employees.

Employees so affected are entitled to the disciplinary protections of **Section 75**, and to exercise the same vertical bumping and retreat rights they would have been entitled to had their positions remained in the competitive class.

Local 1549 has filed 3 NYPD Article 78 Supreme Court proceedings to make certain there is compliance with Civil Service Law Sect 75 rights of its members by the NYPD. One case was settled with the member returned to work at NYPD. It is essential the L. 1549 employees not be reclassified to lose their Civil Service Rights.⁶

"Bumping" and "Retreating"

CSR § 80.7, [5.5(a)], [5.5(a)(1)] and [5.5(a)(3)] states that Competitive class employees may often have an opportunity to displace other less senior employees in the layoff unit through either bumping or retreat. Exactly what may occur in the case of bumping varies with each situation, but generally, the employee will displace the least senior employee, provided he/she has greater retention standing, in the next existing lower occupied title in direct line of promotion. Non-competitive and labor class employees do not bump since there are no direct promotion lines in these classes. L. 1549 members must keep these civil service rights.⁷

Summary of Objections

1. **The NYS Constitution, Article V, Section 6**, provides that: "Appointment and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive..."¹ Local 1549 feels the Competitive class is appropriate for the Supervising Police Communications Technicians (SPCT) and Police Communications Technicians (PCT) within the New York Police Department and the Call Center Representatives (CCR) Department of Information Technology and Telecommunications (DoITT).
2. We feel that DCAS proposals to come into compliance with **Section 65(5)(b)** of the New York State Civil Service Law by violating other Sections of the law namely, the Classification and Consolidation Sections of the Civil Service Law as it launches its Provisional Reduction Plan.
3. New SPCT, PCT and CCR will not obtain tenure under Section 75 of the Civil Service Law this will establish two classes of employees within these critical Public Safety Communication Centers. The effect of this personnel dichotomy on the chain of command and efficiency are unknown but the local's position is that there exists a significant likelihood it will be negative. Once the stress of this important and under appreciated work is factored-in we do not believe this proposal is good for public policy. It might indeed have ramification of a very serious nature that could border on national security responsiveness. Both services combined to handle about 22 million calls a year.
4. Local 1549 opposes the reclassification of the PCTs and SPCTs and 311 DOITT titles into the non-competitive class, for the appointing officer still has the power of selection, but the appointee must meet such educational, experience and other qualification requirements as may be fixed by the Department of Civil Service. Generally, no written or oral tests are required for non-competitive class appointments.⁴ Local 1549 states that this reclassification would lead to discrimination against its minority New York City members.

5. It is Local 1549's that position the Non-Competitive class is not appropriate for either the Supervising Police Communications Technicians, (SPCT) and Police Communications Technicians, (PCT) within the New York Police Department nor the Call Center Representatives, (CCR) and within the Department of Information Technology and Telecommunications (DoITT) because these Titles do not met the criteria of **CSL § 42** and **CSR § 2.2. No analysis or justification is made by DCAS as to these public safety positions and the requirements of New York City and New York State Homeland Security and terror response planning. DCAS ignores the heroic response of Local 1549 NYPD members on Sept. 11, 2001**

Notes:

¹ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Sources of the Law Governing Civil Service www.cs.ny.us/pio/summaryofcsl.htm, page 1.

² Mayor's Office of Operations, Mayor's Management Report, NYPD and Citywide Performance Reporting <http://www.nyc.gov/html/ops/cpr/html/home/home.shtml>.

³ Mayor's Office of Operations, Mayor's Management Report and Citywide Performance Reporting 311, <http://www.nyc.gov/html/ops/cpr/html/home/home.shtml>.

⁴ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Non Competitive Class, www.cs.ny.us/pio/summaryofcsl.htm, page 4.

⁵ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Competitive Class. www.cs.ny.us/pio/summaryofcsl.htm, page 5.

⁶ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Reclassification. www.cs.ny.us/pio/summaryofcsl.htm,

⁷ NYS Civil Service Commission, Summary of the NYS Civil Service Law, Bumping and Retreating. www.cs.ny.us/pio/summaryofcsl.htm,



THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

REQUIRED FORMS

APPLICATION FORM

MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

**NOTICE
OF
EXAMINATION**

PROMOTION TO SUPERVISING POLICE COMMUNICATIONS TECHNICIAN

Exam. No. 8503

WHEN TO APPLY: From: February 6, 2008
To: February 26, 2008

APPLICATION FEE: \$45.00
Payable by mail by money order to D.C.A.S. (EXAMS) or
payable online by credit card, bank card, or debit card.

THE TEST DATE: The multiple-choice test is expected to be held on **Saturday, June 7, 2008.**

WHAT THE JOB INVOLVES: In the Police Department, under general supervision, with some latitude for the exercise of independent judgement, action and initiative, Supervising Police Communications Technicians supervise and direct E-911 call-takers, radio dispatchers and personnel performing clerical, administrative and other duties related to the provision of emergency service; perform difficult and responsible work in the evaluation of priority designations; interact with the public, other agencies and Police Department personnel; perform training as required; make roll call changes and monitor operations during tour changes; initiate alerts or backlogs when supervising radio operations; evaluate subordinates and monitor their performance; and perform related tasks.

Supervising Police Communications Technicians will be required to work various tours around the clock, including Saturdays, Sundays and holidays, and will be required on occasion to work overtime tours depending on the needs of the Department.

Some of the physical activities performed by Supervising Police Communications Technicians and environmental conditions experienced are: periodically wearing a headset while monitoring call-takers and dispatchers; typing information into the computer using a computer keyboard; giving instructions to a continuous flow of call-takers and dispatchers under stress; listening carefully to clearly understand emergency information; making responsible judgements where timing is critical; speaking with the public, when required, and making continuous telephone notifications to units within the Department and outside agencies.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$40,355 per annum. This rate is subject to change.

HOW TO APPLY: If you believe you are eligible to take this examination, there are two ways to apply for this examination:

1. **Online at the DCAS WEBSITE:** If you wish to apply online, go to the Online Application System (OASys) at www.nyc.gov/examsforjobs and follow the onscreen application instructions for electronically submitting your application and completing any required forms. The following methods of payment are acceptable: major credit card, bank card associated with a bank account, or prepaid debit card which you may purchase online or at various retail outlets.
2. **By mail:** Refer to the "Required Form" section below for the form that you must fill out. Return the completed form and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007.

DCAS will not accept applications in person from candidates.

ELIGIBILITY TO TAKE EXAMINATION: This examination is open to each employee of the Police Department who **on the date of the multiple choice test:**

- (1) is permanently (not provisionally) employed in or appears on a Preferred List (see Note, below) for the title of Police Communications Technician; and
- (2) is not otherwise ineligible.

(Note: A "Preferred List" is a civil service list which is only for certain former permanent incumbents of the eligible title who have rehiring rights.)

If you do not know if you are eligible, check with **your agency's personnel office.**

You may be given the test before we verify your eligibility. You are responsible for determining whether or not you meet the eligibility requirements for this examination prior to submitting your application. If you are marked "Not Eligible," your application fee will not be refunded and you will not receive a score.

ELIGIBILITY TO BE PROMOTED: In order to be eligible for promotion, you must have completed your

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probationary period in the eligible title as indicated in the above "Eligibility To Take Examination" section, and you must be permanently employed in the eligible title or your name must appear on a Preferred List for the eligible title at the time of promotion. Additionally, you must have served permanently in the eligible title for at least eighteen months.

REQUIRED FORM:

Application for Examination: Make sure that you follow all instructions included with your application form, including payment of fee. Save a copy of the instructions for future reference.

THE TEST: You will be given a multiple-choice test. You must achieve a score of at least 70% to pass this test. Your score on this test will determine 85% of your final score. Your seniority will determine the remaining 15%. You must pass the multiple-choice test to have your seniority credited. Your seniority score will be 70 plus ½ point for each three months of completed, permanent, continuous service with an agency under the jurisdiction of the Commissioner, Department of Citywide Administrative Services in competitive class titles. Your service will be credited through the date of the test, up to a maximum of 15 years. Time served prior to a break in service of more than one year will not be credited.

The multiple-choice test may include questions on: routine administrative paperwork; functioning, operation and inspection of equipment; interactions with other supervisors, other City agencies and other departments; policies and procedures contained in the E-911 Call-takers Guide and the Radio Dispatchers Guide; evaluation, counseling and discipline of personnel; supervising and instructing subordinates and responding to unforeseen emergencies which occur during a tour of duty; standards of proper employee ethical conduct, including the provisions of Mayor's Executive Order No. 16 of 1978, as amended; and other related areas.

ADMISSION CARD: You should receive an Admission Card in the mail about 10 days before the date of the test. If you do not receive an Admission Card at least 4 days before the test date, you must go to the Examining Service Section, 1 Centre Street, 14th floor, Manhattan, to obtain a duplicate card.

THE TEST RESULTS: If you pass the multiple-choice test and are marked eligible, your name will be placed in final score order on an eligible list and you will be given a list number. You will be notified by mail of your test results. If you meet all requirements and conditions, you will be considered for promotion when your name is reached on the eligible list.

ADDITIONAL INFORMATION:

Selective Certification for Spanish: If you possess the ability to speak Spanish, you may be considered for promotion to positions requiring this ability through a process called Selective Certification. If you pass a qualifying test, you may be given preferred consideration for positions requiring this ability. Follow the instructions given to you in the multiple-choice test booklet on the day of the test to indicate your interest in such Selective Certification.

SPECIAL ARRANGEMENTS:

Late Filing: Consult your agency's personnel office to determine the procedure for filing a late application if you meet one or more of the following conditions:

- (1) you are absent from work for at least one-half of the application period and cannot apply for reasons such as vacation, sick leave or military duty; or
- (2) you become eligible after the above application period but on or before the date of the multiple-choice test.

Special Test Accommodations: If you plan to request special testing accommodations due to disability or an alternate test date due to your religious belief, and you are applying:

- (1) **online**, follow the onscreen instructions; or
- (2) **by mail**, follow the instructions included with the "Application for Examination."

Make-up Test: You may apply for a make-up test if you cannot take the test on the regular test date for any of the following reasons:

- (1) compulsory attendance before a public body;
- (2) on-the-job injury or illness caused by municipal employment;
- (3) absence for one week following the death of a spouse, domestic partner, parent, sibling, child or child of a domestic partner;
- (4) absence due to ordered military duty; or
- (5) a clear error for which the Department of Citywide Administrative Services or the examining agency is responsible.

To request a make-up test, contact the Examining Service Section, 1 Centre Street, 14th floor, New York, NY 10007, in person or by certified mail as soon as possible and provide documentation of the special circumstances.

The General Examination Regulations of the Department of Citywide Administrative Services apply to this examination and are part of this Notice of Examination. They are posted and copies are available in the Applications Center of the Division of Citywide Personnel Services, 18 Washington Street, NY, NY.

The City of New York is an Equal Opportunity Employer.

Title Code No. 71013; Police Communications Technician Occupational Group

For information about other exams, and your exam or list status, call 212-669-1357.
Internet: nyc.gov/dcas



THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

NOTICE OF EXAMINATION

REQUIRED FORMS

APPLICATION FORM
EDUCATION AND EXPERIENCE
TEST PAPER
FOREIGN EDUCATION
FACT SHEET
(IF APPLICABLE)

POLICE COMMUNICATIONS TECHNICIAN

Exam. No. 6036

WHEN TO APPLY: From: September 6, 2006 **APPLICATION FEE:** \$30.00
To: September 26, 2006 Payable only by money order to D.C.A.S. (EXAMS)
THE TEST DATE: The multiple-choice test is expected to be held on Saturday, December 9, 2006.

WHAT THE JOB INVOLVES: Police Communications Technicians, working under direct supervision in the Police Department Communications Section, serve as 911 emergency call-takers; obtain necessary information from callers in order to initiate emergency assistance; serve as radio dispatchers of police resources; perform clerical, administrative and other duties related to the provision of emergency service; and perform related work.

You will be required to work various tours around the clock, including Saturdays, Sundays and holidays, and you will be required on occasion to work overtime tours depending on the needs of the Department.

Some of the physical activities performed by Police Communications Technicians and environmental conditions experienced are: sitting for extended periods of time with headset on while monitoring a computer screen; typing information into the computer using a computer keyboard; coordinating eye/hand movements while handling emergency calls for the efficient use of console and computer; speaking calmly and clearly in order to elicit information and giving instructions to a continuous flow of callers under stress; listening carefully to clearly understand emergency information; making responsible judgments where timing is critical; and sitting within hearing distance of other call-takers working under similar conditions.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$27,637 per annum. This rate is subject to change.

HOW TO APPLY: If you believe that you meet the requirements in the "How to Qualify" section, refer to the "Required Forms" section below for the forms that you must fill out. Return all completed forms and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007 by mail only. DCAS will not accept applications in person from candidates.

HOW TO QUALIFY:

Education and Experience Requirements: By the last day of the Application Period you must have a four-year high school diploma or its educational equivalent; plus

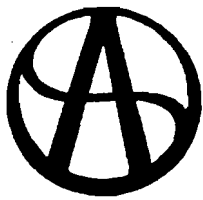
1. One year of satisfactory full-time experience performing clerical, typing, or secretarial work; or
 2. One year of satisfactory full-time experience dealing with the public, including the obtaining of information from persons; or
 3. The successful completion of 30 semester college credits from an accredited college or university; or
 4. Two years of active U.S. military duty with honorable discharge; or
 5. A satisfactory combination of education and/or experience that is equivalent to 1, 2, 3, or 4 above.
- However, all candidates must have a four-year high school diploma or its educational equivalent.

You may be given the test before we review your qualifications. You are responsible for determining whether or not you meet the qualification requirements for this examination prior to submitting your application. If you are marked "Not Qualified," your application fee will not be refunded and you will not receive a score.

Medical and Psychological Requirements: Medical and psychological guidelines have been established for the position of Police Communications Technician. Candidates will be examined to determine whether they can perform the essential functions of the position of Police Communications Technician. Where appropriate, a reasonable accommodation will be provided for a person with a disability to enable him or her to take the medical and/or psychological examination, and/or perform the essential functions of the job.

Drug Screening Requirement: You must pass a drug screening in order to be appointed.

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ORGANIZATION OF STAFF ANALYSTS

220 EAST 23rd STREET - SUITE 707
NEW YORK, NEW YORK 10010
TEL.: (212) 686-1229 • FAX: (212) 686-1231
WEB: WWW.OSAUNION.ORG
HOTLINE: (212) 330-8833

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Testimony by Robert Croghan before the New York State Civil Service Commission June 10, 2008.

I am the Chairperson of the Organization of Staff Analysts. The Organization of Staff Analysts is a union founded in 1970, by career civil servants working as Personnel Examiners for the City of New York. Our founding documents express a strong belief in the value of the civil service and we seek to re-affirm that belief again, here, today.

The Department of Citywide Administrative Services "Plan" for 2008 and beyond, seeks to reduce the numbers of provisional employees serving in New York City. It does so by listing a number of proposed changes.

One change, allocating enough staff and resources to give the competitive exams required by law, is a good change. Most of the rest of the changes suggested are simply ways for DCAS to avoid doing its job.

For example, under the heading of reclassifying jobs, the "Plan" will deny competitive status to hundreds of jobs. Far from supporting an influence free, competitive civil service, the reclassification scheme simply makes legal that which was previously illegal.

They also wish to discard their role as examiner for Transit Authority and the Triborough Bridge and Tunnel Authority. Discarding the TA and the TBTA as customers will not replace a single sitting provisional employee. Still it will improve the numbers for DCAS. It is a statistical solution of no real value and would only add increased complexity and inefficiency.

Staff Analysts now work in both the City employ and the Transit Authority, and only one test is needed. If the “Plan” goes through, both the TA and DCAS will become responsible for their own Staff Analyst exam. In a hundred and more such cases, the DCAS plan to discard the TA and the TBTA is wasteful of resources and deceitful in intent.

The Consolidation of Titles part of the plan substitutes managerial discretion for testing in eighty five titles. As envisioned by the plan, in eighty five titles series, employees will lose their right to be tested for advancement.

The Broad banding of titles suggested may be valid in some instances. In others the obvious goal is to replace testing with discretionary appointments.

It is in the area of reclassifying competitive titles to non competitive or exempt jobs that the Plan becomes a blatant demand for more patronage jobs.

The Plan is not exactly radical. Many sections seem to stem from current illegal practices that DCAS would now like to call legal.

For example, the Staff Analyst Trainee position was created one generation ago. The first exam given created a list that was never used. Meanwhile small numbers of provisional Staff Analyst Trainees continued in service for about twenty years. Recently the small number of provisional Staff Analyst Trainees began to grow and the union demanded an exam.

The exam was given but the new “Plan” calls for this to be the last exam. Henceforward the City wants to legally retain their previously illegal practice of appointing Trainees by referral and not by exam.

The Staff Analyst Trainee title is the lowest paid of the Analyst jobs. The highest is the Administrative Staff Analyst. There are currently 1585 Administrative Staff Analysts serving provisionally. Under the plan a new force of Strategic Analysts will come into existence with 1000 jobs, non competitive. Also, the Plan argues for 200 Executive Program Specialists and 1500 Strategic Initiative Specialists and all of their jobs would be exempt.

All 2700 of these new jobs would be hired by referral.

So, then, entry level jobs (Staff Analyst Trainee) would be hired by referral and the highest paid jobs (Strategic Analyst et al.) would be awarded by referral.

The two thousand competitive class Staff Analysts and Associate Staff Analysts would be the lean meat in the middle of the “non-compet” sandwich, bracketed on both sides by patronage employees, friends of the Commissioner or the Mayor himself.

The Plan is a very poor response to the Long Beach decision. It is worse than poor, it is an insincere attempt to avoid any real reduction in illegal discretionary employees by simply increasing the number of legal discretionary employees.

Why was there no mention of Citywide lists for promotional exams? Thousands of provisionals would have been replaced over the last few years if Citywide lists had been certified by DCAS. Instead, hundreds of candidates of other Agencies wait for years for their appointment while the Agency down the block appoints hundreds of provisionals since there is no list for “their” Agency !

Citywide promotion lists would reduce the number of provisional employees promptly and dramatically. DCAS could establish such lists at its own discretion right now. The Plan makes no mention of Citywide Promotion lists because neither the Mayor nor his DCAS Commissioner wish to limit the number of provisional employees serving.

The Plan can speak of Strategic Analysts and Strategic Specialists and a ton of other folderol but when the Plan refuses the obvious remedy of Citywide promotional lists, the Plan itself is nonsense, dishonest and an assault on the competitive civil service.

Members of Local 1457 are routinely assaulted by youth in Detention and/or brought up on child abuse allegations after being attacked. The Agency (DJJ) then imposes a thirty-day pre-hearing suspension. Provisionals with less than 2 years of service are almost never presented with charges but instead, are threatened with termination. On the other hand, permanent employees under the same conditions, who exercise their Section 75 Rights are usually vindicated through the disciplinary process.

In 1998, our 4 titles: Juvenile Counselor, Senior Counselor, Principle Counselor, and Head Counselor were broad-branded and reduced to 2 titles; Juvenile Counselor, and Associate Juvenile Counselor thus removing the career ladder to Principle Counselor and Head Counselor. Currently, over 95 percent of my members are permanent in the remaining 2 titles. The local prides itself by requesting civil service examinations and then preparing our

members to embark in a career as a civil servant. This proposal erodes the civil service merit and fitness system by empowering management who will promote workers without competitive testing. In comparison to competitive class workers, non-competitive have weaker due process, leave and layoff rights. Therefore, we strongly object to DCAS's proposal to move our two remaining titles to non-competitive class. Once again, thank you for the opportunity to give testimony.

Testimony of
Arthur Cheliotas, President of
New York Administrative Employees
Local 1180 of the
Communications Workers of America, AFLCIO;
to the New York State Civil Service Commission
on June 10th, 2008 in Albany New York.

Regarding the
New York City
Department of City-wide Administrative Services Plan
to eliminate over 30,000 provisional appointments.

Good morning, my name is Arthur Cheliotas, President of New York Administrative Employees Local 1180 of the Communications Workers of America, AFLCIO representing over nearly 10,000 workers of which approximately 9,000 are civil servants working for the City of New York and its affiliated public employers.

My testimony today is based on my experience of 36 years as a career civil servant having been appointed from an open competitive civil service list on February 22, 1972. My career has been tempered by battles with the City of New York to adhere to the Civil Service Law. My union work began when I was elected steward in 1973 and then full time staff representative of Local 1180 in 1975 and since 1979 in my current position as a full time President of the Local. I have taken and passed promotional examinations in the course of my career and am currently awaiting the establishment of the Administrative Manager's List for the competitive promotional examination I took last June.

The members of Local 1180 together with their fellow civil servants have seen many Mayors and Commissioners come and go. We remain like the New York City municipal building itself prepared to implement the policies of the peoples elected leaders according to the law. We serve our fellow citizens in the public service and maintain their trust because they understand we have been found qualified to hold our positions through an objective competitive process. We understand that without government there can be no commerce, industry or a civil society. Our public service stands as the foundation upon which our society is built upon. This concept of our role in the public service has been at the core of the mission of this Local as we represent public servants in the workplace. It informs my opinions and observations regarding the DCAS Plan that I wish to share with you.

First, Some New York City managers have a management style that is described by one member of the Local as 'The Tyranny of the Bean Counters'. These managers know the cost of everything and the value of nothing. They look upon their workforce as an expense item in their budget rather than an asset that provides services to the public. They fail to recognize that the workforce is an asset that requires investment, development, maintenance and upgrades. In my June 1, 2008, letter to the Hon. Nancy G. Groenwegen, President of the N.Y.S. Civil Service Commission that is attached to this testimony I wrote the following:

"The DCAS plan lacks a well thought out human resource policy that invests in the New York City workforce, acknowledges their skills and talents, and offers a clear career path based upon merit and fitness. Over the last 30 years, this union has witnessed policies and actions of City Agencies that often place barriers in the path of career civil servants, many of whom are minorities and women. For example, it is a common practice to hire career civil servants at the minimum rate of pay upon appointed from a civil service list. It is also the City's practice to suppress the managerial minimum hiring rate below the wage rate for subordinate titles. However, provisional appointments for new employees hired from outside civil service career paths are given higher rates of pay than those offered career employees.

Agencies protect individuals without permanent status by shuffling them from one provisional title to another when a civil service list for their position would force their removal. They continue to work at the same job doing the same work though the position was conveniently reclassified with DCAS's approval, thus avoiding the appointment from the list of a qualified person on the list.

The recent settlement of a lawsuit filed by the NAACP on behalf of minorities working in the Department of Parks is indicative of a citywide problem of hiring individuals outside the civil service career path into high-level positions. It was established that the Agency eliminated the career opportunities of career civil servants who were predominately minorities and women."

Second, the City of New York has been a serial abuser of the Civil Service Law by neglecting its duty to enforce the Law. Since the fiscal crisis of the mid-70's it has engaged in the long term erosion of the Civil Service Law by not providing the resources and staff necessary to establish pools of qualified competitively tested candidates for the public service in its jurisdiction. We believe that holding regular examinations to have qualified candidates ready to fill vacancies is as much a fundamental duty of government as holding elections for public officials. It is unthinkable that the people of our state would be denied constitutionally mandated regular elections where candidates compete for their votes. Why then is it permissible, to deny the people of our state constitutionally mandated competitive examination process to appoint qualified individuals to serve the public. Both are required by the New York State Constitution and are necessary for good government and the preservation of the public trust.

The greatest number of Local 1180 members hold appointments in the Principal Administrative Associate title. It has the dubious distinction of having the most provisional appointments in the City. As I explained in my letter dated June 1:

"Anyone who has experience with the civil service appointment process understands that the DCAS plan fails to remedy the decades old problem of a high number of provisional appointments in the Principal Administrative Associate (PAA) title. In the DCAS plan, the PAA title is at the top of the list with over 2,000 provisional appointments. The cause of the problem is clear; **it is DCAS's refusal to create citywide lists to provide tested and qualified candidates to agencies that have exhausted their promotional lists.** By not using citywide lists for this and all citywide titles the DCAS plan will not eliminate provisional appointments in agencies with few eligible candidates to take and pass a promotional exam. Furthermore, the failure to use citywide lists for the Principal Administrative Associate title promotes concentrations of minorities in specific agencies.

In addition, in footnote # 4 the DCAS plan refers to the City's policy of giving examinations for public safety titles a priority over other examinations. The result of this policy is that there are regular promotional opportunities and clear career paths based upon examinations that measure merit and fitness for these public safety titles. Public safety examinations have a priority even though the Principal Administrative Associate title has over 2,000 provisional appointments. The individuals in the Principal Administrative Associate title are predominantly women and minorities who have been

relegated to second class status and denied the same access to regular examinations offered candidates in public safety titles which have higher concentrations of whites and males and far fewer, if any, provisional appointments."

We believe strongly that all city workers should be offered the opportunity to pursue their careers through a functioning merit system. Again, in my letter I explain:

"Two decades ago, this Union filed a lawsuit that eventually resulted in the greatest number of women and minorities in the City's history achieving managerial status through a competitive civil service examination. These minorities and women had taken both a qualifying managerial examination and a competitive examination to be appointed to the title of Administrative Manager (AM). This Union had to go to court to force the City to obey the law. The City had to remove provisional appointments, many of whom were white males and some of whom were processed through the basement of City Hall through Koch's "Talent Bank." The Koch "Talent Bank" purportedly was designed as an affirmative action program but was actually a patronage operation.

The New York State Commission on Government Integrity headed by John D. Feerick, then Dean of the Fordham Law School, confirmed that violations of the Civil Service Law contributed to the corruption scandals of the Koch administration. In its report issued August of 1989 entitled **'Playing Ball' with City Hall: A Case Study of Political Patronage in New York City** the Commission found that mid and high level patronage appointments such as Administrative Manager in the Department of Transportation led to corruption. It allowed these appointees to undermine the bidding process, violate the public trust and engage in other illegal activities that cost the City millions of dollars and resulted in the felony convictions of many individuals and suicide of an elected official. Despite the corruption caused by these appointees the Koch administration resisted its constitutional obligation to appoint candidates from the Administrative Manager civil service list who had followed the rules. These candidates earned the right to be appointed to the positions held by the provisional appointees so they could demonstrate through a practical examination known as a one-year probationary period that they could do the job based on what they knew, not who they knew. The commission report stated:

"The New York City civil service system is in a state of crisis...the Civil Service Law is now widely regarded as something it is desirable to bypass or avoid, where possible."

Nearly 20 years after this Feerick Commissions report was issued, DCAS in large part proposes the legalization of the patronage mill run out of the basement of City Hall. Rather than develop a comprehensive personnel management and civil service system that can through the merit system develop qualified candidates to provide service to the public. The DCAS plan further emasculates any measure of enforcement that requires City agencies to follow the law. The conditions documented by the commission have only grown worse, the DCAS plan of creating thousands of non-competitive and exempt

positions will simply serve as tinder that will ignite the next patronage scandal. Appointing city workers through competitive examinations that measure merit and fitness continues to be necessary today, as it was in 1894 when the New York State Constitution established the merit and fitness mandate and again during the Koch administration in the 1980's. Anyone committed to the integrity of the public service understands that the constitutional mandate is grounded in an enduring wisdom. The Feerick Commission report concluded with the following:

“Clearly, more is needed than just effective enforcement of current law; more is needed than even a dedicated audit by the State Civil Service Commission could provide. One High-level employee described what is needed as a “Moreland Act Commission focusing solely on civil service/personnel issues.”

Those words ring truer today than they did nearly twenty years ago and we strongly suggest they be considered very seriously.”

LOCAL 1180

6 HARRISON STREET

ARTHUR CHELIOTES
President



COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

NEW YORK, N.Y. 10013-2898 ☐ (212) 226-6565 FAX: (212) 966-6831

June 1, 2008

BY OVERNIGHT DELIVERY

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

RE: Submission of DCAS Pursuant to CSL '65(5)

Dear President Groenwegen:

I am writing as President of CWA Local 1180 ("Local 1180"), the Union that represents City employees in titles found on the attached list. The union submits these objections and questions to the CSL Plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law ' 65(5) (the "DCAS Plan").

The Section 65 amendments effective January 29, 2008 were intended to promote the constitutional and statutory requirement that appointments and promotions be made according to merit and fitness to be ascertained, as far as practicable, by examination. The amendments were intended to decrease the number of provisional employees and increase the number of appointments by merit and fitness. The amendments required DCAS to submit to the Commission a Plan that would effectuate the purposes of the Statute.

DCAS submitted its Plan on March 28, 2008. However, the Plan did not substantially increase the number of tests. Instead the DCAS Plan seeks to bypass and avoid testing. Rather than significantly increasing the number of tests, it eliminates competitive examinations through reclassification to non-competitive and exempt titles for over 20,000 City employees.

We show below, there is no factual or legal reason to reclassify these job titles. Reclassification as the substantial approach defeats merit and fitness testing and denies City

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

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June 1, 2008

CSL ' 42(1) ("Section 42") states that a title requires no test, if it is classified as "non-competitive" rather than "competitive". However, such a designation is the exception and not the rule. It may be made only if testing is not practicable to ascertain merit and fitness. This is a very high standard and such use should be rare. See *Berkowitz*, 133 Misc. 2d, at 325-26, 507 N.Y.S.2d, at 119 (annulling non-competitive classification). *Levitt v. Civil Serv. Comm=n of State of New York*, 150 A.D.2d 983, 985, 54.1 N.Y.S.2d 662,664 (3d Dep=t 1989).

The Amendments to CSL Section 65

After the Court of Appeals decision in *City of Long Beach*, 8 N.Y.3rd 470, 835 N.Y.S.2d 538 (2007), the State Legislature, addressed its concern over the use of provisional appointments. CSL Section 65 was amended reaffirm the constitutional mandate of making appointments and promotions according to merit and fitness which is to be ascertained by examination competitively, as far as practicable. DCAS was required to submit a Plan to reduce the number of provisional appointments. The Amendment contemplated an increased number of scheduled examinations, additional eligible lists and consolidation of titles through reclassification.

The Constitutional infirmity of the DCAS Plan is that it emphasizes as its primary remedy to reduce provisional employment, the reclassification of positions from the competitive to non-competitive and exempt classes. Under the DCAS Plan, competitive examinations would not be required where currently they are given citywide. As we understand the DCAS proposal, 294 competitive titles encompassing over 22,000 employees (15 percent of all competitive-class employees) would be reclassified.

While reclassifying competitive tiles en masse, the DCAS plan proposes only to increase minimally the number of examinations. Under the DCAS Plan there would only be 20 more examinations per year over the five year duration of the Plan (Section 2.1.0). Accordingly, DCAS proposes to cure the problem not by constitutionally mandated testing, but by reducing the number of titles for which there will be tests.

The DCAS plan lacks a well thought out human resource policy that invests in the New York City workforce, acknowledges their skills and talents, and offers a clear career path based upon merit and fitness. Over the last 30 years, this union has witnessed policies and actions of City Agencies that often place barriers in the path of career civil servants, many of whom are minorities and women. For example, it is a common practice to hire career civil servants at the minimum rate of pay when they are appointed from a civil service list. It is also the City's practice to suppress the managerial minimum hiring rate below the wage rate for subordinate titles. However, provisional appointments for new employees hired from outside civil service career paths are given higher rates of pay than those offered career employees.

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Agencies protect individuals without permanent status by shuffling them from one provisional title to another when a civil service list for their position would force their removal. They continue to work at the same job doing the same work though the position was conveniently reclassified with DCAS's approval, thus avoiding the appointment from the list of a qualified person on the list.

The recent settlement of a lawsuit filed by the NAACP on behalf of minorities working in the Department of Parks is indicative of a citywide problem of hiring individuals outside the civil service career path into high-level positions. It was established that the Agency eliminated the career opportunities of career civil servants who were predominately minorities and women.

Two decades ago, this Union filed a lawsuit that eventually resulted in the greatest number of women and minorities in the City's history achieving managerial status through a competitive civil service examination. These minorities and women had taken both a qualifying managerial examination and a competitive examination to be appointed to the title of Administrative Manager (AM). This Union had to go to court to force the City to obey the law. The City had to remove provisional appointments, many of whom were white males and some of whom were processed through the basement of City Hall through Koch's "Talent Bank." The Koch "Talent Bank" purportedly was designed as an affirmative action program but was actually a patronage operation.

The New York State Commission on Government Integrity headed by John D. Feerick, then Dean of the Fordham Law School, confirmed that violations of the Civil Service Law contributed to the corruption scandals of the Koch administration. In its report issued August of 1989 entitled **'Playing Ball' with City Hall: A Case Study of Political Patronage in New York City** the Commission found that mid and high level patronage appointments such as Administrative Manager in the Department of Transportation led to corruption. It allowed these appointees to undermine the bidding process, violate the public trust and engage in other illegal activities that cost the City millions of dollars and resulted in the felony convictions of many individuals and suicide of an elected official. Despite the corruption caused by these appointees the Koch administration resisted its constitutional obligation to appoint candidates from the Administrative Manager civil service list who had followed the rules. These candidates earned the right to be appointed to the positions held by the provisional appointees so they could demonstrate through a practical examination known as a one-year probationary period that they could do the job based on what they knew, not who they knew. The commission report stated:

"The New York City civil service system is in a state of crisis...the Civil Service Law is now widely regarded as something it is desirable to bypass or avoid, where possible."

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Nearly 20 years after this Feerick Commissions report was issued, DCAS in large part proposes the legalization of the patronage mill run out of the basement of City Hall. Rather than develop a comprehensive personnel management and civil service system that can through the merit system develop qualified candidates to provide service to the public. The DCAS plan further emasculates any measure of enforcement that requires City agencies to follow the law. The conditions documented by the commission have only grown worse, the DCAS plan of creating thousands of non-competitive and exempt positions will simply serve as tinder that will ignite the next patronage scandal. Appointing city workers through competitive examinations that measure merit and fitness continues to be necessary today, as it was in 1894 when the New York State Constitution established the merit and fitness mandate and again during the Koch administration in the 1980's. Anyone committed to the integrity of the public service understands that the constitutional mandate is grounded in an enduring wisdom. The Feerick Commission report concluded with the following:

“Clearly, more is needed than just effective enforcement of current law; more is needed than even a dedicated audit by the State Civil Service Commission could provide. One High-level employee described what is needed as a “Moreland Act Commission focusing solely on civil service/personnel issues.”

Those words ring truer today than they did nearly twenty years ago and we strongly suggest they be considered very seriously.

With respect to the specifics of the DCAS plan, we wish to address the relevant sections with the following comments and observations:

Section 2.1.0 Examination Administration

Anyone who has experience with the civil service appointment process understands that the DCAS plan fails to remedy the decades old problem of a high number of provisional appointments in the Principal Administrative Associate (PAA) title. In the DCAS plan, the PAA title is at the top of the list with over 2,000 provisional appointments. The cause of the problem is clear; it is DCAS's refusal to create citywide lists to provide tested and qualified candidates to agencies that have exhausted their promotional lists. By not using citywide lists for this and all citywide titles the DCAS plan will not eliminate provisional appointments in agencies with few eligible candidates to take and pass a promotional exam. Furthermore, the failure to use citywide lists for the Principal Administrative Associate title promotes concentrations of minorities in specific agencies.

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In addition, in footnote # 4 the DCAS plan refers to the City's policy of giving examinations for public safety titles a priority over other examinations. The result of this policy is that there are regular promotional opportunities and clear career paths based upon examinations that measure merit and fitness for these public safety titles. Public safety examinations have a priority even though the Principal Administrative Associate title has over 2,000 provisional appointments. The individuals in the Principal Administrative Associate title are predominantly women and minorities who have been relegated to second class status and denied the same access to regular examinations offered candidates in public safety titles which have higher concentrations of whites and males and far fewer, if any, provisional appointments.

2.3.0 Reclassification Actions out of the Competitive Class

In this section DCAS proposes the reclassification of Associate Call Center Representative (ACCR) and Principal Police Communications Technician (PPCT) titles from competitive to non-competitive status. This portion of the DCAS Plan and the entire plan are arbitrary, capricious and unconstitutional and violates CSL Section 42 and the intent of Section 65(5). It is not impracticable to hire these titles by competitive examination. In fact, as set forth below, a competitive examination has been administered for one of these titles. These titles are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities that cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

The foregoing titles were created by city agencies using the job descriptions of former Principal Administrative Associates who actually were doing this work. In an effort to compensate these workers for the specialized skills and not violate the pattern of wage increases established in contract negotiations reclassifications were instituted. There have been 2 examinations for the PPCT title that has been in existence for many years. The ACCR title was established in 2004 and examinations for the entry-level title have been held. Consolidating the PPCT and ACCR titles with their current pay scales back to the original title of PAA with selective certification would reduce the number of provisional appointments and keep these titles and functions in the competitive class.

Therefore, we believe that to reduce the number of provisionals it would be constitutionally necessary to take the following actions:

1 - Associate Call Center Representative should be broadbanded and consolidated with PAA with selective certification for the specialized skill.

2 - Principal Police Communications Technician should be broadbanded and consolidated with PAA with selective certification for the specialized skill.

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2.3.3 Reclassifying Competitive Class Titles with Historically Few Incumbents into the Non-Competitive Class

An examination in these titles was practicable in the past and we do not see any reason why these positions cannot continue to be in the competitive class. As an alternative we believe it would be appropriate to consolidate and broadband rather than reclassify to the non-competitive and exempt class.

We propose that the following:

- 1 - Legal Secretarial Assistant should be consolidated and broadbanded with the PAA title with selective certification for the specialized skill.
- 2 - Stenographic Specialist should be consolidated and broadbanded with the PAA title with selective certification for the specialized skill.

2.3.5 Resolving Classification Status of Temporary Titles

Our Union represents the School Business Manager title. We propose that since these duties are similar to those of an Administrative Manager this temporary title should be consolidated and broadband into the Administrative Manager title.

Our Union represents the Principal Administrative Associate title. There are over 2,000 provisional appointments in this title it is our understanding that there are many more doing the same work but serving in temporary titles. Many of these temporary titles are proposed for reclassification to the non-competitive or exempt class. They are listed in appendix VIII.

We have not had an opportunity to review the job specifications of these temporary titles and request that they be sent to us. However, given the broad nature of the administrative duties of the Principal Administrative Associate job specification and the history of the use of the title, Principal Administrative Associates also perform many of the duties performed by individuals in these temporary titles. For example,

‘serving as a secretary to or assistant to a manager or a high level executive’

This is a duty in the Principal Administrative Associate job specification. Temporary positions such as: Administrative Assistant (Campaign Finance Board), Confidential Secretary, Secretary (MA), Secretary to Counsel (HA) and many other similar positions appear to have this duty as well. It appears that these temporary titles were used to avoid the appointment of career civil servants as occurred in the Department of Parks lawsuit. Thus reclassifying them would be a transparent attempt to avoidance of the constitutional mandate to retain these positions in the competitive class. Therefore, we propose that these temporary titles be consolidated and broadband into the Principal Administrative Associate title.

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This union has petitioned the Board of Collective Bargaining to represent the Administrative Manager (AM) title and we anticipate it will make its decision regarding the specific number of Administrative Managers we will be representing in the next few months. There are over 900 provisional appointments in this title. In addition, there are many temporary titles identified for reclassification to the non-competitive class listed in appendix VIII. We have not had an opportunity to review all the job specifications of these temporary titles and request that they be sent to us. However, the broad nature of the high-level duties of the Administrative Manager job specification and the history of the use of the Administrative Manager title appears to encompass many of the duties performed by individuals in these temporary titles. For example, the Administrative Manager job specification states,

‘In the office of an agency head, deputy commissioner or other high-level executive responsible for administrative, departmental, analytic or management work, oversees difficult and responsible work in the capacity of an executive assistant or principal assistant; may represent the executive at meetings.’

Similarly, temporary positions such as Executive Assistant to the First Deputy City Clerk, Special Assistant to the Executive Director (HA), Director of Administration (LD), Director of Administration (Workers Comp. Benefits) (LD), Director of Building Management (DS), Director of Management Information Services (DEP), Director of Materials Management (HA), and other titles appear to perform Administrative Manager job duties as well. Again, it appears that these temporary titles were used to avoid the appointment of career civil servants as occurred in the Department of Parks lawsuit. Reclassifying them serves only to avoid the constitutional mandate to keep these positions in the competitive class. Therefore, we propose that these temporary titles be consolidated and broadband into the Administrative Manager title.

Finally, we ask that you provide us with answers to the following questions:

1. What is the process the State and City will be following?
2. For example, will the State and/or City conduct separate and/or joint investigations and hearings on the DCAS Plan before its approval or rejection?
3. Will the State and/or City conduct separate and/or joint investigations and hearings on the reclassifications of specific job titles?
4. Please provide us with copies of all documentation and information provided by DCAS to the Commission with its Plan.

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5. Please provide us with the confirmations made by the Commission that the facts submitted by DCAS are accurate, and advise us how the Commission has or will confirm the accuracy of those fact, as set forth in the CSL amendment.

Conclusion

For all of the above reasons, Local 1180 respectfully urges that the Commission and DCAS modify or reject the current DCAS Plan and provide us with answers to our questions

Respectfully,
Arthur Cheliotis

President

Copy:
Martha K. Hirst, Commissioner
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LIST OF TITLES REPRESENTED UNDER OUR CONTRACT WITH THE CITY OF NEW YORK.

10122*, 10125*	Administrative Assistant (including all approved specialties)
11023*	Administrative Assistant (EDP)
10142*	Administrative Assistant (Income Support)
10130*, 08970*	Administrative Associate
22112	Assistant Planning and Operations Officer (Civil Defense)
10236, 003820	Assistant Coordinating Manager
10271	Associate Call Center Representative * (Decision # 3-2004, 4/29/04)
10248	Administrative Job Opportunity Specialist (Decision #4-2005, 7/28/05)
71477	Chief of Resources Management (Civil Defense)
13611, 961210	Computer Associate (Technical Support)
961220, 961230	
40563	Contract Reviewer (OLS)
980130, 980140	Coordinating Manager (Decision #3-2006, 5/15/06)
95948	Coordinating Manager (Decision #9-2007, 6/7/07)
000310, 83051	Health Care Program Planner Analyst
10171*	Hearing Administrative Services Coordinator (Parking Violations Bureau)
03903	Hospital Payroll Accounts Manager
09539, 30081	Legal Coordinator
1022 A, B, C	Legal Secretarial Assistant (Levels II, III, IV)
11703, 960400	Office Machine Associate
71488*	Operations Assistant (Civil Defense)
22113*	Planning and Operations Officer (Civil Defense)
10124, 96021	Principal Administrative Associate
96022, 96023	
71014	Principal Police Communications Technician
10420*	Principal Shorthand Reporter
10825*	Principal Telephone Operator
71415	Security Officer (Civil Defense)
10217, 960710	Stenographic Specialist
960720, 960730	
11704	Supervisor of Office Machine Operations (Level I and II)
71496	Training Coordinator (Civil Defense)

*for present incumbents only

14.

"PLAYING BALL" WITH CITY HALL: A CASE STUDY OF POLITICAL PATRONAGE IN NEW YORK CITY

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INTRODUCTION: THE COMMISSION'S INVESTIGATION AND HEARINGS

UNDER THE AUTHORITY granted by Governor Mario M. Cuomo's Executive Order establishing the Commission on Government Integrity,¹ the Commission conducted an investigation into certain personnel procedures and practices of the City of New York and, on January 9 and 11 and April 4 and 5, 1989, held public hearings concerning that investigation. This report contains the Commission's findings from the investigation and its recommendations addressing certain shortcomings disclosed by the investigation.

The Commission's investigation and hearings, and this report, present a case study of the influence of political patronage on certain city personnel procedures and practices, primarily during 1983-86. The report focuses on the involvement of the Mayor's Office² (and, in particular, the Mayor's Talent Bank) in personnel procedures and practices during that time period and on two large mayoral agencies, the Department of Environmental Protection ("DEP") and the Department of Transportation ("DOT").³

Patronage involves the hiring and firing of public employees with political considerations playing an important, if not necessarily dispositive, role in the decision. In its classic form it involves the hiring of individuals referred or endorsed by political leaders, in return for their political support. In a government characterized by patronage, public-sector jobs are viewed as benefits controlled by those in power, who may distribute them as they choose, and may use them to reward supporters, favor friends, or punish opponents.

Patronage is thus distinguished from the "merit system," which dictates a separation of politics from public personnel administration, a set of

¹Paragraph I of Executive Order No. 88.1 (April 21, 1987) directs the Commission, *inter alia*, to investigate the management and affairs of any political subdivision of the State in respect to the adequacy of laws, regulations, and procedures relating to maintaining ethical practices and standards in government, assuring that public servants are duly accountable for the faithful discharge of the public trust reposed in them, and preventing favoritism, conflicts of interest, undue influence, and abuse of official position and to make recommendations for action to strengthen or improve such laws, regulations, or procedures.

²The Office of the Mayor, a separate agency with its own budget and staff, is referred to throughout this report as the "Mayor's Office."

³A glossary of abbreviations is annexed to the original report as Attachment A (not included here).

objective criteria for public-sector jobs, and open competition for those jobs, with hiring, promotion, and termination decisions based upon ability and performance as measured against those objective criteria. In a merit system, public employees are seen as public servants, whose duty is to deliver services to all citizens effectively and fairly, and whose allegiance is to the general welfare instead of to a political group. Thus, public jobs belong to the public and should be made available and fairly distributed to all who meet non-political criteria.

Abolishing patronage is, therefore, strongly relevant to the quest for ethical government. When political considerations affect, and are perceived to affect, hiring and other personnel decisions, government inevitably suffers. Even if the number of personnel actions that are tainted by politics is limited, a general sense of unfairness is engendered that can erode public confidence in government integrity and harm the productivity, morale, and sense of professionalism of ethical, hard-working city employees. Although the Commission has not made and could not make an exhaustive study of the entire New York City personnel system, important lessons can be learned from the parts of that system the Commission has examined. (See Section V, Recommendations, below.)

Some of the City's affirmative action efforts are implicated by this investigation, particularly those relating to the Mayor's Talent Bank, but affirmative action is not the focus of this Commission. Although the Commission concludes that the Talent Bank's affirmative action efforts were undermined in the 1983-86 period by efforts to benefit job candidates with political pedigrees, this report should not be read as an evaluation of the City's affirmative action achievements in general.

In the course of the investigation, Commission staff interviewed scores of witnesses, reviewed thousands of pages of documents from city files and elsewhere, and took private sworn testimony from 49 individuals, including many of the 20 witnesses who testified publicly.⁴ Commission members and staff also consulted with experts in public administration and personnel policy.⁵

Sections I-III contain the Commission's factual findings and Sections IV and V are devoted to the Commission's conclusions and recommendations for reform. After providing an overview of the role of the Mayor's Office in city personnel practices, Section I examines the creation of the Mayor's Talent Bank and its operation in the period from 1983 to 1986, other job-referral activities of the Mayor's Office, the early 1986 destruction of certain Talent Bank records, and subsequent changes in the operation of the Talent Bank. Sections II and III explore the Mayor's

⁴A list of witnesses who testified at the public hearings is annexed as Attachment B (not included here).

⁵A list of the experts consulted by the Commission is annexed as Attachment C (not included here).

Office's role in and effect on the personnel practices at DEP and DOT, respectively.

An Appendix, titled "DeVincenzo's Retirement," contains the Commission's factual findings concerning certain events which followed the Commission's January 1989 public hearings and a recommendation concerning pension forfeiture, a related subject of concern to the Commission.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

This report describes certain patronage practices which existed in the period from 1983 through 1986 in the New York City personnel system. During this period, employees of the Mayor's Office played important roles in referring candidates for a wide variety of city jobs to mayoral agencies. This referral function was performed primarily by a unit of the Mayor's Office which came to be called the Mayor's Talent Bank. Although the Talent Bank was designed to broaden the pool of applicants for jobs by accepting referrals from a variety of sources including political figures, one of its major objectives was to promote the hiring of women and minorities. Throughout the 1983-86 period, Joseph DeVincenzo, a special assistant to the Mayor, exercised overall responsibility for the Talent Bank. During this same period, however, DeVincenzo and members of his staff also played a key oversight role in monitoring and approving agency personnel actions.

The consolidation of job referral and personnel oversight authority played a central role in the patronage practices described in this report. DeVincenzo's personnel oversight powers served as a lever to induce DEP and DOT to hire and extend favorable treatment to candidates referred by the Mayor's Office. And the primary concern of the Talent Bank during this period was to place candidates with political pedigrees, not to promote the hiring of women and minorities.

As a result, the affirmative action objectives of the Talent Bank were undercut. Moreover, typical consequences of patronage ensued: agency effectiveness was impaired; employee morale was seriously eroded; and employees became vulnerable to pressures to engage in improper conduct and to fudge, if not break, established procedures for hiring and promoting personnel.

The Commission's recommendations flow directly from the weaknesses of policy, management practices, and structure which this investigation has revealed. They entail a restructuring of the New York City personnel system to discourage patronage, including the transfer of day-to-day supervisory authority over personnel matters from the Mayor's Office to the Department of Personnel; an establishment of a separate Appointments Office to handle the small number of senior, policy-level positions for

which political considerations are relevant; strict legal requirements for providing widespread notice of employment opportunities; development of equitable screening procedures to assure that jobs are open to all; and a drastic reduction in the percentage of provisional employees.

I. THE ROLE OF THE MAYOR'S OFFICE IN NEW YORK CITY AGENCY PERSONNEL MATTERS

A. The Mayoral Agency Work Force

The Commission's investigation explored the role of the Mayor's Office in personnel matters for mayoral agencies⁶ throughout New York City. Of necessity, that role is greatest with respect to discretionary employees, that is, employees who are not hired from civil service lists as a result of competitive examinations.⁷

Data provided by the City indicate that the number and percentage of discretionary employees in mayoral agencies have increased over the last decade.⁸ In 1978, the total number of employees in mayoral agencies was 101,193. Of that total, 90,486 (89.4%) were competitive, permanent employees, while 10,707 (10.6%) were discretionary employees. By 1986, the number of mayoral agency employees increased to 137,257, of which 102,134 (74.4%) were competitive, permanent employees and 35,123 (25.6%) were discretionary employees. By 1988, discretionary employees comprised 30.2% (44,869 out of 148,420) of the mayoral agency work force.

In fact, between 1978 and 1988 the number of discretionary employees increased fourfold while the total mayoral agency work force increased by less than 50%.⁹

⁶Mayoral agencies are defined as those under the direct jurisdiction of the Mayor of the City of New York.

⁷"Discretionary employees," as reported by the New York City Department of Personnel, include employees who hold positions which are exempt from civil service; temporary employees who are hired for specified periods of time to perform specific tasks; civil service employees who are provisionally hired (in the absence of a competitively ranked list); and non-competitive civil service employees such as those in laborer positions for which a formal examination may not be appropriate. New York Civil Service Law §§ 41-43, 64, 65.

⁸The statistics cited throughout this section are culled from the Annual Reports of the New York City Department of Personnel to the New York State Department of Civil Service and compiled at Attachment D (not included here).

⁹See Attachment D (not included here).

B. The Authority of the Mayor's Office over Agency Personnel Matters

The Mayor's Office, consisting of approximately 1,000 employees with an annual budget of approximately \$70 million,¹⁰ exercises wide-ranging authority over personnel matters in mayoral agencies. The Department of Personnel ("DOP"), a separate mayoral agency with over 500 employees and a \$30 million annual budget, also has responsibilities for agency personnel matters, some of which it exercises in conjunction with the Mayor's Office.¹¹

1. PAR AND MPD AUTHORITY

Joseph DeVincenzo, a special assistant to the Mayor, exercised key aspects of the authority of the Mayor's Office over agency personnel actions throughout the period from 1983 to 1986, indeed until his resignation in February 1989. DeVincenzo and his staff exercised this authority principally through the review and approval process for Planned Action Reports ("PARs") and Managerial Position Descriptions ("MPDs").

PARs are forms submitted by mayoral agencies on a monthly basis to the Mayor's Office for the purpose (insofar as is relevant to personnel matters) of obtaining approval to hire, promote, give a raise to, change the title of, transfer, or demote a city employee.¹² Thus, in essence, mayoral agencies submitted PARs in connection with all significant personnel actions relating to their employees. As James Hein, DeVincenzo's principal aide for PAR matters, testified: "Just about anything that can happen to a city employee has to come through my desk."¹³

Although PARs were also submitted to DOP and the Office of Management and Budget ("OMB"), DeVincenzo's office was the decisive force in the PAR approval process.¹⁴ As DeVincenzo testified, DOP's and OMB's review of PARs was "based on a technical aspect of the process."¹⁵ Indeed, when asked what DOP's role was in the process, Hein testified that it had

¹⁰Jan. Tr. at 455-56. References in this format are to pages of the transcript of the Commission's January 9 and 11, 1989 public hearings.

¹¹Other entities with authority over agency personnel matters include the Office of Management and Budget ("OMB") and the Office of Municipal Labor Relations ("OMLR").

¹²DeVincenzo at 44-45, 50; Hein at 11-12. References in this format, i.e., with the name of a witness and page number, are to pages of that witness' private hearing transcript. At the request of the New York County District Attorney, the Commission is not making public any witness' private hearing transcript at this time.

¹³Hein at 3.

¹⁴Hein at 52-53; DeVincenzo at 51.

¹⁵DeVincenzo at 47.

no real role.¹⁶ Moreover, the Mayor's Office was the final sign-off authority on PARs,¹⁷ communicating the outcome of the review process in the form of a letter commonly known throughout city personnel circles as the "Joe D. letter."

The receipt of a Joe D. letter was crucial to a range of personnel actions subject to "pre-audit" review. These actions—which included all actions affecting managerial employees (such as hires, promotions, or raises) and certain other actions affecting non-managerial employees (such as hires, promotions, or transfers after which the employee would be paid a salary in excess of that prescribed by various guidelines)—could not be effectuated by agencies until after PARs were submitted and the requisite Joe D. letter obtained.¹⁸ Most personnel actions, however, were subject to "post-audit" or after-the-fact review.¹⁹ In other words, all personnel actions that did not fall within the class of actions subject to "pre-audit" review could be implemented by agencies without first obtaining a Joe D. letter. Agencies, however, were still required to submit PARs relating to these actions to DeVincenzo's office for after-the-fact review and approval.²⁰

Each PAR, be it "pre-audit" or "post-audit," had to provide a written justification for the particular personnel action it described, and DeVincenzo's office reviewed the sufficiency of the justification.²¹ An important function of the PAR review process was to set the salary of mayoral agency employees.²²

¹⁶Hein at 53.

¹⁷DeVincenzo at 71, 73.

¹⁸Hein at 20, 42–46.

¹⁹DeVincenzo at 34.

²⁰This "pre-audit" and "post-audit" system was instituted in 1980 pursuant to Mayoral Directive 80–1, which DeVincenzo helped write. (DeVincenzo at 75.) This directive established a general policy of post-audit review of mayoral agency personnel actions provided that agencies operated within their budgetary guidelines set by OMB and acted in accordance with civil service law. Directive 80–1, however, stated that the application of the post-audit policy was a "privilege" that could be withdrawn at any time.

Directive 80–1 specified the various kinds of personnel actions subject to "pre-audit" and "post-audit" review. The kinds of actions subject to pre-audit review expanded in the years following the issuance of 80–1. (DeVincenzo at 161–62.) Most notably, the hiring of labor class employees became subject to "pre-audit" review in 1986. DeVincenzo at 110–13.

²¹DeVincenzo at 352–53; Hein at 24, 28–31.

²²Hein at 27. Generally, agencies could pay an employee in a particular job title a salary within a specified range. If, for example, an agency sought to hire a new employee and pay a salary above the minimum amount specified for the position, DeVincenzo's staff reviewed the justification proffered by the agency and, on the basis of such factors as the prior salary history of the candidate, the salary paid to comparable employees or the salary paid to subordinates, would determine either to approve the salary at the amount requested or at a lower amount within the applicable range. Hein at 24, 28–31.

DeVincenzo exercised additional authority in the MPD review process. When agencies sought to create a new managerial position or upgrade an existing managerial position, they were required to submit MPDs to DeVincenzo's office and to DOP.²³ These forms describe the prospective responsibilities of the new or upgraded position and request that a particular "M" level be assigned to the position.²⁴ The City's managerial classification system consists of ten managerial, or "M" levels, with M1 the lowest and M10 the highest level. Since MPDs relate to managerial employees, they are subject to "pre-audit" review.²⁵ Accordingly, agencies cannot hire a new manager or promote an incumbent manager until the need for a new manager and the particular "M" level to be assigned is reviewed and approved.

Until 1987, DeVincenzo's office and DOP exercised joint authority over all MPDs.²⁶ When DeVincenzo's office completed its review,²⁷ it communicated its position to DOP and DOP in turn communicated the outcome of the review process (i.e., approval or rejection of the prospective managerial position or approval of the position at a lower "M" level) to the agencies.²⁸ Although DOP and DeVincenzo's office jointly determined whether to approve the creation or upgrading of a managerial position and the particular "M" level to be assigned to the new or upgraded position, it was DeVincenzo's office which reviewed and approved—through the PAR process—agency decisions concerning the candidate chosen and the salary to be paid.²⁹ Since these decisions were subject to pre-audit review, they could not be implemented without a Joe D. letter.³⁰

2. VACANCY NOTIFICATION PROCEDURES

A mayoral directive issued on April 18, 1983 established new hiring procedures for positions at mayoral agencies, other than those governed

²³DeVincenzo at 35; Skolnick at 42. (Barry Skolnick, a Mayor's Office employee, worked on MPDs during the relevant time period.)

²⁴DeVincenzo at 26, 129; Hein at 14, 17.

²⁵DeVincenzo at 34, 99–100; Hein at 20, 42–43.

²⁶In 1987, First Deputy Mayor Brezenoff altered the authority of the Mayor's Office and DOP over MPDs: DOP became the lead office in MPD review and review of MPDs by DeVincenzo's office, particularly those relating to managerial positions at levels M1 through M4, was curtailed. Brezenoff at 221–23; DeVincenzo at 27–29, 36–37; Skolnick at 17–20, 27–28, 44.

²⁷DeVincenzo's staff evaluated MPDs against criteria such as the type and nature of the supervisory duties of the position, whether the putative manager's subordinates would be clericals or professionals, the extent to which the position entailed budgetary responsibilities, and the level of expertise called for by the position. Skolnick at 22–23.

²⁸Skolnick at 23, 32.

²⁹Skolnick at 34; Hein at 24, 28–31.

³⁰DeVincenzo at 99–100; Hein at 42–43.

by a current civil service list. Under these procedures, as supplemented by subsequent directives, agencies were required to submit written notice of job vacancies to the Mayor's Office. The Mayor's Office was to be accorded at least ten working days following receipt of the notice in which to submit the names of candidates for the vacant positions. The final decision concerning the selection of a candidate was to remain with the agency, but mayoral agencies were prohibited by the directive from selecting candidates without considering candidates supplied by the Mayor's Office. In the event an agency determined not to hire a Mayor's Office candidate, it was obliged to explain why.³¹

The promulgation of this April 1983 directive added to DeVincenzo's personnel authority. His office received the vacancy notices called for by the directive and referred candidates in response to the notices. Through the PAR review process, moreover, DeVincenzo's office enforced compliance with the directive's requirement that candidates referred in response to the vacancy notices be considered and adequate explanations be given if Mayor's Office candidates were not selected.

C. The Creation and Operation of the Talent Bank: 1983-86

By promulgating the procedures requiring notice to the Mayor's Office of job vacancies, the Mayor's April 18, 1983 directive, in effect, created the Mayor's Talent Bank.³² As Mayor Koch has stated, in both his private and public appearances before the Commission, a "major component" of the Talent Bank was affirmative action.³³ Increasing the number of minorities and women in the City's work force, however, was not the Talent Bank's sole objective. In his private appearance before the Commission, Mayor Koch stated that he established the Talent Bank for affirmative action purposes and "also [to] accommodate the political need when people would say, 'Now listen, we are supporting the administration. We

³¹Koch at 94; April Tr. at 561; April Exhibit 1. (References in this format are to pages of the transcript of the Commission's April 4 and 5, 1989 public hearings and exhibits introduced at those hearings.) An earlier directive, Mayoral Directive 78-11, issued in 1978, established posting requirements for job vacancies. The directive required that public notices be prominently posted by all city agencies, placed on file at DOP, and published in the City Record. The purpose of this directive was to broaden the pool of applicants and thus increase competition for city jobs. Koch at 103.

³²The term "Mayor's Talent Bank" was coined later. A press release issued by the Mayor on June 28, 1983 referred rather to the "minority recruitment program announced April 18." The unit of DeVincenzo's staff that implemented the new notification procedures and referred candidates from the Mayor's Office later became known as the "Talent Bank."

³³Koch at 65-66; April Tr. at 560-61.

worked for you. We are not asking that you give us a job, but give us an opportunity to submit people so that you can consider them. . . ."³⁴ Similarly, the Mayor's April 18, 1983 directive alludes to two purposes underlying the new procedures it mandated: (1) "guarantee[ing] that the City is maximizing its efforts to attract women and members of minority groups to city service" and (2) ensuring that agencies would "have the widest selection of candidates from which to choose including qualified women, members of minority groups, and individuals recommended by civic and political organizations."³⁵

The Talent Bank, accordingly, was also designed to meet a perceived political need by providing a mechanism through which individuals referred by political figures³⁶ would be considered for city jobs. As is discussed below, this objective of the Talent Bank seriously undercut its affirmative action goals.³⁷

1. DE VINCENZO'S VIEW OF THE TALENT BANK'S PURPOSES

In November 1985, DeVincenzo appointed Nydia Padilla-Barham ("Padilla") as the director of the Talent Bank.³⁸ In the course of familiarizing herself with the Talent Bank's operations, Padilla reviewed computer printouts relating to the candidates previously placed in jobs and those currently pending.³⁹ She concluded that the number of candidates successfully referred by the Talent Bank was low and, given her understanding that the primary purpose of the Talent Bank was to promote the hiring of minorities and women, that the pending candidates included relatively few minorities.⁴⁰ At the time, the Talent Bank's recruitment efforts were negligible and no member of its staff was engaged in any recruitment activities.⁴¹ Its four full-time staff members consisted of Luz Morales, the

³⁴Koch at 66.

³⁵April Exhibit 1. The Mayor referred to both of the Talent Bank's objectives when he announced its creation. April Tr. at 605-6.

³⁶The term "political figure" as used in this report includes both elected public officials, such as borough presidents, and leaders of political parties, such as district or county leaders.

³⁷On July 14, 1989, Mayor Koch made public two reports containing historical descriptions of the Talent Bank which are at odds with or ignore certain of the evidence considered and factual findings made by the Commission in this report, particularly the evidence and findings concerning the preferences accorded candidates referred by political figures.

³⁸Jan. Tr. at 61.

³⁹Jan. Tr. at 66-67; Padilla Feb. at 21. References in this format are to pages of Padilla's February 24, 1988 private hearing transcript. References to "Padilla Sept. at ____" are to Padilla's September 13, 1988 private hearing transcript.

⁴⁰Jan. Tr. at 66-67; Padilla Feb. at 17; Padilla Sept. at 16.

⁴¹Jan. Tr. at 67-68; Padilla Sept. at 17-18.

"coordinator" who supervised the daily activities of the other staff; Denita Williams, who was responsible for entering data into and retrieving it from the Talent Bank's computer; and Magaly Maldonado and Annette Luyanda-Medina ("Luyanda"), who performed clerical duties.⁴² Accordingly, Padilla's first proposal to DeVincenzo was that the Talent Bank hire a full-time recruiter to publicize the Talent Bank, open up the Talent Bank to the general public, and increase recruitment of minorities and women.⁴³

Padilla testified that DeVincenzo's response was a "sharp, no."⁴⁴ Although "street resumes" (unsolicited resumes submitted by the general public) were "okay," he explained to Padilla that "the real purpose [of the Talent Bank] is . . . these political resumes that are submitted to us. . . ."⁴⁵ Her "main goal," according to DeVincenzo, was to track and follow up on resumes referred by political figures to make sure that they were being referred for vacancies.⁴⁶ Padilla was further instructed to keep Hein informed when resumes referred by political figures were forwarded to agencies so that Hein could follow up on them with the agencies.⁴⁷ And, as DeVincenzo told her at this or a later meeting, she should keep him apprised of the status of these referrals so that he could answer the questions he received from the political figures who referred the candidates.⁴⁸

2. THE TALENT BANK COMPUTER, THE BLACK BOOK, RESUME COVER SHEETS, AND COLORED FOLDERS

The recordkeeping practices of the Talent Bank afford additional proof that advancing the hiring of politically referred candidates was DeVincenzo's chief concern. Through its computer, the Talent Bank was able systematically to keep track of and monitor the progress of politically referred resumes. In February 1985, the Talent Bank had acquired its own office space on the first floor of 52 Chambers Street, across from City Hall.⁴⁹ As of then, if not earlier, the Talent Bank computer was able to

⁴²Jan. Tr. at 62; Padilla Sept. at 13-14.

⁴³Jan. Tr. at 67-68; Padilla Feb. at 18.

⁴⁴Jan. Tr. at 68; Padilla Sept. at 18.

⁴⁵Jan. Tr. at 69; Padilla Feb. at 22-23, 92-94; Padilla Sept. at 18-19.

⁴⁶Jan. Tr. at 69-70; Padilla Feb. at 22-23.

⁴⁷Jan. Tr. at 70; Padilla Sept. at 20.

⁴⁸Padilla Sept. at 18-19. The accuracy of this account is corroborated by the fact that, among other things, the Talent Bank had been operating for more than two years without a recruiter on its staff. The Talent Bank did receive referrals from the Mayor's Minority Affairs and Hispanic Affairs Advisors and politically referred candidates were not exclusively white males. And efforts were made to obtain female candidates from a women's organization. However, the Talent Bank did not have any recruiting staff until the spring of 1986. Padilla Feb. at 10-11, 88.

⁴⁹Previously, the members of DeVincenzo's staff who performed Talent Bank duties were located in City Hall in Room 1—the basement office area which included DeVincenzo's office—and in an adjoining room, Room 3-A.

"look up" the pending candidates and the hired candidates submitted by a particular referral source and, upon command, print a listing of that source's pending or hired candidates.⁵⁰

These "source" printouts were regularly used to apprise DeVincenzo of the status of candidates submitted by political figures. During the brief period (a matter of a few months) after Padilla became the director of the Talent Bank and before the purging of referral source information from its files and computer (see Section I.D. below), Padilla met with DeVincenzo on at least a bi-weekly basis.⁵¹ Consistent with DeVincenzo's instructions that she should track the politically referred resumes and keep him apprised of their status, Padilla reported on recent Talent Bank placements.⁵² DeVincenzo "always wanted to know the source" of placements⁵³ and Padilla provided him with printouts, including printouts containing information concerning the referral source of Talent Bank candidates.⁵⁴

Before Padilla became the director of the Talent Bank, Hein (who was then responsible for the Talent Bank as well as his PAR duties) requested and obtained Talent Bank computer printouts. In addition to requests for printouts concerning the status of individual candidates, Hein frequently requested printouts of all pending and hired candidates referred by particular political figures.⁵⁵ Hein requested the printouts from Morales who would direct the Talent Bank's computer operator (Williams or her predecessor) to generate them.⁵⁶

The Talent Bank's computer contained referral source information well before the Talent Bank moved from City Hall to 52 Chambers Street. Vickie Moffitt, a Mayor's Office employee who had various responsibilities while working under DeVincenzo from January 1979 to February 1985, was asked by DeVincenzo in late 1983 or early 1984 to computerize the Talent Bank.⁵⁷ At DeVincenzo's direction, referral source information was entered into the Talent Bank's then relatively unsophisticated computer.⁵⁸ As Moffitt stated in private sworn testimony:

[DeVincenzo] wanted to be able to pull out [of the computer] how many candidates were placed in jobs, how many candidates didn't get jobs, what the jobs were, all of blank's candidates, all of, say, John LoCicero's candidates, which of them got jobs, which of them didn't.

The referral source was important. You know, it had to be in there, it was always part of it. That was always important . . . because one of the reports

⁵⁰Jan. Tr. at 73-74; April Tr. at 134-35.

⁵¹Jan. Tr. at 80-81; Padilla Sept. at 29-30; Padilla Feb. at 30.

⁵²Id.

⁵³Padilla Feb. at 30.

⁵⁴Jan. Tr. at 80, 82-83; Padilla Sept. at 29-30; Padilla Feb. at 30.

⁵⁵Jan. Tr. at 163-64, 179; Maldonado at 81-90; Luyanda at 26, 35-36.

⁵⁶Id.

⁵⁷Moffitt at 2, 10, 23.

⁵⁸Moffitt at 10-11.

Joe wanted was to be able to see by referral source who got a job and who didn't, how many jobs people had gotten by referral source. . . . He said that's what he wanted to know.⁵⁹

Moffitt, accordingly, designed forms containing various information relating to each Talent Bank candidate and the forms had a space in which the referral source of the candidate was entered.⁶⁰ The information in the forms was then entered into the computer.⁶¹ The computer equipment then in use could only keep track of such information as the job qualifications and referral source of candidates; it could not "match" candidates with job vacancies.⁶²

Because DeVincenzo wanted the Talent Bank's computer to match candidates with job vacancies, Moffitt obtained the assistance of the New York City Financial Information Services Agency ("FISA") in the spring of 1984.⁶³ FISA employees worked on a program for a FISA mainframe computer that would permit matching.⁶⁴ Helen Mosley, a FISA employee who became a Mayor's Office employee in October 1984, worked on this program and subsequently developed a program for the personal computer system that the Talent Bank was using by February 1985.⁶⁵

According to Mosley, whose testimony on this subject is in accord with Moffitt's, including referral source information in the computer system "was just always part of it from the beginning, just always part of it."⁶⁶ Referral source information was needed because DeVincenzo "always wanted to know what happened when people were referred by other people."⁶⁷

Also for this reason, Mosley created the "Black Book," a large, three-ring binder—with the words "Talent Bank" printed prominently on its spine—containing computer-generated listings of pending and hired Talent Bank candidates in its various subdivisions. Thus, the "Black Book" provided a ready means of identifying, for example, either the pending or hired candidates referred by a particular source or the source of a pending or hired candidate.

Mosley created the "Black Book" in response to complaints from DeVincenzo's staff members about the timeliness of reports on Talent Bank candidates⁶⁸ and in order to put comprehensive information at the

⁵⁹Moffitt at 11, 36–37.

⁶⁰Id. at 10, 12.

⁶¹Id. at 10.

⁶²Id. at 13–14, 19.

⁶³Id. at 19–20.

⁶⁴Id. at 19–21.

⁶⁵April Tr. at 335; Moffitt at 23; Mosley at 4, 135, 140.

⁶⁶Mosley at 16.

⁶⁷Id. at 20.

⁶⁸Mosley also testified that DeVincenzo made such complaints but was unsure "whether he complained directly to me or someone told me he was complaining." April Tr. at 338–39.

fingertips of DeVincenzo's staff and thus obviate the need to generate printouts in response to specific requests for information about Talent Bank candidates.⁶⁹ Mosley updated the "Black Book" at least once; for reasons that are not clear, she apparently updated it for the last time in the summer of 1985.⁷⁰

The Commission also obtained significant documents reflecting Talent Bank recordkeeping practices from Joy Schwartz, an aide to DeVincenzo who was in charge of the Talent Bank—reporting directly to DeVincenzo—for about a one-year period beginning in early 1984 and ending in early 1985.⁷¹ Among the documents obtained from Schwartz are some 350 "resume cover sheets." These resume cover sheets, the existence of which the Commission first learned from Padilla, Maldonado, and Luyanda, are forms which record for each candidate the relevant data put into the Talent Bank computer.⁷² At the top of each form, immediately adjacent to a space for the name of the candidate, is a space (designated "Source") for his or her referral source. The source space was completed, in the handwriting of many different aides to DeVincenzo, on virtually all of the resume cover sheets obtained from Schwartz.

Other documents obtained from Schwartz corroborate the testimony of several witnesses that letters from political figures and other materials disclosing the referral source of candidates were included in the Talent Bank's files.⁷³ Schwartz's own files contained in excess of 30 letters addressed to DeVincenzo or members of his staff from political figures referring job candidates. Letters and other documents revealing the referral sources of candidates were routed from DeVincenzo to the Talent

⁶⁹April Tr. at 338–39; Mosley at 103–6, 179–80, 182.

⁷⁰April Tr. at 340; Mosley at 106, 107, 184–85. Although DeVincenzo denied any knowledge of the "Black Book," one member of his staff—a clerical employee—acknowledged her familiarity with it and testified that she saw it in DeVincenzo's office on one occasion. (Barlow at 29, 32, 37–39.) Mosley testified that when she first created and updated the Black Book she placed it on a shelf above the desk of DeVincenzo's secretary. April Tr. at 340; Mosley at 106, 183–85.

Padilla provided the "Black Book" to the Commission. She, in turn, received it from DeVincenzo. During the course of a meeting in December 1985 or January 1986, DeVincenzo mentioned a book that had been prepared for him and asked that it be brought to the meeting. He then gave that book (the "Black Book") to Padilla, telling her that she could use its format or develop a different means of keeping him posted about the Talent Bank's candidates. Jan. Tr. at 83.

⁷¹April Tr. at 106–7, 109.

⁷²Sample copies of resume cover sheets are reproduced as Attachment E (not included here).

⁷³Jan. Tr. at 113, 151–52; Maldonado at 41–43, 75, 97–98; Luyanda at 7, 20; Padilla Feb. at 20, 47.

Bank.⁷⁴ Indeed, these letters and documents were apparently the primary means by which the source of a resume could be identified for purposes of completing the "source" space on resume cover sheets.

At least for a brief period of time prior to the purging of referral source documents from the Talent Bank's files, the individual candidate folders were color-coded.⁷⁵ The resumes and other materials relating to politically referred candidates—or the most important, or "hottest," of these sources—were stored in red folders while the resumes of unreferred "street" candidates were stored in green folders.⁷⁶

3. THE PREFERENTIAL TREATMENT ACCORDED TO POLITICALLY REFERRED CANDIDATES BY THE TALENT BANK

Following the Talent Bank's move in February 1985 to 52 Chambers Street, politically referred resumes received special treatment at every phase of the Talent Bank's processes. When resumes were received at the Talent Bank,⁷⁷ application forms were mailed to the candidates. Politically referred resumes were separated from "street" resumes and application forms were mailed first to the politically referred candidates.⁷⁸ When applications were returned, the resumes and accompanying materials were sent in batches of ten to Harry Shapiro for classification.⁷⁹ Here, too, candidates whose resumes were referred by political figures often went to

⁷⁴April Tr. at 136–37. When the Talent Bank obtained its own office space at 52 Chambers Street in February 1985, these letters and documents were routed (along with accompanying resumes) to the Talent Bank and then to the office of Harry Shapiro. Shapiro evaluated Talent Bank resumes to determine the particular job titles for which candidates qualified. The various papers relating to candidates were then returned to the Talent Bank for filing after the computer operator entered the relevant data about the candidates into the Talent Bank computer. (Jan. Tr. at 63–64, 150–53, 159; Maldonado at 35–37, 39–41; Luyanda at 5, 9–11, 14.) A similar procedure obtained before the Talent Bank moved to 52 Chambers Street. Maldonado at 12–16, 19–21.

⁷⁵Jan. Tr. at 159–60; Maldonado at 44, 46–47, 78.

⁷⁶Id. Due to the passage of time and the brevity of the period in which this color-coding scheme was employed, Maldonado and Luyanda are less than clear about the meaning of the other colored folders. These witnesses, however, corroborated each other with respect to the existence of the color-coded folders, and they both are corroborated on that point by Padilla. Jan. Tr. at 89–91.

⁷⁷For the most part, unreferred or "street" resumes came to the Talent Bank through the mail. Politically referred resumes came to the Talent Bank from DeVincenzo's office and were often delivered by Hein. (Jan. Tr. at 150–51.) They were received by DeVincenzo from a variety of sources, including the Mayor's special advisor John LoCicero and directly from political figures.

⁷⁸Jan. Tr. at 151, 154; Luyanda at 8, 11.

⁷⁹Jan. Tr. at 159; Maldonado at 37.

the head of the line. Batches of politically referred resumes were regularly sent for classification ahead of street resumes.⁸⁰ As Luyanda explained, the resumes from political figures were processed first "so that in the event that DeVincenzo inquired about a special candidate or a hot referral, we would be ready to give him an answer."⁸¹

Once the initial processing of resumes was completed and all relevant information concerning candidates, including the job titles they might qualify for, was entered into the computer, a candidate could be selected by the computer upon receipt of a vacancy notice indicating an agency's intention to hire for a particular job title.⁸² By entering the complete information concerning politically referred candidates ahead of the information concerning "street" referrals, politically referred candidates were accorded another advantage.

When particularly "hot" referred candidates were received, Talent Bank staff sometimes bypassed the classification step altogether.⁸³ Morales—who had previously assisted Shapiro in his classification duties—would seek to classify the candidate herself; she explained, on occasion, "[t]his is a hot person, and we have to try and classify him."⁸⁴ "Street" candidates did not receive such attention.

When the Talent Bank received a vacancy notice indicating that an agency was seeking to fill one or more vacancies in a particular job title, its computer generated a printout of the candidates who, on the basis of Shapiro's evaluations, were qualified for the title.⁸⁵ On the printout, referred candidates were printed first, above an alphabetical listing of "street" referrals.⁸⁶ The Talent Bank's staff was encouraged to and,

⁸⁰Jan. Tr. at 155–56; Maldonado at 76–77; Luyanda at 12.

⁸¹Jan. Tr. at 156. With respect to the Talent Bank's computer, the initial step in processing involved "logging" into the computer basic information about the candidates. Here, too, politically referred resumes fared better than street resumes. (Luyanda at 34.) Shortly after her appointment as Talent Bank Director, Padilla obtained a report with respect to the backlog of resumes awaiting "logging." This report discloses that of the 50 pending batches of resumes, all 18 "Referral Batches" had been logged but only 15 of the 32 "Street Batches" had been logged into the computer. (Padilla Feb. at 88–89.) Luyanda also testified that there was a "consistent" backlog of street resumes awaiting classification. Jan. Tr. at 156.

⁸²Jan. Tr. at 63–64.

⁸³Jan. Tr. at 156–57; Luyanda at 14.

⁸⁴Jan. Tr. at 157.

⁸⁵Jan. Tr. at 64–65, 160–61; Luyanda at 21–22.

⁸⁶Jan. Tr. at 161; Luyanda at 22. Initially, the name of the referral source was entered into the Talent Bank's computer. Eventually, however, a code—generally an abbreviation of the source's name beginning with its first letter—was entered instead. (Jan. Tr. at 78–79, 115–16; Maldonado at 81, 84, 86; Padilla Sept. at 28.) The code for "street" referrals was "ZGEN." The apparent and perhaps intended consequence of using a code for "street" referrals that began with the last letter of the alphabet was to cause the "street" referrals to be printed out below all others.

depending on the number of candidates who met the qualifications for the particular vacancy, did in fact give preferences to the referred candidates in selecting the candidates who were to be forwarded to the hiring agency for its consideration.⁸⁷

Specifically, Morales instructed Luyanda to obtain candidates from the top list first.⁸⁸ If Luyanda could obtain enough names from that list,⁸⁹ she “wouldn’t need to bother with the second list.”⁹⁰ It “was not a priority” to take into consideration gender, ethnicity, or disability in selecting the candidates to be forwarded to the hiring agency.⁹¹

Padilla felt pressure from DeVincenzo and his staff to refer to agencies the politically referred resumes. Hein, for one, repeatedly told Padilla that the Talent Bank was not doing a good enough job in getting referred candidates placed.⁹² She was criticized if they were not circulated regularly, was called regularly to see if they had been referred, and was directed to make sure that they were referred.⁹³ The pressure was to place the politically referred candidates, not minorities, women, the handicapped, or Vietnam veterans.⁹⁴

Inquiries from DeVincenzo’s office concerning the status of politically referred candidates were a daily event. Several times a day Talent Bank staff were required to answer inquiries concerning matters such as which agencies a candidate had been referred to, whether the candidate had been interviewed, what the outcome of the interview was or whether there were additional openings for which the candidate might be considered.⁹⁵ Apart from evidencing the importance DeVincenzo’s office attached to referred candidates, these constant inquiries—which were frequently matters of

⁸⁷Jan. Tr. at 91–93, 126, 135, 162; Luyanda at 22; Maldonado at 47, 67; Padilla Sept. at 53, 70–71.

⁸⁸Luyanda at 22–23.

⁸⁹When responding to a vacancy notice, the Talent Bank did not generally send more than six to eight candidates. (Jan. Tr. at 64–65.) Depending on the type of job, the Talent Bank might have less or more than six to eight candidates who might be qualified.

⁹⁰Jan. Tr. at 162.

⁹¹Id. at 185. In addition, there was no code to identify Vietnam veterans, notwithstanding the announced policy to aid them in obtaining positions. Id. at 391.

⁹²Padilla Sept. at 70–71.

⁹³Jan. Tr. at 91, 93; Padilla Sept. at 53; Padilla Feb. at 122–23.

⁹⁴Jan. Tr. at 126, 185. According to Maldonado and Luyanda, however, candidates referred by the Mayor’s Minority Affairs and Hispanic Affairs Advisors were among the “hot” candidates. Maldonado at 133; Luyanda at 14.

⁹⁵Jan. Tr. at 93–97, 100–101, 164–65; Luyanda at 35–36; Maldonado at 51–52; Padilla Sept. at 55, 58–59; Padilla Feb. at 122–23.

urgency requiring immediate response—disrupted the flow of Talent Bank work.⁹⁶ As Padilla testified:

There wasn't a day that didn't go by where I didn't have to go running around looking for somebody's resume, somebody who had been referred by somebody important and I had to drop everything to interview these people and I was harassed if they didn't get referred to jobs they qualified for, even though they might not have been appropriate for the job.⁹⁷

Special efforts to obtain jobs for referred candidates were also made after candidates had been sent to agencies. For example, Luyanda was told by Morales to try to "push" referred candidates by requesting additional interviews for different vacancies for "hot" candidates who had not initially been hired.⁹⁸ Following that direction, Luyanda would sometimes seek to persuade agencies that the candidate was a very good one.⁹⁹ Padilla was told to advise an agency that DeVincenzo would be upset if a candidate had not yet been hired or interviewed.¹⁰⁰ One consequence of these efforts was, as Padilla testified, that agencies sometimes believed she was trying to "push" a politically referred candidate when she was actually emphasizing the qualifications of a candidate who was in fact a very good one.¹⁰¹

Prior to the Talent Bank's move to 52 Chambers Street in February 1985, as Schwartz's testimony establishes, politically referred candidates benefited from similar forms of preferential treatment. Lists of candidates, sometimes ordered in a specified priority, were forwarded by Mayor's Office staff to agencies.¹⁰² With respect to those lists containing priority orderings of candidates, the high-priority candidates were referred by political figures. For example, one list containing candidates referred by political figures and other sources ranks the politically referred candidates ahead of the other candidates.¹⁰³ And Schwartz sometimes received from DeVincenzo letters sent by political figures containing lists of candidates that the political figures themselves had ranked in priority order. Either

⁹⁶Luyanda at 36; Padilla Feb. at 122–23. For example, as Luyanda testified, the Talent Bank computer could not simultaneously search for information about a candidate and perform its other functions. Accordingly, the constant requests from DeVincenzo's office for information about referred candidates created a backlog in other computer work. Jan. Tr. at 164–65.

⁹⁷Padilla Feb. at 122–23.

⁹⁸Jan. Tr. at 165–66.

⁹⁹Luyanda at 32.

¹⁰⁰Jan. Tr. at 102.

¹⁰¹Padilla Sept. at 66.

¹⁰²April Tr. at 115–17, 125–26, 128–29. Testimony from employees of the Department of Environmental Protection and the Department of Transportation, as well as documents obtained from these agencies, confirm this practice. See Sections II and III below.

¹⁰³Id. at 128.

these letters or lists incorporating the priority ordering of the letters would then be forwarded to an agency.¹⁰⁴

Schwartz received instructions from DeVincenzo from time to time that certain politically referred candidates had to be hired or should be pushed or reconsidered.¹⁰⁵ And as Schwartz acknowledged, she would act on these instructions by telling agency personnel staff that particular candidates were important, that they should do their best to hire them, that she should be kept posted and by otherwise conveying that they should be hired.¹⁰⁶ Schwartz was not aware of any candidate who was the subject of such efforts who did not obtain a job.¹⁰⁷

Correlatively, the comparative lack of attention paid to the Talent Bank's affirmative action goals is exemplified by Schwartz's testimony that following up on priority list candidates alone occupied a "couple of hours" of her time each day.¹⁰⁸ She was not aware of any efforts made by persons under her to recruit candidates from minority, veterans, or women's organizations.¹⁰⁹

4. LABORER POSITIONS

Among the titles of interest to the Mayor's Office were manual laborers' titles. Many of the manual laborer positions in the City require few qualifications but pay well, some in excess of \$20,000 a year plus opportunities for overtime pay. Far from being open to all city residents, these jobs were, at least until 1986, largely the province of politically referred candidates who were predominantly white males. DeVincenzo's office played a decisive role in the process by which these jobs were dispensed.

When agencies, chiefly DEP and DOT, advised DeVincenzo's office of their plans to hire laborers, Peter Gilvarry¹¹⁰ would submit a handwritten list containing the names of potential laborer candidates to DeVincenzo. The names on these lists were overwhelmingly derived from political figures. On these lists, Gilvarry wrote only the names of the candidates and their referral source. DeVincenzo, not the Talent Bank computer, then determined which of the prospective candidates would be forwarded to the agency; the testimony indicates that the Talent Bank's affirmative action goals played little if any role in this process.¹¹¹

¹⁰⁴Id. at 129-30.

¹⁰⁵Id. at 117, 125, 139-40.

¹⁰⁶Id. at 139-40.

¹⁰⁷Id. at 144.

¹⁰⁸Id. at 147.

¹⁰⁹Id. at 149-50.

¹¹⁰From January 1978 until mid-1985, when he assumed different responsibilities in City Hall, Peter Gilvarry was one of the members of DeVincenzo's staff responsible for reviewing PARs submitted by mayoral agencies.

Gilvarry obtained the names of laborer candidates from a variety of sources: letters from political figures, lists from the office of John LoCicero, the Mayor's special advisor, the Talent Bank, and non-political sources. The largest single source, however, was the letters from political figures that were forwarded to Gilvarry by DeVincenzo. Neither these letters nor the lists that came from LoCicero's office contained any notations concerning the ethnicity of the candidates. And Gilvarry correctly believed that the names on the lists sent by LoCicero's office had in turn been obtained from county leaders and other political figures.¹¹²

The evidence also suggests that DeVincenzo determined which potential candidates would be referred to agencies on the basis of political criteria. Most significantly, apart from a candidate's name, referral source information was the only other information Gilvarry recorded on the lists he submitted to DeVincenzo.¹¹³

By 1983, if not earlier, LoCicero and his executive assistant, Jerry Skurnick, regularly contacted the office of Democratic county leaders in Staten Island, Queens, Brooklyn, and the Bronx and other political figures to invite them to submit names of candidates for laborer positions.¹¹⁴ Because the Manhattan Democratic County Leader was an opponent of the Mayor, however, he was not invited to submit candidates.¹¹⁵

Although LoCicero testified that he always asked county leaders to submit names of minority candidates, he acknowledged that Skurnick was the one who generally contacted the county leaders. Skurnick, who testified that increasing the number of women and minorities was *not* a major component of the Talent Bank, acknowledged that he seldom asked the representatives of the county leaders with whom he dealt to submit minority candidates.¹¹⁶ Since these county leaders did not indicate the ethnicity of their candidates when they submitted them, LoCicero and Skurnick had little means of ascertaining whether they were submitting minority candidates.¹¹⁷ And whatever efforts were made by LoCicero's office to obtain candidates from political figures who were members of minority groups, they were clearly insufficient to counter-balance the overwhelming numbers of white male candidates.

A 1978 mayoral directive sought to broaden the pool of applicants for city jobs by requiring agencies to post all job vacancies. But, as discussed in Sections II and III below, the two agencies hiring the largest number of laborers, DEP and DOT, did not comply with this directive. Rather,

¹¹²Id. at 257-58.

¹¹³Id. at 258, 261.

¹¹⁴Id. at 168.

¹¹⁵Id. at 174. In part for this reason, residents of Manhattan were drastically underrepresented in DEP's and DOT's laborer work force.

¹¹⁶April Tr. at 180, 207.

¹¹⁷Id. at 181.

compliance was waived by DeVincenzo's office. The candidates referred by the Mayor's Office, accordingly, did not compete with the general public for these well-paid, minimum skill jobs.

5. "SPECIAL" REFERRALS

Even prior to the creation of the Talent Bank, DeVincenzo's office regularly referred job candidates to agencies. Members of DeVincenzo's staff, particularly the aides who assisted him in the exercise of his oversight authority over agency personnel actions, were charged with the task of finding jobs for these candidates.

From the time he first assumed responsibilities for PAR review, Peter Gilvarry was given the additional responsibility of trying to find jobs for persons who were referred to him by DeVincenzo.¹¹⁸ The other members of DeVincenzo's staff doing PAR reviews, such as Hein, also endeavored to find jobs for these "special" referrals. Indeed, Gilvarry and Hein "worked" the same candidates;¹¹⁹ Hein would seek to place them at the agencies whose PARs he handled and Gilvarry at the agencies whose PARs he handled. These candidates, unlike Talent Bank candidates, were not referred to agencies in response to vacancy notices from the agencies. Rather, they were generally forwarded for a wide variety of positions, including laborer jobs, to the larger agencies; these agencies were usually under full capacity and thus were able to accept candidates in positions for which they had not previously submitted vacancy notices.¹²⁰

Gilvarry's efforts to place these candidates sometimes began when DeVincenzo or another of his aides introduced him to a candidate sitting in the hall outside DeVincenzo's office.¹²¹ Otherwise, he received their resumes from DeVincenzo. If the particular positions for which they were to be considered had not already been determined, DeVincenzo would direct that the candidates be sent to Harry Shapiro. Shapiro would then interview the candidate and determine the job titles for which he or she might be qualified.¹²²

Gilvarry generally knew the referral sources of these candidates and acknowledged that at least some of them were referred by political figures. Gilvarry learned the referral source either through a cover letter from a political figure accompanying the resume or by being told the name of the political figure by the candidate.¹²³ Gilvarry knew that others had been referred by LoCicero's office either on the basis of memos from LoCicero's office accompanying resumes or subsequent inquiries concerning candi-

¹¹⁸Id. at 255-57.

¹¹⁹Gilvarry at 47-50, 288-89, 304-5.

¹²⁰Id. at 269-70.

¹²¹Id. at 264.

¹²²Id. at 263-65.

¹²³Id. at 266-67.

dates from LoCicero's office. With respect to these candidates, Gilvarry assumed that they had been referred to LoCicero's office by political figures.¹²⁴ Gilvarry retained whatever information he received or noted about the referral sources and so was able to respond to inquiries about the status of candidates from DeVincenzo, who sometimes phrased his inquiries in terms of the name of the candidate's referral source rather than the name of the candidate.¹²⁵

DeVincenzo expected quick action on these "special" referrals. Indeed, partly on the basis of receiving inquiries about their status from DeVincenzo so shortly after first receiving them—often within a day or two—Gilvarry felt pressure to place them.¹²⁶ During the years in which he was performing PAR review, January 1978 to mid-1985, Gilvarry estimated that he received between one and five or six of these "special" referrals per month but none in some months.¹²⁷

According to Gilvarry, he and Hein were generally successful in obtaining jobs for these candidates.¹²⁸ Even if Gilvarry and Hein did not purposefully seek to push agencies into hiring these candidates, their importance was certainly conveyed to agencies.¹²⁹ These candidates, after all, were handled not by the Talent Bank staff but by DeVincenzo's PAR staff and their status was regularly monitored. And, moreover, posting requirements were waived for these candidates.

6. THE ETHNICITY AND GENDER OF TALENT BANK HIRES

A comparison of the ethnicity and gender of the Talent Bank's placements with the ethnicity and gender of discretionary citywide hires is revealing. In fiscal year 1983–84, 48.7% of the City's discretionary hires were members of minority groups as compared to 39.5% of the Talent Bank's placements (145 of 367); in fiscal year 1984–85, 51.6% of the City's discretionary hires were minorities compared to 50.3% of the Talent

¹²⁴April Tr. at 256–57.

¹²⁵Gilvarry at 301, 309–11.

¹²⁶Id. at 301. Padilla and Ellin Hauser, a Mayor's Office employee who was charged with overall responsibility for the Talent Bank for a four- or five-month period in late 1986 and early 1987, testified to feeling similarly pressured by inquiries from DeVincenzo and members of his staff about candidates who they had met or whose resumes they had received just a day or two before.

¹²⁷Gilvarry at 263, 288. The personnel staff at DEP who regularly handled these "specials," the term by which they referred to them, estimated that DEP received an average of five per month (see fn. 235 below). DOT officials estimated that they received anywhere from a "couple" to as many as ten each month. See fn. 316 below.

¹²⁸Gilvarry at 269.

¹²⁹Testimony from DEP personnel regarding their perception of the possible consequences of not hiring City Hall candidates is discussed in Section II, below.

Bank's placements (238 of 473); and in fiscal year 1985–86, 54.3% of the City's discretionary hires were minorities compared to 51.2% of the Talent Bank placements (208 of 406). Similarly, in fiscal year 1983–84, 46% of the City's discretionary hires were women compared to 26.7% of the Talent Bank's placements (98 of 367); in fiscal year 1984–85, 45.3% of the City's discretionary hires were women compared to 27.3% of the Talent Bank's placements (129 of 473); and in fiscal year 1985–86, 46.5% of the City's discretionary hires were women compared to 35.5% of the Talent Bank's placements (144 of 406).¹³⁰

Notwithstanding that a major objective of the Talent Bank was to promote the hiring of minorities and women, it did not do as well as the City as a whole in each of these years.¹³¹

D. The Purging of Referral Source Information from the Talent Bank

The sworn testimony of Padilla, Maldonado, and Luyanda, corroborated by documents and the sworn testimony of others, establishes that on a day either in late January or early February of 1986, the Talent Bank's files and computers were purged of all records revealing the referral source of Talent Bank candidates. Led by Hein, Talent Bank staff and other members of DeVincenzo's staff destroyed documents indicating the referral source of Talent Bank candidates and removed the referral source codes from the Talent Bank computer, thereby attempting to eliminate any evidence suggesting that the Talent Bank gave preferential treatment to politically referred candidates.

Before nine o'clock that morning, Hein telephoned Padilla, telling her to "drop everything" and that it was a "top priority" to remove all source references from the Talent Bank.¹³² After leaving a message for Morales, the Talent Bank's coordinator, to the effect that she had to speak with her, Padilla left for a meeting.¹³³ When Padilla arrived at the Talent Bank later that morning, the work had already begun.¹³⁴

When he arrived at the Talent Bank that morning, Hein appeared

¹³⁰Charts and statistical tabulations relating to these placement statistics are collected in Attachment F (not included here).

¹³¹As noted below, the Talent Bank's referrals for laborer positions at DEP and DOT in the years 1984 and 1985 resulted in these positions being filled overwhelmingly by white males. See Attachments G (DEP) and H (DOT) for the relevant statistical breakdowns (not included here).

¹³²Jan. Tr. at 111.

upset¹³⁵ and, after speaking privately with Morales, told the Talent Bank staff, including Morales, Luyanda, Maldonado, Williams, and others, that they were to stop what they were doing and go through the Talent Bank files and remove all documents which made reference to referral source.¹³⁶ Luyanda recalled further instructions from Morales that they were to "destroy all incriminating evidence that would point out that there had been political referrals being made and that special preference was given to those people."¹³⁷

The staff, accordingly, spent the entire working day going through files, tearing up and throwing out all documents containing indicia of referral sources, including cover letters, resume cover sheets, and, in some cases, resumes.¹³⁸

The colored file folders, used to distinguish candidates on the basis of their referral source, were also torn up and discarded,¹³⁹ but Hein directed the staff to check with him or Morales before destroying the contents of the red folders signifying the particularly "hot" referrals.¹⁴⁰

The door to the Talent Bank was kept closed and, at times, locked.¹⁴¹ Access to the Talent Bank was restricted and a special knock used to gain entry.¹⁴² Ellin Hauser, a Mayor's Office employee, entered the Talent Bank that day but was ordered out by Hein.¹⁴³ Before leaving, Hauser saw Talent Bank staff ripping up folders and heard someone in the room ask how she had gained admittance, commenting that Hauser had not used "the knock."¹⁴⁴

Referral source information was also removed from the Talent Bank computer that day. Padilla, Maldonado, and Luyanda all testified that Helen Mosley, the computer specialist who had programmed the Talent Bank computer, spent at least several hours in the Talent Bank that day removing referral source data from the computer.¹⁴⁵ Hein testified that he asked Mosley to delete referral source information from the computer.¹⁴⁶

¹³⁵Maldonado at 96.

¹³⁶Id. at 97-99.

¹³⁷Luyanda at 41.

¹³⁸Jan. Tr. at 113, 171-72. Some of the resumes in the files bore handwritten notations of the referral source. (Maldonado at 124.) These resumes were thrown out after the Talent Bank staff made copies, cleansed of the referral source notations. Id.

¹³⁹Jan. Tr. at 113, 171-72, 174.

¹⁴⁰Maldonado at 103. Because of the volume of red folders, however, they were put aside by the staff and Hein and Morales reviewed them before destroying documents in the red folders. Id. at 103-5.

¹⁴¹Jan. Tr. at 112, 186.

¹⁴²Id. at 186.

¹⁴³Hauser at 69-70.

¹⁴⁴Id. at 70.

¹⁴⁵Jan. Tr. at 115-16, 175; Maldonado at 122.

¹⁴⁶Jan. Tr. at 396. Although Mosley acknowledged that Hein asked her to delete

Files in at least one other office were also searched for referral source materials that day. Harry Shapiro, who evaluated and classified resumes of Talent Bank candidates, had a nearby office in 52 Chambers Street. His files, according to Maldonado who had previously been his secretary, contained resumes and other materials relating to candidates he had personally interviewed.¹⁴⁷ Maldonado recalled that someone searched Shapiro's files, removed some documents from the files, and brought them into the Talent Bank where they were deposited into one of several plastic garbage bags that were used to discard Talent Bank referral source records.¹⁴⁸ Barry Skolnick, who shared Shapiro's office, also testified that Hein went into the office and examined Shapiro's resume files; he stated that he was not sure, however, whether Hein or anyone else removed any of Shapiro's files.¹⁴⁹

Hein also directed Padilla to remove from her office all materials containing referral source information.¹⁵⁰ Because she was further instructed not to throw such materials into the office trash, she took home with her the Black Book, Talent Bank computer printouts, and other documents.¹⁵¹

The purging of the Talent Bank's files and computer took up the entire day and continued into the evening.¹⁵² The garbage bags containing referral source materials were taken out of the Talent Bank during the

referral source information from the computer and that she spent several hours working on the computer she testified that she did not remove all of the referral source data from the computer. (April Tr. at 342-46; Mosley at 175-76.) Rather, Mosley testified that she altered the referral source information, changing the names of the sources into four-letter abbreviations of their names. (April Tr. at 344.) Copies of the Talent Bank computer printouts in the Commission's possession that were generated at least several weeks before the day Talent Bank records were destroyed, however, contain these abbreviations. (Attachment I, not included here.) Furthermore, Padilla and Maldonado testified that the abbreviation codes for referral sources were used long before that day. (Padilla Sept. at 22-24; Maldonado 80-82.) Accordingly, the Commission concludes that all referral source information was removed from the Talent Bank computer as well as from its files on the day in question.

¹⁴⁷Maldonado at 118.

¹⁴⁸Id. at 118-20.

¹⁴⁹Skolnick at 111-12, 166-67, 169-71.

¹⁵⁰Jan. Tr. at 118.

¹⁵¹Id. at 118-19. There is also evidence, albeit inconclusive, that documents in Room 1 in City Hall were also discarded that day. Luyanda testified that Monica Fung, a Mayor's Office employee who worked in Room 1, was present in the Talent Bank that day and, referring to the destruction of documents in the Talent Bank, said "If you think it's bad here, you should see over at City Hall, it's chaos." Jan. Tr. at 174.

¹⁵²Jan. Tr. at 116; Luyanda at 44.

course of the day and put into Hein's car. In his public testimony, Hein stated that he took the garbage bags home to Yonkers with him because trash was not scheduled to be picked up until the next day and due to "the sensitivity and the amount of the stuff in the bags, I did not want those papers flying all over Chambers Street the next morning."¹⁵³

Regardless of what may have prompted the purging of referral source documents, it was initiated by DeVincenzo. In his public testimony, Hein stated that DeVincenzo initiated it by telling him, in substance, to "make sure that the Talent Bank doesn't have any referral sources in it."¹⁵⁴ Although Hein also testified that he did not discuss the removal of source documents with DeVincenzo during the course of the day,¹⁵⁵ Maldonado testified that she recalled Hein receiving a phone call from DeVincenzo in the morning and that Hein was called out of the Talent Bank in the afternoon to speak with DeVincenzo.¹⁵⁶ Padilla, moreover, testified that she overheard Hein giving a status report over the telephone on the progress of the efforts to remove source material and that Hein told her he had been speaking to DeVincenzo after he hung up the telephone.¹⁵⁷

Those who assisted in the destruction of referral source materials were instructed not to speak of the events of that day. Maldonado testified that Hein said they should "leave that day, like, off the record, not to mention it at all, a day like it never happened."¹⁵⁸ Luyanda recalled that Morales advised her the next day not to mention anything about the events of the preceding day, explaining that if anyone found out the Talent Bank would be shut down and the staff would lose their jobs.¹⁵⁹ Regardless of whether Hein or Morales were the individuals who instructed the participants to deny the events of that day, such instructions were given and followed by several of the participants, including when they were questioned under oath by the Commission.

The destruction of Talent Bank documents containing referral source information was not part of a regular practice designed to keep Talent Bank files up-to-date. Hein's public testimony that stale resumes (i.e., ones more than six months old) were purged from the files, as they had been in the past, along with referral source documents,¹⁶⁰ is at odds with the testimony of Padilla, Maldonado, and Luyanda. Maldonado testified

¹⁵³Jan. Tr. at 425. Similarly, Maldonado recalled that Hein stated that the garbage bags should not be disposed of at 52 Chambers Street explaining that he was concerned reporters might go through the garbage. Maldonado at 115-16.

¹⁵⁴Jan. Tr. at 435.

¹⁵⁵Id. at 429.

¹⁵⁶Maldonado at 109-10.

¹⁵⁷Jan. Tr. at 116-17.

¹⁵⁸Maldonado at 117-18.

¹⁵⁹Jan. Tr. at 177; Luyanda at 51-52.

¹⁶⁰Jan. Tr. at 423-24, 431-34.

that the destruction of Talent Bank records that day was not related in any way to any practice of removing stale resumes from the files and that efforts to remove stale resumes did not begin until the latter part of 1986.¹⁶¹ Similarly, Luyanda testified that she did not recall any regular cleaning out of old resumes occurring prior to the destruction of referral source materials.¹⁶² And Padilla testified that although there was a "theoretical" policy to get rid of stale resumes, old resumes were never thrown out but rather were retained in an inactive file.¹⁶³

Other evidence before the Commission suggests that old resumes were not thrown out and that the Talent Bank's efforts to update files were desultory even after early 1986. Charles Miller, a public records officer for the New York City Department of Records and Information Services, conducted a survey of Talent Bank records over the course of several months beginning in November 1987.¹⁶⁴ Among the records Miller surveyed were six cubic feet of folders relating to inactive Talent Bank candidates dating back to 1985.¹⁶⁵ In a written "Recommendation Statement," moreover, Miller recommended that closed candidate folders be "weeded out twice annually." In his conversations with Talent Bank staff, Miller was never told that the Talent Bank was already weeding out inactive folders on a regular basis.¹⁶⁶

Salvatore Salamone, the Director of Management Information Systems at the Department of General Services, began an audit of the Talent Bank in the late spring or early summer of 1987 at DeVincenzo's request.¹⁶⁷ On the basis of some twelve to fifteen meetings with Hein, Padilla, and others he prepared a "Top/Down Analysis" of the Talent Bank.¹⁶⁸ In his analysis, Salamone identified a number of items that Hein, Padilla, and the others all agreed were problems at the Talent Bank.¹⁶⁹ One such problem was "We don't purge files systematically."¹⁷⁰ Salamone was never told during the course of his meetings with Talent Bank staff that the Talent Bank had any policy with respect to purging files.¹⁷¹

E. The Talent Bank's Improved Affirmative Action Performance

In part as a result of changes in the procedures by which the Talent Bank obtained and referred candidates for laborer positions and changes

¹⁶¹Maldonado at 126-28.

¹⁶²Luyanda at 48-49.

¹⁶³Jan. Tr. at 125; Padilla Sept. at 47-48.

¹⁶⁴Miller at 2-4.

¹⁶⁵Id. at 7-9.

¹⁶⁶Miller at 12-13.

¹⁶⁷Salamone at 3-4, 6.

¹⁶⁸Id. at 11-14, 20.

¹⁶⁹Id. at 12-13, 31.

¹⁷⁰Id. at 37.

¹⁷¹Id. at 38.

in the procedures by which agencies hired laborers, the Talent Bank's affirmative action performance began to improve in 1986. In fiscal years 1983-84, 1984-85, and 1985-86, as previously noted, the Talent Bank's placements reflect a lower percentage of women and minorities hired than the percentage of women and minorities hired in these years by the City as a whole.¹⁷² But in fiscal year 1986-87, for the first time, the Talent Bank's minority placement performance exceeded that of the City. In this year, 68.3% of the Talent Bank's placements were members of minority groups as compared with the 58.5% of the City's discretionary hires who were members of minority groups.¹⁷³

Changes in Talent Bank procedures relating to laborer hiring were prompted when First Deputy Mayor Brezenoff learned in late 1984 or early 1985, but in any event not later than February 1985, that a disproportionate number of white males had been getting laborer jobs paying in excess of \$20,000.¹⁷⁴ DeVincenzo informed Brezenoff that the overrepresentation of white males was "attributable in part because of the nature of the referrals which were coming very heavily from elected and political officials and unions and Vietnam veterans. . . ."¹⁷⁵ More specifically, Brezenoff learned that the majority of laborer referrals were coming from county leaders.¹⁷⁶

Brezenoff, accordingly, instructed DeVincenzo to take a number of steps to improve the placement of minorities and women. He directed DeVincenzo to increase his efforts at expanding the Talent Bank's referral sources by using TAP centers, women's organizations, and the Mayor's Advisors for Black and Hispanic Affairs.¹⁷⁷ He also told DeVincenzo to tell the Talent Bank's existing referral sources, including county leaders, that they would have a better chance of obtaining jobs for their nominees if they were minorities or women.¹⁷⁸

By the summer of 1986, however, Brezenoff had concluded that insufficient progress had resulted from these steps and determined, with the concurrence of the Mayor, to take "fundamental action."¹⁷⁹ The Talent Bank thus became, around August of 1986, the exclusive source for laborer candidates and agencies were required to hire only from lists of candidates provided by the Talent Bank.¹⁸⁰

¹⁷²See the comparison set forth at pp. 516-17 above.

¹⁷³The Talent Bank's placement of women, however, continued to lag behind the City in fiscal year 1986-87. See Attachment F (not included here).

¹⁷⁴April Tr. at 476-77; Brezenoff at 61-62, 79-83, 119-20.

¹⁷⁵April Tr. at 477.

¹⁷⁶April Tr. at 478-79.

¹⁷⁷April Tr. at 475-80; Brezenoff at 59-60, 120-21.

¹⁷⁸April Tr. at 480; Brezenoff at 120-21.

¹⁷⁹April Tr. at 475.

¹⁸⁰April Tr. at 474; Brezenoff at 53-57.

Mayor Koch did not learn from Brezenoff until sometime in 1986 "that a disproportionate number of the laborers hired through the Talent Bank were white males,"¹⁸¹ that "laborer jobs, in large numbers, not exclusively, were filled by having calls made to political leaders to tell them there were jobs available,"¹⁸² or that LoCicero had been making such calls.¹⁸³ In early 1987, Mayor Koch directed another change: the implementation of a lottery system for the selection of the Talent Bank laborer candidates who would be forwarded to agencies when agencies planned to hire laborers.¹⁸⁴

Apart from these changes relating to laborer positions, the Talent Bank changed in other ways in 1986. Following the destruction of records in early 1986, referral source information was no longer stored in the Talent Bank computer or in the individual candidate files.¹⁸⁵ And Padilla observed a greater concern on DeVincenzo's part about the placement of women and members of minority groups through the Talent Bank.¹⁸⁶

F. The Role of Joseph DeVincenzo

Joseph DeVincenzo's dominant role in the patronage operations described above is established by the overwhelming weight of the evidence. His role is important to understand because he reported directly to Deputy Mayor Brezenoff, maintained close communications with the Mayor's Special Advisor John LoCicero, and exercised authority legally vested in the Mayor and delegated to him as a subordinate of the Mayor.

The copies of the Talent Bank computer printouts furnished to the Commission by Schwartz and Padilla establish that the Talent Bank systematically recorded the referral source of its candidates. The testimony of Padilla, Moffitt, Mosley, and others establishes the existence of source

¹⁸¹April Tr. at 557.

¹⁸²Koch at 74.

¹⁸³April Tr. at 565-66.

¹⁸⁴April Tr. at 487-88, 566.

¹⁸⁵Talent Bank staff, however, were expected to keep track informally of referral sources. (Jan. Tr. at 122; Padilla Feb. at 53-54; Luyanda at 52.) Padilla was obliged to continue to report to DeVincenzo on the status and progress of particular candidates. (Jan. Tr. at 121-22.) While pressure from DeVincenzo's office to place "specials" subsided following the purging of source documents, Padilla testified that by 1987 it had returned. (Jan. Tr. at 140-41; Padilla Feb. at 54-55.) Ellin Hauser also testified that during the period in which she was in charge of the Talent Bank (late 1987 and early 1988), a great deal of her day was spent interviewing "specials" sent to her by DeVincenzo and members of his staff. (Hauser at 189-90.) In about May 1987, DeVincenzo suggested to Padilla and others that referral source information be put back into the computer. Jan. Tr. at 141.

¹⁸⁶Padilla Feb. at 107; Padilla Sept. at 90-91.

information in the Talent Bank's computer and demonstrates DeVincenzo's knowledge of its existence. His top aides would not have undertaken on their own initiative to develop and operate Talent Bank computer systems containing such significant information as the political referral source of candidates.

The resume cover sheets that Schwartz provided to the Commission establish that source information was integral to the Talent Bank's operation. They too spell out DeVincenzo's role in its operation. Several of them contain instructions and notations from DeVincenzo in his own handwriting.¹⁸⁷ It is improbable that in reviewing these forms and writing these messages on them DeVincenzo could have failed to notice their "Source" space, particularly given its prominence on the forms.

DeVincenzo's testimony that he accorded no preferences to candidates on the basis of political considerations is contradicted by other documents obtained from Schwartz. Various of these documents reflect determinations about the relative priorities to be accorded candidates referred by political figures and instructions that such candidates "must be hired," "pushed," or otherwise placed. Schwartz testified that DeVincenzo, not she, made these determinations and delivered these instructions and it is unlikely that a low-level City Hall employee could have been in a position to assess such political priorities and issue such directions.

DeVincenzo's testimony that he either threw out or forwarded to LoCicero's office any letters he received from political figures referring job candidates is also contradicted by the documents in Schwartz's files. Her files contained more than 30 letters addressed to DeVincenzo or members of his staff from political figures referring job candidates. Schwartz testified that letters from political figures referring candidates and other documents disclosing the referral source of candidates were routinely forwarded to her by DeVincenzo.¹⁸⁸

Finally, the evidence established that DeVincenzo played a supervisory role in the early 1986 destruction of records. Hein did not act on his own initiative in directing this urgent and secret operation. In fact, Hein testified that DeVincenzo initiated the operation by instructing him to make sure that the Talent Bank's records contained no referral sources.¹⁸⁹ And Padilla testified that she overheard Hein's end of a telephone conversation that day between Hein and DeVincenzo in which Hein reported on the status of the operation.¹⁹⁰

¹⁸⁷April Tr. at 113-15. See, e.g., Attachment E (not included here).

¹⁸⁸April Tr. at 136-37.

¹⁸⁹Jan. Tr. at 429, 435.

¹⁹⁰Jan. Tr. at 116-17.

II. THE MAYOR'S OFFICE AND THE PERSONNEL PRACTICES OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

During the period 1983–86, candidates referred by the Mayor's Office to the Department of Environmental Protection ("DEP") enjoyed numerous advantages over other candidates for jobs. Although precise figures cannot be determined, at least a substantial portion of Mayor's Office candidates were persons who had been referred by political figures. At times, various forms of pressure were brought to bear on DEP to hire these candidates and the oversight authority that DeVincenzo's office exercised over DEP's personnel actions played a key role in the placement of candidates referred by the Mayor's Office.

A. The Mayor's Office's Authority over DEP Laborer Hiring

As DEP records establish, it hired some 197 laborers in 1984 and 1985.¹⁹¹ These positions paid well in excess of \$20,000 and offered opportunities for overtime.¹⁹² In theory, these jobs were open to all New York City residents who could pass a medical examination and possessed a valid driver's license.¹⁹³ However, although a mayoral directive required that all job vacancies be posted, DEP did not post laborer vacancies.¹⁹⁴ Nor did it advertise their existence.¹⁹⁵ Rather, DEP notified only DeVincenzo's office when it planned to hire laborers.¹⁹⁶ Sherri Roth and Marlene Hochstadt, currently Deputy Directors of Personnel at DEP, estimated that the overwhelming majority—perhaps more than 90%—of all laborer hires in the 1983–85 period were Mayor's Office referrals.¹⁹⁷ And all laborers hired were subject to prior approval by DeVincenzo's office.¹⁹⁸ Accordingly, as a practical matter, referral by the Mayor's Office was an additional requirement for a laborer job at DEP.

After DEP notified DeVincenzo's office of its intention to hire laborers, DEP's personnel staff received lists of candidates from DeVincenzo's office.¹⁹⁹ Sometimes one list was sent; sometimes a number of smaller lists

¹⁹¹See also Jan. Tr. at 194; Roth at 62–63.

¹⁹²Jan. Tr. at 194; Hochstadt at 13–14.

¹⁹³Jan. Tr. at 195; Roth at 71; Hochstadt at 13.

¹⁹⁴Jan. Tr. at 208; Roth at 14, 15, 30; Hochstadt at 21–22, 96.

¹⁹⁵Jan. Tr. at 208; Roth at 30; Hochstadt at 22.

¹⁹⁶Jan. Tr. at 195; Roth at 14; Hochstadt at 18.

¹⁹⁷Jan. Tr. at 204; Roth at 42, 53, 63; Hochstadt at 28–30, 60.

¹⁹⁸Jean at 91.

¹⁹⁹Jan. Tr. at 196–97; Roth at 11–14, 20–21, 24–26; Hochstadt at 36–37.

were sent.²⁰⁰ At times, these lists bore notations indicating the names of the political figures who had referred the candidates.²⁰¹ Less frequently, DeVincenzo's office also transmitted the names of candidates by simply forwarding to DEP letters from political figures and union representatives addressed to DeVincenzo or other Mayor's Office staff that contained listings of laborer candidates.²⁰² Even when documents from the Mayor's Office did not indicate the names of the political figures who had referred candidates to the Mayor's Office, Roth and Hochstadt—the DEP employees who regularly received and handled these lists—sometimes learned the source of individual candidates from Fred Carfora, the then Deputy Commissioner for Administration at DEP.²⁰³ Roth and Hochstadt would then record the source on the list or elsewhere.²⁰⁴

According to Roth and Hochstadt, they did not always know who had first referred particular candidates to the Mayor's Office, nor did they think it important to know: what was important was that these candidates were the Mayor's Office candidates.²⁰⁵ Roth, Hochstadt, and others at DEP, however, believed that the Mayor's Office candidates were predominantly those first referred by political figures.²⁰⁶

Candidates were individually interviewed for laborer positions at periodically conducted "pools," or mass interview sessions.²⁰⁷ Although the vast majority of candidates were Mayor's Office referrals, some arrived at the pools by other routes, including candidates referred directly to DEP by political figures; candidates referred by Vincent Parisi, a representative of District Council 37; and DEP "internals," candidates referred by DEP employees or who were themselves DEP employees seeking to obtain higher-paying laborer jobs.²⁰⁸ People who were not referred by one of these routes, but who merely sent letters to DEP asking to be considered for laborer jobs, were not interviewed.²⁰⁹

At the hiring pools, all candidates were interviewed by DEP personnel staff and representatives of the particular DEP bureaus seeking to fill vacancies.²¹⁰ The candidates were rated on a scale of 1 to 10, with 10 the

²⁰⁰Jan. Tr. at 197; Roth at 16, 24.

²⁰¹Jan. Tr. at 199–200, 250–51; Roth at 20–21, 83–84; Hochstadt at 50.

²⁰²Jan. Tr. at 198–99, 248–50; Roth at 24.

²⁰³Jan. Tr. at 200; Roth at 20–21; Hochstadt at 56. When Carfora apprised them of the source of particular candidates, the source was a political figure. Roth at 21–23.

²⁰⁴Roth at 21–22.

²⁰⁵Jan. Tr. at 346–47; Roth at 20–21; Hochstadt at 50–53.

²⁰⁶Jan. Tr. at 254–55, 306–7; Hochstadt at 50–53, 204–5.

²⁰⁷Jan. Tr. at 197.

²⁰⁸Jan. Tr. at 198, 201, 211, 303; Hochstadt at 23, 32, 59, 61–62; Roth at 28, 32–33, 42, 53–54, 58.

²⁰⁹Jan. Tr. at 202; Roth at 29, 31.

²¹⁰Jan. Tr. at 208; Roth at 38–38; Hochstadt at 64.

highest. A score of 5 was the usual cutoff point; candidates rated below 5 were not hired and candidates who were rated 5 and above generally were hired.²¹¹

Candidates who were not referred by the Mayor's Office, but who were interviewed and rated anyway, had no real chance of obtaining jobs because the hiring of such a candidate was rarely approved.²¹² Rather, as demonstrated by DEP documents and the testimony of Roth and Carfora, DEP's regular practice was to hire only the Mayor's Office candidates. If the number of acceptable Mayor's Office candidates was insufficient to fill all the existing laborer vacancies, the excess vacancies remained unfilled until the Mayor's Office supplied additional candidates who were interviewed individually or at subsequent pools.²¹³

A June 1985 memorandum from Hochstadt to Carfora concerning a laborer pool conducted on June 5, 1985 illustrates this practice. DEP interviewed candidates for 35 vacancies. Of the 31 Mayor's Office candidates interviewed, 18 were selected. DEP "felt obligated" to interview 14 candidates referred directly to it by elected officials and 12 of them were found acceptable. However, these 12 candidates were not hired even though they were qualified. Instead, Mayor's Office candidates with relatively low ratings were hired over other candidates with higher ratings.²¹⁴

After pools were conducted, DEP apprised members of DeVincenzo's staff which Mayor's Office candidates had been accepted and which rejected.²¹⁵ Various efforts to "push" one or more of the rejected candidates followed every pool.²¹⁶ Members of DeVincenzo's staff sought explanations of the reasons why particular candidates had not been selected, explaining at times that DeVincenzo wanted to know or that DeVincenzo was very interested in the particular candidate.²¹⁷ Hochstadt, Roth, and others provided the explanations, either immediately on the basis of their records or after checking with the representatives of the DEP bureaus who had interviewed the candidates.²¹⁸ These explanations were rarely sufficient.²¹⁹

Sometimes within 20 minutes of providing an explanation, members of DeVincenzo's office (including Schwartz, Gilvarry, and Hein) would

²¹¹Jan. Tr. at 209; Roth at 38-39; Hochstadt at 65-66.

²¹²Jan. Tr. at 206, 333-34; Hochstadt at 60-63; Roth at 53, 63. Indeed, Hochstadt testified that she could not recall any instances in which the requisite approval to hire a non-Mayor's Office candidate was obtained from DeVincenzo's office. Hochstadt at 62-63.

²¹³Jan. Tr. at 204-6, 314-15; Roth at 55-56, 86.

²¹⁴Jan. Tr. at 217-18; Hochstadt at 84; Roth at 85-86.

²¹⁵Jan. Tr. at 212-13; Roth at 36; Hochstadt at 71.

²¹⁶Jan. Tr. at 212-14; Roth at 36, 43-44; Hochstadt at 72-74.

²¹⁷Jan. Tr. at 212-15; Roth at 36, 44-45; Hochstadt at 71, 75.

²¹⁸Jan. Tr. at 213; Roth at 36; Hochstadt at 75-76.

²¹⁹Jan. Tr. at 213; Roth at 49-51.

either call back and say that the reasons were not good enough or that they were under pressure from DeVincenzo, or otherwise communicate a request that the rejected candidate be reconsidered.²²⁰

Hochstadt and Roth, accordingly, were obliged to contact the relevant DEP bureau. They would explain that the Mayor's Office was pushing a particular candidate and either ask for more information or request that the candidate be accepted.²²¹ Depending upon the bureau's response, second and third telephone calls between DeVincenzo's office and DEP's personnel staff might follow.²²² These efforts sometimes but not always resulted in the hiring of a previously rejected candidate.²²³ Occasionally, moreover, Hochstadt and Roth would learn from Carfora that a Mayor's Office candidate who had not been acceptable to the bureau was acceptable or was to be scheduled for a medical examination, a prerequisite for employment.²²⁴ Accordingly, they believed that persons above them at DEP had been contacted by DeVincenzo or his staff in continuing efforts to get jobs for candidates who were apparently of particular importance to the Mayor's Office.²²⁵

The rating process was also influenced by the Mayor's Office. Because it was difficult to defend a decision not to select a marginally rated Mayor's Office candidate, DEP regularly adjusted the ratings of those Mayor's Office candidates who received a marginal rating. Thus, a candidate who had been rated a "5" might have his rating adjusted down to a "4" and be rejected or up to a "6" and be accepted. In this manner, DEP sought both to pre-empt efforts from DeVincenzo's office to push rejected Mayor's Office candidates and to enhance its ability to respond to such efforts.²²⁶

Although DEP did not post or advertise laborer vacancies, some members of the general public became aware of vacancies nonetheless. In addition to those who wrote letters to DEP,²²⁷ interested persons came to DEP's offices several times a month.²²⁸ Cassandra Kennedy, an employee

²²⁰Jan. Tr. at 213-15; Roth at 49-51; Hochstadt at 76-77.

²²¹Jan. Tr. at 216; Roth at 46-49, 52; Hochstadt at 78, 82-83.

²²²Roth at 36-37, 39-40.

²²³Jan. Tr. at 216-17; Roth at 38-40; Hochstadt at 78-79, 83-84.

²²⁴Jan. Tr. at 216-17; Roth at 45, 49-50; Hochstadt at 78-79.

²²⁵Id. Members of DeVincenzo's staff also telephoned DEP to provide names of candidates both before and after hiring pools were conducted. (Jan. Tr. at 197, 221; Roth at 18, 27.) Candidates whose names were thus obtained after pools were sometimes interviewed by Hochstadt or Roth. (Jan. Tr. at 221; Roth at 57-58.) Like the candidates interviewed at the hiring pools, some of these candidates were "pushed" by DeVincenzo's office. Jan. Tr. at 221; Roth at 57-58.

²²⁶Jan. Tr. at 210-11; Roth at 40-43.

²²⁷Persons who wrote letters to DEP inquiring about laborer vacancies received a letter stating that their names would be kept on file. They did not obtain interviews. Jan. Tr. at 202; Roth at 28-30.

²²⁸Jan. Tr. at 16, 18.

of DEP's Recruitment Unit, received inquiries from persons who walked in off the street.²²⁹ Knowing that it was pointless for her to do so, Kennedy explained that she could not accept their names or resumes.²³⁰ Although she was uncertain about whether she should tell them the truth, Kennedy advised them to try to obtain a letter of reference from a political source and hand-deliver the letter to Room 1 in City Hall.²³¹ The general response to her advice was a comment to the effect that "oh, so this is a political thing."²³²

DEP employees noted that the Mayor's Office laborer candidates reflected a low percentage of women and minorities, and a high number of Staten Island residents.²³³ DEP personnel records concerning its 197 laborer hires in 1984 and 1985 demonstrate the accuracy of these perceptions. In 1984, approximately 69% of DEP's laborer hires were white males, 29% were minority males and females, 31% were Staten Island residents and 5% were Manhattan residents. Similarly, in 1985 approximately 65% of DEP's laborer hires were white males, 34% were minority males and females, 22% were Staten Island residents and 6% were Manhattan residents.²³⁴

B. "City Hall Specials"

As often as five times a month, DEP received "special" referrals from DeVincenzo's office.²³⁵ Unlike Talent Bank or laborer candidates, these referrals were not sent in response to specific vacancy notices posted by DEP.²³⁶ Rather, they were candidates for whom DEP sought to find vacancies.²³⁷ DEP was generally understaffed and thus able to hire these "City Hall specials" (as they were referred to by DEP personnel staff) to fill vacancies that had not previously been posted, either because there were no immediate plans to fill the vacancies or because they had not gotten around to posting the vacancy notices.²³⁸ Since DEP was not required to post the vacancies for which "City Hall specials" were considered, the "specials" did not have to compete for these vacancies with other candidates.²³⁹

²²⁹Id.

²³⁰Id. at 17-18.

²³¹Id. at 17-18, 33.

²³²Id. at 19.

²³³Jan. Tr. at 218, 289; Roth at 74-75; Kennedy at 27-28.

²³⁴For a more detailed analysis, see Attachment G (not included here).

²³⁵Jan. Tr. at 223; Roth at 106.

²³⁶Jan. Tr. at 222; Roth at 96; Hochstadt at 107.

²³⁷Jan. Tr. at 224; Roth at 123-24.

²³⁸Jan. Tr. at 227; Roth at 119-20; Hochstadt at 107-8.

²³⁹Jan. Tr. at 228-29; Roth at 116, 119-21; Hochstadt at 108-9.

Some "City Hall specials"—those who were referred to DEP but not for a specific position—enjoyed an additional advantage. DEP's personnel staff would interview these candidates or evaluate their resumes, or both, to determine the job titles for which they would be qualified.²⁴⁰ In this evaluation process, the salary that the "special" was looking for was sometimes crucial.²⁴¹ DEP's staff would endeavor to find a job title for which they were qualified and which paid a salary commensurate with the amount sought by the "City Hall special."²⁴²

In contrast, no such attention was devoted to the members of the general public who, without specifying a particular position, mailed their resumes to DEP seeking employment. DEP received up to 500 resumes a week in the mail and roughly half of these resumes were not sent in response to vacancies posted or advertised by DEP.²⁴³ Rather, they were sent by people who expressed a general interest in obtaining employment at DEP.²⁴⁴ Because of the volume of these resumes, DEP's small personnel staff could do little more than place them in an inactive file after mailing letters advising that their resumes would be kept on file.²⁴⁵

Some "City Hall specials" were pushed by DeVincenzo's office more than others.²⁴⁶ Roth and Hochstadt were told by Hein, Gilvarry, Schwartz, and others that particular candidates were "hot," "high priority," or "important."²⁴⁷ These candidates were the subjects of frequent follow-up calls.²⁴⁸ Members of DeVincenzo's staff would seek to learn the status of "City Hall specials" (e.g., whether they had been interviewed yet, when they would be interviewed, what the results of interviews were) and sometimes explained that DeVincenzo wanted to know or that they were being pressured by DeVincenzo.²⁴⁹ Gilvarry, in particular, would sometimes sound distraught when inquiring about the status of a referral.²⁵⁰ The importance of certain "City Hall specials" was also communicated by the frequency of telephone requests for updates on their status.²⁵¹ For example, the same candidate might be the subject of more than one status request on the same day or status requests on successive days.²⁵²

²⁴⁰Jan. Tr. at 222–23; Roth at 98, 126–27, 131–33; Hochstadt at 103, 113–14, 119; Sullivan at 17.

²⁴¹Roth at 105–6; Sullivan at 12–14.

²⁴²Jan. Tr. at 222–24; Hochstadt at 113–16; Sullivan at 12–15, 17.

²⁴³Jan. Tr. at 202, 233; Roth at 131–32.

²⁴⁴Id.

²⁴⁵Jan. Tr. at 202, 233; Roth at 131–32; Hochstadt at 117–19.

²⁴⁶Jan. Tr. at 223; Roth at 96, 99–101; Hochstadt at 99.

²⁴⁷Hochstadt at 120–21; Roth at 148–50.

²⁴⁸Hochstadt at 101–2, 216–18; Roth at 107–8.

²⁴⁹Jan. Tr. at 224; Hochstadt at 99–100, 102–3, 111–12, 120–21.

²⁵⁰Jan. Tr. at 224–25; Roth at 101.

²⁵¹Hochstadt at 101, 216–17.

²⁵²Hochstadt at 101–2, 217–18.

In addition to Hochstadt and Roth, Carfora also received resumes or other information relating to "City Hall specials" from DeVincenzo's office.²⁵³ At times in a distraught tone, Carfora would tell DEP personnel staff that he was getting a "lot of heat," or pressure about a particular candidate, that the candidate should be shopped around to the various bureaus, or that a job should be found for the candidate.²⁵⁴ At times, DEP's personnel staff would be obliged to drop their other work and attend to the process of finding jobs for these candidates.²⁵⁵

If a "special" was interviewed by a DEP bureau but the bureau did not want to hire the candidate, additional interviews at other bureaus or at the same bureau for the same or different positions would be arranged.²⁵⁶ Less frequently, members of DeVincenzo's staff would question or reject the reason why a bureau did not want to hire a candidate.²⁵⁷ And at least on some occasions, the bureau would then agree to hire the candidate.²⁵⁸

If not as a result of the first interview, then as a result of second or third interviews, "City Hall specials" were hired by DEP.²⁵⁹ Indeed, except for occasional instances in which a "special" was hired by another agency, Roth could not recall a single instance in which a position was not found for the heavily pushed "specials" at DEP.²⁶⁰

C. Talent Bank Candidates

Talent Bank candidates were also pushed by the Mayor's Office.²⁶¹ Cassandra Kennedy, who acted as DEP's liaison with the Talent Bank, regularly received telephone calls from Talent Bank staff seeking additional interviews for their candidates and she was often told that particular candidates were "hot" or "special."²⁶² Like "City Hall specials," the status

²⁵³Hochstadt at 100, 113; Martin at 34-35. (Roger Martin was the DEP Personnel Director from 1983 to 1985.) Roth at 96, 110-11.

²⁵⁴Jan. Tr. at 224-25, 280-81; Hochstadt at 113; Martin at 34-35; Roth at 101, 103.

²⁵⁵Sullivan at 27.

²⁵⁶Jan. Tr. at 231, 233; Hochstadt at 104-5, 107; Roth at 111.

²⁵⁷Hochstadt at 103-4; Roth at 109-10.

²⁵⁸Hochstadt at 104-5; Roth at 112-13.

²⁵⁹Jan. Tr. at 226-27; Hochstadt at 105-7; Roth at 103, 111-12.

²⁶⁰Roth at 103. Although documents that DEP received from DeVincenzo's office may not have generally indicated the persons who had first referred the "City Hall specials," DEP personnel staff knew or assumed that at least some of them had been referred by political figures. (Hochstadt at 1221-23; Roth at 99; Sullivan at 11-13.) As Gilvarry's testimony makes clear, see Section I.C.5, above, this assumption was correct.

²⁶¹Jan. Tr. at 236-38; Roth at 107; Hochstadt at 144, 146-47.

²⁶²Kennedy at 39-41.

of some Talent Bank candidates was frequently monitored, and Talent Bank staff sometimes explained that DeVincenzo wanted the information or that they were under pressure to obtain it.²⁶³

That DEP felt pressure from DeVincenzo's office with respect to Talent Bank candidates is also clear from DEP's handling of "candidate disposition sheets." When the interviewing process was completed, the bureau at DEP that was hiring for the particular vacancy filled out these forms, recording on them all the candidates interviewed, the results of the interviews, and the reasons why rejected candidates were rejected and the other candidates selected.²⁶⁴ DEP's personnel staff then forwarded the candidate disposition sheets to DeVincenzo's office along with the Planned Action Report for the particular hire.²⁶⁵ If the candidate disposition sheet did not indicate that all Talent Bank candidates had been interviewed (or failed to state a sufficient explanation for not interviewing a particular candidate) or did not adequately explain why a Talent Bank candidate was not selected, problems ensued. The hire would not be approved or the reasons why a Talent Bank candidate had not been selected would be questioned.²⁶⁶

Accordingly, DEP's personnel staff took care to review the candidate disposition sheets when they were submitted by hiring bureaus.²⁶⁷ If a candidate disposition sheet indicated that a Talent Bank candidate was qualified but another candidate had been selected, Carfora "would bang the table and say 'If a person is a City Hall candidate [and] is qualified for the position, that person should be hired.'"²⁶⁸ The paperwork would then be returned to the bureau. The message thus conveyed was that a qualified Talent Bank candidate should be hired even if that meant passing over a more qualified candidate.²⁶⁹

Similarly, if a candidate disposition sheet failed to give a sufficient explanation for not interviewing or selecting a Talent Bank candidate, DEP's personnel staff would either contact the bureau and try to obtain an adequate explanation or return the paperwork to the bureau.²⁷⁰ On occasion, such "inadequate" paperwork was forwarded to DeVincenzo's

²⁶³Id.

²⁶⁴Jan. Tr. at 236, 274; Martin at 37-38; Roth at 113.

²⁶⁵Hochstadt at 137, 143-44; Martin at 37-38.

²⁶⁶Jan. Tr. at 235-38, 286; Hochstadt at 144-46; Martin at 67-68.

²⁶⁷Jan. Tr. at 247-48; Hochstadt at 152-54; Martin at 41-42; Roth at 151-52, 154-56. Because they knew that they would not be questioned about the adequacy of the reasons given for not selecting candidates who had not been referred by the Mayor's Office, DEP's personnel staff reviewed only the explanations given for not selecting the Mayor's Office candidates. Jan. Tr. at 247-48; Hochstadt at 155-56; Roth at 142, 155-56.

²⁶⁸Jan. Tr. at 283.

²⁶⁹Jan. Tr. at 282-85; Martin at 41-43.

²⁷⁰Hochstadt at 153-55; Roth at 151-52, 154-55.

office despite these screening efforts. And as Roger Martin, the then-DEP Personnel Director, explained, "Fred [Carfora] would be notified by City Hall and he would come flying down to my office and rant and rave about how inefficient and careless we were in letting that happen."²⁷¹

D. Leveraging Preferences: PAR Authority

DeVincenzo's office exercised extensive oversight authority, primarily through review of PARs, over DEP personnel actions. The various preferences that "City Hall specials" and Talent Bank candidates enjoyed in the hiring process at DEP were directly related to this oversight authority. DEP employees believed that in order to secure DeVincenzo's approval for personnel actions, it was necessary to appease DeVincenzo by hiring City Hall candidates. DeVincenzo's oversight authority thus served as a lever by means of which these preferences were obtained.

Every month DEP submitted a post-audit and a pre-audit package of PARs to DeVincenzo's office. The post-audit package consisted of between 80 and 125 personnel actions that DEP could and did effectuate without DeVincenzo's prior approval. The pre-audit package consisted of between 15 and 25 proposed personnel actions; actions such as certain hires and promotions that DEP could not institute without the all-important "Joe D. letter."²⁷²

Pre-audit PARs were supposed to be turned around (i.e., approved, disapproved, or returned for additional information) within a few weeks of their submission to DeVincenzo's office.²⁷³ Those submitted by DEP, however, were plagued by chronic delays. Most pre-audit PARs were not approved within a month of their submission; generally it took a longer period, sometimes months longer, to secure an approval from DeVincenzo's office.²⁷⁴ Virtually every pre-audit package included actions that were subject to delays of up to six months.²⁷⁵

Pre-audit PARs relating to the hiring of "City Hall specials" or Talent Bank candidates, however, were not subject to such protracted delays. They were approved much faster.²⁷⁶ Thus, pre-audit PARs relating to the hiring or promoting of a non-referred candidate—and particularly those in which an existing DEP employee or an outside candidate was promoted

²⁷¹Jan. Tr. at 284.

²⁷²Jan. Tr. at 239–40; Roth at 135–36.

²⁷³Jan. Tr. at 240; Hochstadt at 150.

²⁷⁴Jan. Tr. at 240–43; Hochstadt at 150; Roth at 136.

²⁷⁵Hochstadt at 165.

²⁷⁶Jan. Tr. at 244; Hochstadt at 157–59; Roth at 143–44, 147. Prompt approval of a pre-audit PAR invoking a "City Hall special" or Talent Bank candidate was another of the advantages these referrals enjoyed.

or hired over a referred candidate—were the ones that were most likely to be subject to extended delays.²⁷⁷ DEP's employees did not fail to draw the lesson: delays were attributable at least in part to the Department's failure to hire a sufficient number of referred candidates.²⁷⁸

In response to Hochstadt's inquiries, members of DeVincenzo's staff assured her that delays were not attributable to deficiencies in the preparation of DEP's PARs.²⁷⁹ Sometimes, no explanations were given and those that were provided were viewed as inadequate by DEP's personnel staff.²⁸⁰ At times, members of DeVincenzo's staff told Hochstadt that they had not yet reviewed or discussed with DeVincenzo long-delayed pre-audit submissions.²⁸¹ Such inaction was alone sufficient, as Hochstadt testified, to "impl[y] to me that [DeVincenzo] didn't feel like looking at DEP's submissions" because he was dissatisfied with the agency.²⁸²

The implicit was sometimes made explicit. The "stock" explanation that Gilvarry gave to Roth when she inquired about delayed PARs was that "Joe was displeased either with the agency in general or with a particular action or with some other action which was holding up the rest of them."²⁸³ The cause of displeasure with the agency, as Roth understood, was DEP's failure to hire enough referred candidates and the cause of displeasure with a particular action was DEP's having chosen to hire or promote someone other than the Mayor's Office candidate.²⁸⁴

The dispositions that displeased DeVincenzo were not necessarily limited to pre-audit hires of non-referred candidates. Most personnel actions were subject only to after-the-fact or post-audit review and thus were beyond DeVincenzo's direct control. Accordingly, Hochstadt suspected that pre-audit actions may have been delayed because post-audit review by DeVincenzo's staff revealed other personnel actions in which referred candidates had not been hired.²⁸⁵

Regularly, as often as every month, Carfora met with DeVincenzo in an effort to obtain approval of long-delayed PARs.²⁸⁶ Prior to these meetings, DEP's personnel staff would brief Carfora about the details of the delayed actions and the reasons why approvals were important to the agency.²⁸⁷ Because they understood that DEP had to "play ball" with City Hall by

²⁷⁷Jan. Tr. at 241-45; Hochstadt at 157-59; Roth at 163-64.

²⁷⁸Jan. Tr. at 244-45, 262, 264-65, 275-77; Hochstadt at 168-70.

²⁷⁹Hochstadt at 180-81.

²⁸⁰Id. at 159-60, 162.

²⁸¹Id. at 162-64.

²⁸²Id. at 164.

²⁸³Roth at 141.

²⁸⁴Jan. Tr. at 245-47; Roth at 141-43.

²⁸⁵Hochstadt at 172-73. Of course, the perception of such politicization is in and of itself important.

²⁸⁶Jan. Tr. at 276-77, 321-22; Hochstadt at 173-74; Roth at 160-61.

²⁸⁷Hochstadt at 174-75.

doing it favors and hiring Mayor's Office referrals, they also briefed Carfora about the recent hires of referred candidates.²⁸⁸ Carfora, in turn, used this information in his meetings with DeVincenzo to demonstrate the agency's cooperativeness and hopefully obtain approvals in return.²⁸⁹

These demonstrations of cooperativeness were generally not successful in obtaining the requisite "Joe D. letter" approving delayed personnel actions.²⁹⁰ But sometimes approvals were obtained.²⁹¹ Thus, the carrot of approval and the stick of delay led DEP to continue to play ball.

III. THE MAYOR'S OFFICE AND THE PERSONNEL PRACTICES OF THE DEPARTMENT OF TRANSPORTATION

The Mayor's Office also exercised extensive influence over the personnel actions of the Department of Transportation ("DOT") in the 1983-86 period. Vacancies in certain types of laborer positions were dominated by City Hall referrals and job candidates referred by City Hall enjoyed an array of advantages.

A. Cooperating with the Mayor's Office

Robert Jean, Joseph DeMarco, and Marsha Singer, three DOT personnel officials in the 1983-86 period,²⁹² agreed in their testimony that the relationship between DOT and the Mayor's Office was a cooperative one with respect to personnel matters.²⁹³ For DOT, cooperation meant hiring and extending other favors for job candidates referred by the Mayor's Office. As Jean testified:

Q: And by "cooperating," that means taking some of [City Hall's] candidates?

A: Yes, playing the game the way it was supposed to be played.

Q: And the game was, that you take their candidates—

A: The game was to help them out. Not to take everybody they sent, and not to turn it into a total patronage number, but take a

²⁸⁸Jan. Tr. at 319-20, 326-27; Hochstadt at 177-79.

²⁸⁹Id. at 320-22.

²⁹⁰Id. at 323-24.

²⁹¹Hochstadt at 175-77; Roth at 161-62.

²⁹²During this time, Jean was the DOT Personnel Director; DeMarco was his deputy; and Singer was his staff assistant.

²⁹³April Tr. at 42-43, 89-90; Jean at 56, 91-92; DeMarco at 146; Singer at 124.

reasonable number, our share as a department, or however you want to put it.²⁹⁴

The oversight authority that DeVincenzo's office exercised over DOT's personnel actions was a decisive factor in DOT's cooperativeness. As DeMarco testified, "[w]e had a large number of actions each month, and it wasn't conducive to business if you didn't cooperate with [the Mayor's Office]."²⁹⁵ Jean testified that he knew "that other agencies had problems with City Hall getting [personnel actions] approved, the time [delays], and all that," but DOT cooperated and did not have such problems.²⁹⁶

In the belief that cooperation was important to fair and expeditious review of DOT's personnel actions, DOT's officials cooperated by hiring and extending preferential treatment to City Hall candidates.²⁹⁷

B. DOT Laborer Hiring

Hiring in at least four laborer titles—ferry agent, deckhand, assistant highway repairer, and debris remover—was dominated by candidates referred by the Mayor's Office.²⁹⁸ No civil service list was in effect for these titles and, accordingly, provisionals were hired to fill vacancies.²⁹⁹ In general, DOT hired from lists of candidates sent by members of DeVincenzo's staff, usually Gilvarry or Hein.³⁰⁰ Some exceptions were allowed. If DOT had a candidate of its own and sought approval from DeVincenzo's office to have that candidate considered, approval was usually granted because of the cooperative relationship between DOT and DeVincenzo's office.³⁰¹

Jean, moreover, testified that Anthony Ameruso, then the Commissioner of DOT, instructed him to let him (Ameruso) know "if we were hiring any positions with a fairly large number of candidates where there was no education or experience requirements that City Hall might be interested in filling" so that Ameruso could make arrangements with DeVincenzo's office.³⁰² By making such arrangements,³⁰³ Jean explained,

²⁹⁴Jean at 56.

²⁹⁵April Tr. at 89.

²⁹⁶Jean at 91; see also April Tr. at 42.

²⁹⁷April Tr. at 42–43, 89–90; Jean at 91–92; DeMarco at 38, 146; Singer at 124.

²⁹⁸April Tr. at 12, 15–17, 69–74.

²⁹⁹Id. at 14, 15, 74.

³⁰⁰Id. at 22–23, 78.

³⁰¹Id. at 23.

³⁰²Id. at 20–21. Jean testified that Ameruso also expressed uncertainty about whether he would be reappointed Commissioner after the 1985 mayoral elections. Jean at 91.

³⁰³Such arrangements were made from time to time. (Jean at 34–37.) For

DOT obtained "credit" with the Mayor's Office: "It was credit for yourself, in a business sense, as an agency, and a credit for him, as a Commissioner, in a sense, with the political establishment."³⁰⁴

DOT did not post vacancy notices for these job titles, and was not required to post by DeVincenzo's office, notwithstanding the 1978 mayoral directive requiring posting.³⁰⁵ Rather, DOT regularly endorsed or stamped "posting waived" on PARs relating to hires for these titles or indicated that the hire was a Mayor's Office candidate for whom posting was not necessary by writing out that fact or writing the letter "Z" on PARs.³⁰⁶ Nor did DOT's personnel staff believe that there was anything improper about not complying with the 1978 directive. As Jean testified, "[p]osting for vacancies was a procedure established by the Mayor's Office. If City Hall told you you didn't have to post, then you didn't have to post."³⁰⁷

Since DOT neither posted nor advertised vacancies in these laborer titles, candidates sent by the Mayor's Office did not compete with the general public. The hiring process at DOT for these positions was simple: absent exceptional circumstances, Mayor's Office candidates were hired.³⁰⁸ If DOT "rejected some [City Hall] candidates in favor of other candidates from City Hall," it would not encounter difficulties from DeVincenzo's office.³⁰⁹ Thus, DOT could and did reject a City Hall candidate who may have "reek[ed] of alcohol" or "look[ed] like a bum."³¹⁰

At times, the lists of candidates forwarded by DeVincenzo's staff ranked the candidates in priority order.³¹¹ DOT's personnel staff understood that interviewing and hiring was to be done in accordance with the priorities stated on these lists.³¹²

DOT's personnel staff was not aware of any affirmative action component to the candidates DOT received from the Mayor's Office for these positions.³¹³ The only impression that they had concerning the ethnicity of candidates referred by the Mayor's Office was that for Ferry Bureau

example, Jean and Singer both testified that an arrangement was made to have assistant highway repairer vacancies filled by candidates from the Mayor's Office and from the rank and file in a lower-paying position, the motor vehicle operators title. Jean and Singer believed that this arrangement was agreed upon by Ameruso, DeVincenzo, and the union leadership representing the motor vehicle operators. April Tr. at 19; Jean at 35-36; Singer at 63-66.

³⁰⁴Jean at 91.

³⁰⁵April Tr. at 15-16, 69, 74.

³⁰⁶Id. at 81-82, 87.

³⁰⁷Jean at 27.

³⁰⁸April Tr. at 25, 75-76.

³⁰⁹Jean at 49.

³¹⁰Id.

³¹¹April Tr. at 78; see, e.g., Attachment J (not included here).

³¹²Jean at 49-50.

³¹³April Tr. at 83-84.

jobs and the higher-paying, more desirable assistant highway repairer position, the candidates from the Mayor's Office were comprised mostly of white males, and that most of the minority candidates referred by the Mayor's Office were referred for the lower-paying and less desirable debris remover position.³¹⁴ Statistics culled from DOT and Talent Bank records confirm that impression. For the calendar years 1984 and 1985, over 85% of assistant highway repairer, deckhand, and ferry agent hires were white males. During the same period, over 70% of the hires for the debris remover position were members of minority groups or women.³¹⁵

C. "Special" Hires

In addition to laborer candidates, DOT regularly received candidates from DeVincenzo's office for a variety of jobs and accorded them various preferences in the hiring process.³¹⁶ A member of DeVincenzo's staff would call DOT and say that it was important that DOT find a job for the candidate or, in substance, state that a job should be found for the candidate.³¹⁷ DOT, accordingly, would review the qualifications of the candidate and seek to determine if there were any vacancies in the job titles for which the candidate might be qualified.³¹⁸

DOT sometimes "created" jobs for these candidates. That is, an agency as large as DOT often had budget authority for particular positions and, even though the bureaus at DOT which had such "vacancies" had no immediate plans to fill them, Mayor's Office candidates would be hired for these "vacancies."³¹⁹ In other words, the Mayor's Office candidates preceded the bureaus' plans to fill such openings. More often, however, DOT was able to "slot" a Mayor's Office candidate into a vacancy which one of DOT's bureaus was seeking to fill.³²⁰ If the Mayor's Office candidate, however, was not qualified for the particular job title or was seeking a salary higher than the maximum amount payable for the job title, DOT sometimes changed the job title for the vacant position to accommodate the Mayor's Office candidate.³²¹ Thus, the vacancy was adjusted to suit the candidate.

³¹⁴Id. at 27-28, 85-86.

³¹⁵For a complete statistical breakdown of these positions by gender and ethnicity, see Attachment H (not included here).

³¹⁶Jean testified that he was unsure about the frequency with which DOT received such candidates but estimated that DOT received a "couple" each month and perhaps more frequently in 1985. (Jean at 69.) Singer "guesstimated" that DOT received as many as ten each month. Singer at 95-96.

³¹⁷Jean at 68; Singer at 92-93.

³¹⁸Jean at 68; Singer at 95.

³¹⁹Singer at 105-8.

³²⁰Id. at 92-94.

³²¹Id. at 96-98, 102-5.

Some of these candidates, moreover, were "musts."³²² In other words, DOT had no discretion and had to hire the Mayor's Office candidate. As Jean testified, Ameruso could sometimes resist hiring particular Mayor's Office candidates but sometimes he could not.³²³ With respect to these musts, Ameruso "would say, we have to do this one."³²⁴

For example, DeVincenzo's office presented a candidate to DOT along with a particular set of duties he was to perform and DOT was required to find a title to fit the candidate's qualifications and duties. When DOT could not find a suitable title, an obsolete title, Secretary to the Commissioner, was resurrected. Although DOT had not considered filling the "vacancy" for this title, which had remained vacant since at least 1970, the Mayor's Office candidate was hired. When Jean told Commissioner Ameruso he found the appointment "ridiculous," he was told it was "one that we had to do."³²⁵

D. Other Preferences Accorded to Mayor's Office Referrals

A Mayor's Office candidate referred to DOT enjoyed advantages not otherwise extended to other job candidates. These advantages began at the time the agency initially contacted the candidate, continued through the interview and hiring process, and sometimes extended through the employee's tenure.

A Mayor's Office candidate could expect to be contacted more quickly by DOT. DOT officials normally contacted candidates by mailing a form letter. However, Mayor's Office referrals were often telephoned the same day their names were received. They could then expect interviews within a day or two of the initial contact.³²⁶

After they were hired, Mayor's Office referrals were not dismissed without the approval of the Mayor's Office. As DeMarco testified, "in theory" DOT could simply dismiss a City Hall referral like a non-City Hall referral, "but, in reality, [DOT] probably didn't because there was a general aura about the Mayor's Office, and, I think, in general people had a concern not to take negative actions unless [there] were extraordinary circumstances."³²⁷ And, as DeMarco further testified, DOT's reluctance to dismiss Mayor's Office candidates was a function of "general concern" about possible "repercussions" from DeVincenzo's office affecting the review and approval of DOT's personnel actions.³²⁸

³²²April Tr. at 40; Jean at 70; Singer at 105.

³²³Jean at 70.

³²⁴Id.

³²⁵Id. at 71; see also April Tr. at 33-34.

³²⁶Singer at 125-26.

³²⁷April Tr. at 88-89.

³²⁸Id. at 89.

Thus, DOT notified DeVincenzo's office before it terminated a Mayor's Office referral.³²⁹ At times, DeVincenzo's staff would not oppose the employees' termination, but in some cases, they would request that the employee be given another chance or moved to another bureau.³³⁰ Because of the deference accorded to some of these Mayor's Office referrals, Singer described them as "like bad pennies" that the agency could not get rid of.³³¹ Jean recalled one particular, albeit extreme, example:

There were a few musts. I remember one, and I don't remember the man's name, where the guy came in and he was behaving very strangely, and my staff in Appointments & Promotions came out and said that this guy is not too straight, he was rambling and babbling, and I went to the Commissioner and I said, "You know, this guy is a problem, but I understood it to be important to City Hall that he be put on," and he told me to hold off for a while and he would check it out, and at a certain point, he said, "Look, we have to find something for him," and we put him in the Parking Violations Bureau.

After about two weeks, I got a call from them that he was very disruptive, and I went to the Commissioner again and I said, "This guy is very bad, he's, obviously, not all there," and, again I was told, at a certain point, that we should give him another chance somewhere else, and we put him in Ferries for a while, and I think he fell down a ferry hatch, and I don't know what happened to him. He was injured. He was on Workmen's Compensation. I don't know what happened to him after that.³³²

IV. CONCLUSIONS

A. Causes of Patronage Abuses

The Talent Bank, established for laudable purposes, went awry for a combination of reasons. First, it was part of the consolidation of citywide personnel authority in the Mayor's Office, most particularly in one mayoral assistant, Joseph DeVincenzo. By 1983, when the Talent Bank was created, DeVincenzo had authority over "just about everything that can happen to a city employee." DeVincenzo's powers over hires, promotions, transfers, and salary increases provided him with the means by which he could and did make sure that agencies hired candidates referred by political figures, even though the formal hiring authority remained with the agencies.

Second, the consolidation of personnel authority in the Mayor's Office coincided with large and steady increases in the number of provisional

³²⁹April Tr. at 39; Jean at 89-90; Singer at 42, 43, 121-22.

³³⁰*Id.*

³³¹Singer at 122.

³³²April Tr. at 40-41.

and discretionary hires. The ability of the Mayor's Office to give preferential treatment to candidates referred by political figures was obviously severely circumscribed with respect to candidates hired from lists resulting from competitive civil service examinations. The increase in the number and percentage of positions filled without regard to such lists increased the opportunities for hiring based on political considerations.

Ultimate responsibility for the Talent Bank, however, belongs to the Mayor, who created it, publicly announced its creation, and appointed DeVincenzo to run it. By creating the Talent Bank and investing it with both an affirmative action and a political mission, the Mayor directed that it serve two unequal masters. In retrospect, it can be seen that, given the danger that the political objectives of the Talent Bank would overwhelm its affirmative action goals, and given the announced importance of the Talent Bank, strong measures were required to monitor the situation and act decisively to prevent the abuses which developed.

The Mayor did not make clear the importance of the Talent Bank's affirmative action goals to his aides who ran it or had dealings with it. Jerry Skurnick, for example, testified that affirmative action was not one of the Talent Bank's major objectives, and DeVincenzo certainly did not take this goal seriously. That DeVincenzo may have been acting on his own in giving preferential treatment to candidates on the basis of their political sponsorship is beside the point. He was exercising mayoral authority, and his actions demonstrated a failure by the Mayor to communicate effectively his views of patronage to the person to whom it was most crucial that he do so.

Nor did the Mayor take adequate steps to monitor the Talent Bank's performance. He did not learn until 1986 that high-paying laborer jobs had been filled overwhelmingly by white males referred by political figures and that LoCicero and DeVincenzo were soliciting candidates for those jobs from certain county leaders. Brezenoff, however, knew these facts by February 1985 at the latest. That Brezenoff did not bring them to the Mayor's attention until 1986 indicates that the Mayor had not impressed upon his chief assistant the importance of the Talent Bank's affirmative action goal and his disapproval of patronage.³³³

³³³There are other examples of the effect of inadequate communication of policy concerning the Talent Bank and patronage. The Talent Bank-related activities of John LoCicero, Skurnick's immediate superior and a political advisor to the Mayor, are inconsistent with a clear understanding of the Talent Bank's stated goals. In the solicitation of laborer candidate referrals from county leaders, LoCicero failed to take effective steps to ensure that these key sources of candidates referred minority and women applicants. (April Tr. at 180-81, 207-8.) Also, the fact that documents reflecting the referral sources of candidates were systematically destroyed, and referral source information deleted from the Talent Bank computer, is persuasive evidence that those involved in the document destruction at least

B. Consequences of Patronage Abuses

Patronage inevitably results in serious consequences for integrity in government; prominent among them are impaired employee professionalism and morale, decreased administrative effectiveness, and the distortion of public values by ulterior private influences. The patronage practices revealed by the Commission's investigation did yield these results.

1. IMPAIRED PROFESSIONALISM AND MORALE

The intrusion of political considerations into the personnel practices of DEP and DOT had indisputable, if not readily quantifiable, adverse consequences on those agencies' employees. These consequences are decidedly relevant to integrity in government because a work force that enjoys a high sense of professionalism and morale is less vulnerable to corruption than a work force in which cynicism and insecurity prevail.

Several members of DEP's personnel staff stated that political connections and considerations affected hiring and promotion at that agency. Evidence supporting that perception includes the extent to which the Mayor's Office dominated laborer hiring; its efforts to push referred candidates; the preferences those candidates were accorded; the rules bent for those candidates' benefit; and the chronic delays imposed on personnel actions of DEP by the Mayor's Office.

The chronic delays in hiring staff at DEP, which occurred with a "fair amount of regularity,"³³⁴ had a particularly significant impact on morale precisely because of the widespread perception that these delays were caused by political considerations. As former DEP Personnel Director Roger Martin testified:

The morale impact, I think, was extensive, particularly among the upper management personnel. When you, as a city manager, are charged with the responsibility of carrying out a mandate of the agency and providing service to the public, and you are unable to fill your vacancies and staff up to the level at which you can complete those responsibilities, your morale has to suffer, because you're being called upon to do a job for the citizens of the City, and not being given the resources, that is, the personnel in order to do that job, and yet you're being held accountable to do the job. . . .

That's a very heavy morale burden on a manager, not to have the resources and staff to be able to accomplish the work that he's supposed to accomplish, and if the reason for that is a political reason, that's twice as bad.³³⁵

belatedly understood that there was something wrong with what they had been doing. If the unacceptability of these practices had been communicated unequivocally to them previously, the practices and documents would not have existed, and there would have been no occasion for destruction of the records.

³³⁴Jan. Tr. at 241.

³³⁵Id. at 286-87.

DEP personnel staffers Cassandra Kennedy and Sherri Roth, and undoubtedly many others, were troubled by the preferential treatment that the Mayor's Office referrals enjoyed. Kennedy found it frustrating to be unable to help laborer applicants who came "off the street" without connections, many of whom were members of minority groups,³³⁶ especially because those who were being hired were predominantly white males.

A sense of cynical resignation among at least some DEP employees was another result of the intrusion of political considerations into DEP's personnel affairs. Roth testified that while most of DEP's administrative staff were aware of and annoyed by this intrusion, many simply accepted it as part of "life in the big city."³³⁷

At least some DEP employees, however, could not so easily reconcile themselves to the extent to which political considerations affected DEP personnel practices. Christopher Sullivan, a DEP personnel staff member from January 1984 to May 1985, left DEP because he became so disaffected by what he described as "unprofessionalism," "bending over backwards to City Hall," and "political cronyism" relating to the intrusion of the Mayor's Office into his work.³³⁸ He testified, moreover, that he and his colleagues felt that they were unfairly excluded from consideration for jobs which went to applicants referred by the Mayor's Office.³³⁹

The morale of DOT employees also suffered. Robert Jean, a former DOT Personnel Director, and Marsha Singer both testified that they were concerned with the effects on morale when, for example, employees with political connections received large salary increases or were hired at disproportionately high salaries. As Jean put it:

It was difficult on the part of some of my subordinates when they saw somebody—someone who they had signed up and who they knew did not sound like someone who was capable or someone they dealt with that they knew was incapable, and they would be getting a large increase and they would know that through that person's connections either politically or personally, that they got there. It had a bad effect.³⁴⁰

In addition, the perception that some employees enjoyed protection against dismissal because they had been referred by the Mayor's Office further damaged morale.

There was also a sense of resignation at DOT. Jean testified that while he tried to hide from lower-level staff the fact that politically referred candidates were being hired, often at higher salaries than theirs,³⁴¹ when

³³⁶Kennedy at 28.

³³⁷Jan. Tr. at 263.

³³⁸Sullivan at 5.

³³⁹Id. at 83.

³⁴⁰April Tr. at 63.

³⁴¹Id. at 49.

they did become aware of it he passed on to them advice he had received in 1970:

[W]hen I first came to work for the department, it bothered me, and I went—my boss had to sit me down—my boss at that time was the Personnel Director, Edward Rossomondo, and he said to me, you have to learn to deal with this, because the Mayor does have the right to bring in his own people; and he also said that, on a number of occasions—and I have said that to my own people, too, at times—that you have to make a choice. If you feel that these people—or that you would be better off by becoming politically active and referred this way, then follow that path, but if you're not, then you have to put up with this and do your job and not let it affect you.³⁴²

These are convincing expressions of the impact of political patronage on employee morale. As the perception of patronage spreads, it reduces the attractiveness of city government service as a career and can have a negative long-term impact on the quality of public service that cannot be measured. The existence of patronage saps incentive for meritorious service and diminishes penalties for substandard performance. Career employees can become demoralized and cynical about their work. When they are committed to the mission of the agency, they see that mission frustrated by political considerations. The cynicism may be accompanied by resentment or resignation; in either case, employees' sense of professionalism is demeaned because it receives limited reward or recognition. Worse, employees see themselves compromised because they are required to participate in the patronage practices they find offensive. And, inevitably, their motivation to oppose corruption is lessened.

2. IMPAIRED ECONOMY AND EFFECTIVENESS IN PURSUING PUBLIC OBJECTIVES

The ability of the Talent Bank, DEP, and DOT to serve their functions was also directly affected by patronage practices. First, and most obviously, a major objective of the Talent Bank—to increase hiring of women and members of minority groups—was seriously undermined. As the evidence before the Commission demonstrates, the Talent Bank's chief concern from 1983 to 1986 was to facilitate the hiring of candidates with political pedigrees. Consequently, the Talent Bank referred for hire lower percentages of minorities and women than the City as a whole hired in fiscal years 1983–84, 1984–85, and 1985–86. A particularly stark example of the subversion of announced governmental values is presented by the hiring of two classes of DOT laborers: the mostly white assistant highway repairers, deckhands, and ferry agents and the mostly minority and female debris removers.³⁴³

³⁴²Jean at 103–4.

³⁴³April Tr. at 27, 86.

City resources were misused: DEP and DOT regularly hired candidates referred by the Mayor's Office for positions that the agencies had no current plans to fill. In substance, jobs were created for Mayor's Office referrals, regardless of the agencies' actual needs, through efforts to find vacancies for which there was budget authority. And legitimate needs were altered to suit Mayor's Office referrals.

At the same time, jobs that the agencies needed to fill were not staffed. DEP was often unable to hire needed staff promptly. Laborer vacancies regularly remained unfilled because of an insufficient number of Mayor's Office candidates, despite the availability of qualified but "unconnected" candidates. Chronic delays in obtaining PAR approvals from the Mayor's Office, which DEP staff believed resulted from not "playing ball" with DeVincenzo, affected DEP in other ways. As Roth explained:

When you had a new hire, somebody who perhaps was either not working or somebody looking for a new job, and perhaps it was delayed because a Talent Bank person hadn't got a job, people aren't going to wait four or five months or six months to be hired, and we would lose a lot of people by the time we got an actual approval that somebody could start. . . . So that's when it would really hurt. You would wait for four months, five months, and have a vacancy for this amount of time; we finally get the approval, the person is gone, you have to start all over again.³⁴⁴

Roger Martin also testified to the inevitable consequences these delays had on DEP's efficiency: "You would have programs that wouldn't be put into effect, because the staff wasn't brought on in a timely fashion and, basically, it gummed up the works, and the agency was less efficient."³⁴⁵ Pressures from the Mayor's Office, moreover, led DEP and DOT to hire candidates on occasion who were at best marginally qualified. And the oversight authority wielded by DeVincenzo's office led DOT to retain some Mayor's Office referrals who would have otherwise been dismissed.

These, of course, are classic examples of the effects of patronage practices on administrative effectiveness. To the extent that they result in the compromising of government's legitimate needs, they are also examples of corruption.

C. Other Consequences of the Mayor's Office's Practices

Apart from these consequences, the Commission's investigation uncovered other troubling matters.

First, there was a clear sense that hiring rules and procedures could and should be manipulated to satisfy the Mayor's Office. For example, posting

³⁴⁴Roth at 138.

³⁴⁵Martin at 64.

requirements for certain positions were routinely waived at DOT in order to find jobs for Mayor's Office referrals. At DEP, those rating the qualifications of job candidates learned to "fudge" the scores in order to resist pressure from the Mayor's Office to hire its referrals.

Another, potentially more damaging consequence concerns the fear of reprisal for cooperation with government investigators. This Commission observed a striking difference between the candor and forthrightness of witnesses who were no longer in the City's employ, and some of those who were still on the payroll, especially provisional employees. The former, on the whole, were much more willing than the latter to recall and describe details of the personnel practices they witnessed. Some current employees were explicit in voicing fears of retaliation if the fact or substance of their testimony were to come to light.

In addition, many of those employees directly involved in the execution of the patronage practices also participated in the 1986 destruction of documents and were less than candid in their sworn testimony concerning both their role in the patronage operation and the document destruction. The destruction of documents and the lack of candor are among the most serious byproducts of the patronage practices disclosed by the Commission's investigation. While they may not be inherent to patronage, they should not come as a surprise. After all, patronage employees, and particularly those who are provisional employees, lack job security. If there is corrupt behavior, which they might otherwise report or resist, they may be less free to do so because it may cost them their jobs. As Robert Jean testified when asked about the effect provisional employees had on DOT administration:

From what I know from what happened in PVB when Jeffrey Lindenauer was talking about the hand held computers and they had a committee of people reviewing this, most of those people were provisional and were beholden—not necessarily beholden to them, but he had a lot of power over a lot of his subordinates that he wouldn't have if they were civil servants and at some point, might have felt protected enough to say, no, I'm not going to sign this or, I'm not going to do this, but if you're in a position where you were vulnerable where you're provisional, or even past a certain point as a manager, where someone can turn around and when you say, no, I don't think this is right, or, I'm not going to sign this, where you can lose your job or be demoted, it's very unlikely that you'll say, "No," and in that sense, yes, I think it hurts the City.³⁴⁶

V. RECOMMENDATIONS

A. Patronage Has No Place in Public Personnel Systems

The harm that results from patronage extends beyond the individuals whose jobs are affected directly and the agencies where it most predomi-

³⁴⁶April Tr. at 65.

nates. Its presence in even a limited way undermines government, for it subordinates the authority of government officials to unaccountable political powers. By injecting ulterior and illegitimate influences in place of formal standards and procedures, patronage impairs the integrity of government. Involving as it does the deploying of public resources to serve private political objectives, patronage, though it may not be either unlawful or invidious in intent, is itself a breach of the public trust. It simply has no legitimate place in a public personnel system.

There is a limited place, acknowledged in civil service law, for political considerations to play a part in hiring for top-level policy and professional or confidential positions, that is, at the Commissioner and perhaps Deputy Commissioner levels. In acknowledging the appropriateness of such "political appointments," it is important to define clearly what they are and how they differ from patronage hiring.

In these few, very senior or confidential positions, it is important for an elected chief executive to be able to select staff who will share his viewpoint about policy decisions, who will be accountable to him, serve at his pleasure, and wholeheartedly share his agenda. As with federal cabinet appointments, political considerations may be relevant, but merit-based qualifications are also a *sine qua non*.³⁴⁷

Experts consulted by the Commission were unanimous in describing the proper role for politically influenced hiring in a public personnel system as a limited one. They pointed out that the number of such positions in a municipality like New York City should be on the order of a few hundred, not thousands. The entire federal government, with more than two million civilian employees, includes only some 3,000 political appointees, and a recent in-depth study ended with the recommendation that the number be reduced to not more than 2,000.³⁴⁸

Despite the concrete adverse effects which accompany patronage, strong pressures remain to adopt such practices in government. These pressures are brought to bear by political and elected government officials who sometimes expect that the benefits of government, including jobs, will be used to reward the supporters of those holding power or to appease those who might otherwise be their opponents. Accordingly, they call on government decision-makers to provide such rewards for their support.³⁴⁹

³⁴⁷Because merit is crucial, and because the reasons for discretionary hiring relate to policy, not just politics, this is not patronage. Patronage is something else. It places politics equal to or above merit, and dictates hiring, salary, promotion, and firing (or immunity from firing) based on political factors.

³⁴⁸Leadership for America: Rebuilding the Public Service. The Report of the National Commission on Public Service (Volker Commission). Washington, D.C., 1989, p. 7.

³⁴⁹LoCicero and Brezenoff both testified that county leaders complained that job candidates they referred were not obtaining jobs in sufficient numbers. April Tr. at 395-96, 490.

The perceived need of elected leaders to build coalitions in order to stay in office or to gain acceptance for their programs adds force to these pressures. Where those in elected office view government jobs as in some sense "theirs" to award, they themselves become more vulnerable to these pressures from without.³⁵⁰

The chief executive must meet these inevitable pressures with forceful and unequivocal communications of the government's policy that patronage will not be tolerated. This communication must go beyond public statements. The chief executive's staff must have no doubt about this policy or the consequences that will follow if it is breached. Effective internal controls and oversight mechanisms should be in place to detect and correct any weakness in this respect.

B. The Personnel System Must Be Restructured to Discourage Patronage Abuses

The personnel system must be structured so as to protect against the possibility of employment decisions based on political ties. Procedures must be put in place to assure merit-based, open hiring throughout the system, and that political appointments are restricted to those very few positions discussed above. Whenever possible, the day-to-day processes of hiring, promoting, disciplining, and dismissing public employees should be governed by institutionalized procedures and routinely left to the trained professionals in the appropriate agencies, namely, the Department of Personnel and the personnel departments within mayoral agencies. While there must be effective oversight mechanisms in place to assure that what is expected is what is done, staff within the Mayor's Office should not be charged with case-by-case review of personnel actions. Nor should those oversight procedures be controlled, on a day-to-day basis, by the same individual or group of individuals that controls the recruiting and hiring process. The Mayor, of course, should retain the power, indeed responsibility, to dictate overall policy objectives to Commissioners of all

³⁵⁰This is one reason that the Commission rejects the argument that "all other things (in terms of merit qualifications) being equal," it should be acceptable to prefer the politically referred applicant for a position at any level of government. Where political considerations for lower and middle level jobs are allowed any play, they open the door to abuse. The way is opened for political factors to outweigh merit-based decisions in day-to-day actions of the employee who owes his job to politics. Inequities develop in access to employment opportunities, so that the politically connected have an advantage. Other employees, equally meritorious, come to feel that without a political sponsor their chances of advancement are inferior.

agencies, including the Department of Personnel, and the authority to require that specific steps be taken to attain those objectives.³⁵¹

Specifically, the Commission recommends the following steps:

1. Staff within the Mayor's Office should have no role in individual day-to-day personnel decisions, such as Planned Action Report ("PAR") and Managerial Position Description ("MPD") review procedures.
2. A separate Appointments Office should be established for senior, policy-level positions.
3. Firm requirements should be adopted for providing widespread notice of employment opportunities. In addition to posting, advertising in newspapers of general circulation should be required. Posting and advertising should be required by law, not by a waivable mayoral doctrine.
4. Where the threshold requirements of certain jobs make it likely that large numbers of people can qualify and traditional screening procedures might be inequitable, other procedures such as lotteries should be used to ensure that the opportunities for such jobs are fairly distributed.
5. The percentage of provisional employees in the city personnel system should be drastically reduced. If overhaul of the civil service procedures is required to accomplish this, a commission should be empaneled to study and recommend effective changes.

1. THE MAYOR'S OFFICE SHOULD NOT HAVE A DAY-TO-DAY ROLE IN PERSONNEL DECISIONS

As discussed above, the consolidation of the power to refer job candidates to agencies and the power to review agency personnel actions in the Mayor's Office unit under Joseph DeVincenzo was the crucial factor in the patronage practices disclosed by the Commission's investigations. DeVincenzo's authority over the PAR and the MPD process provided the muscle by which politically referred candidates were leveraged into DEP and DOT. The testimony of DEP and DOT witnesses vividly demonstrates that they "played ball" with DeVincenzo precisely because he exercised such extensive authority over their personnel actions.

Staff within the Mayor's Office should not be directly involved in the oversight of routine personnel decisions. They should be handled by the Department of Personnel, in conjunction with the Office of Management and Budget, which are responsible for establishing personnel procedures

³⁵¹These might include, for example, directives to fill vacancies only in cases of urgent necessity; to authorize appointments only after reviewing evidence of an affirmative action search; to encourage speedy appointment of environmental protection inspectors needed for a new program, and the like.

and reviewing personnel decisions.³⁵² Within that framework of oversight, appropriate control over hiring and firing should be delegated to the operating agencies.

Removing day-to-day oversight responsibility from staff within the Mayor's Office itself would not unduly impair the Mayor's ability to make sure that the personnel system is well run, that its leaders follow his agenda, or that they are accountable for its performance. To the contrary, the Commissioner and Deputy Commissioners in the Department of Personnel, as well as in the Office of Management and Budget, are directly accountable to the Mayor for the effective performance of their duties, and the policies and practices they are to implement could be dictated by the Mayor. The current practice, which involves staff within the Mayor's Office in a second layer of detailed review, serves no essential purpose (and, in fact, is cumbersome and counterproductive to effective management) but makes much more likely exactly what happened in this case: the introduction of political considerations into personnel practices.

2. A SEPARATE APPOINTMENTS OFFICE SHOULD BE ESTABLISHED

The Mayor's Office should have direct authority over only the small number of senior employees and other narrowly defined confidential employees for whom direct accountability to the Mayor is important for reasons of policy. A separate office, removed from the rest of the civil service and personnel system, should handle those few appointments.³⁵³

Consideration should be given to the establishment of a screening panel, similar to the Abrams panel,³⁵⁴ to evaluate the merit qualifications of

³⁵²It would be appropriate, for example, to establish an internal control system within the Department of Personnel and individual agencies to monitor compliance with prescribed personnel procedures.

³⁵³Some have recommended that the Mayor's Office be allowed to participate in recruiting and referral of city employees, so long as it does not also have responsibility for routine oversight review of personnel actions. Others oppose such a role for the Mayor's Office, since this, itself, would create the risk of politicizing those decisions.

The Commission opposes a system which involves the Mayor's Office in receiving political referrals of the names of candidates for government employment. As a practical matter, once the notion of political referrals for city jobs has been given an institutional blessing (as by creating an office through which such referrals are processed) the way is that much more clear for it to be abused, for "all other things" not to be so equal, and for those within and outside the system to believe that they are not.

³⁵⁴Under present practice, the Mayor's Committee on Appointments, chaired by Floyd Abrams, submits recommendations to the Mayor from which the Mayor appoints members of nine commissions and boards, subject to confirmation by the City Council.

potential policy-level appointees. In any event, to the extent that political considerations are involved in these appointments they should be clear, public, and open.

3. WIDESPREAD NOTICE OF ALL VACANCIES SHOULD BE REQUIRED BY LAW

The Mayoral Directive requiring posting of all job vacancies was waived or ignored regularly, particularly when DOT and DEP were hiring large numbers of employees for relatively unskilled jobs; in other words, precisely in the kind of hiring where posting was especially important to the goal of attracting a wide pool of qualified candidates. Since posting procedures were required by the Mayor's Office, DEP and DOT personnel staff viewed posting as a requirement the Mayor's Office could waive. But waivers of this kind simply enhance the possibility that patronage practices will exist and serve to narrow the availability of applicants and reduce desirable competition for jobs.

Posting and advertising are fundamental to an open and equitable public hiring system. Requirements for posting of vacancies, and even wider notification of the availability of positions for which there are or may be large numbers of vacancies, should be rigorously enforced, and certainly not relegated to a position that "he who gives can take away." The requirements should be clear and unequivocal, and should have the force of law.³⁵⁵

4. OPEN AND EQUITABLE SELECTION PROCEDURES SHOULD BE ADOPTED FOR ALL POSITIONS

There are potentially a significant number of positions for which traditional testing methods may not be suitable screening devices. Among these are possibly a number of jobs, such as laborer jobs, for which there may be minimum qualification requirements, yet which command relatively high salaries, and thus would be attractive to a large number of applicants.³⁵⁶ In these situations, alternative procedures must be developed

³⁵⁵If there are circumstances which might warrant departure from the requirement, the possible range of circumstances should be statutorily prescribed and a procedure should be established to ensure that exceptions are made rarely, for documented reasons, as authorized by appropriate reviewing personnel, and are open to public scrutiny.

³⁵⁶During the time period covered by this investigation, certain laborer positions for which there had been competitive testing requirements were reclassified by the State Civil Service Commission, at the City's request, into non-competitive Laborer Class titles. The Commission cannot and does not comment on the appropriateness of particular classifications. The crucial requirement is that all positions, whether competitive class or laborer class, be openly and equitably available to those who qualify.

to ensure that these positions are available on an open and equitable basis and that selections among those qualified are made in a fair way. The lottery procedure adopted by the Talent Bank in recent years seems one viable alternative. Certainly others can also be developed. The standard must always be that the procedures be open and available on an equitable basis to all who qualify.³⁵⁷

5. THE PERCENTAGE OF PROVISIONAL EMPLOYEES MUST BE DRASTICALLY REDUCED

One of the critical tasks of the Department of Personnel must be to reduce the percentage of provisional employees and other discretionary hiring in the city personnel system. The number and percentage of provisional employees in New York City government today are shockingly high and increasing annually.

There are currently more than 30,000 provisional employees (over 20%) in the work force in the mayoral agencies alone.³⁵⁸ In addition, there are over 2,000 employees in positions to which they were provisionally promoted, nearly 12,000 employees in non-competitive positions, and over 750 employees in exempt classifications. Thus, more than 30% of the City's work force are in discretionary positions in their current jobs. In 1978, only 3% of the work force held provisional positions, and only 10% were in discretionary positions.³⁵⁹

The experts consulted by the Commission have unanimously described these figures as "shocking," "astonishing," "alarm bells." One has said they represent the "demise of the civil service system." It has been said that these figures cannot be appropriate within the terms of the Civil Service Law and rules, particularly the provision of state law which provides that employees hired provisionally cannot remain for more than nine months without going through civil service procedures.³⁶⁰

This high percentage of provisional employees has important implica-

³⁵⁷Other positions may also be difficult to test for in the traditional manner historically used in civil service systems. In all these cases, the principle remains the same: selection procedures must be devised which will make these positions available on an equitable basis to those who would be qualified to perform the work.

³⁵⁸This excludes the Transit Authority, the Department of Education, the Health and Hospital Corporation, and the non-pedagogical component of the City University system, as well as other agencies with fewer employees.

³⁵⁹See Attachment D (not included here).

³⁶⁰New York Civil Service Law § 65.2. The New York State Civil Service Commission, which oversees the city system, has not audited the City since before 1978. Commission on Government Integrity staff were told it would require all the audit resources of the entire State Commission for over a year, to perform such an audit.

tions for integrity in government, some of which are reflected in the circumstances of this case. For example, provisional employees are, by definition, very vulnerable.³⁶¹ To quote one expert, "there is no such thing as a 'provisional whistleblower.'" Also, an environment so full of discretionary hiring lends itself readily to patronage abuse, particularly when no safeguards exist to prevent that from happening.

The civil service system faces enormous pressures, and the recent growth in the number of provisionals stems from several causes.³⁶² Other jurisdictions, however, have experienced similar pressures, have devoted considerable resources to study and reform of their merit-based public employment systems, and have developed techniques which show much promise. This Commission has not undertaken such a study. But the portion of New York City's hiring and personnel practices the Commission has examined in depth dramatically highlights today's problems, and points the direction for what remains to be done.

The New York City civil service system is in a state of crisis. Anecdotal evidence related by experts, and confirmed by a number of Commission staff interviews, suggest that the Civil Service Law is now widely regarded as something it is desirable to bypass or avoid, where possible. Adherence to the law is viewed as hampering the effective recruitment, deployment, and retention of qualified workers. The expression "civil service mentality" is a pejorative description of a bureaucrat who mindlessly follows rules and cannot get anything done.

Clearly, more is needed than just effective enforcement of current law; more is needed than even a dedicated audit by the State Civil Service Commission could provide. One high-level employee described what is needed as a "Moreland Act Commission focusing solely on the civil service/personnel issues."³⁶³ There are skills, talents, and experience in the private sector, and in other jurisdictions. All should be enlisted for a comprehensive attack on the problem.

Dated: New York, New York
August 1989

³⁶¹Although the most recent city union contracts provide for some job security for employees who have been provisional hires for more than two years in the same title (itself a recognition of serious problems of compliance with the letter of the civil service laws), these safeguards do not apply to managerial employees.

³⁶²For example, intense pressures both from lawsuits over the unequal impact of the tests used in public hiring, and from the vastly increased demands placed on city employees to deliver complex services, have hindered the City's ability to recruit employees in the manner it did years ago.

³⁶³Since mid-century, the New York City public personnel system has been the repeated subject of detailed expert study and comprehensive reform (e.g., Mayor's Committee on Management Survey (1952); Josephs Commission on Government of New York City (1958)) but it has been some 15 years since anyone studied the city personnel system in any comprehensive way.

APPENDIX: DE VINCENZO'S RETIREMENT

A. Introduction

Little more than a month after the Commission's January 1989 public hearings at which DeVincenzo testified, he retired from city service at age 46. Prior to his retirement, DeVincenzo took a number of steps—consistent with current law—which had the effect of locking in his eligibility for a \$52,000 annual pension before any pending investigation of his conduct could be concluded.

The Commission has previously examined the subject of pension forfeiture for public employees engaged in wrongdoing.¹ DeVincenzo's ability to retire before any action could be taken which might have jeopardized his lucrative pension prompted the Commission to explore the details of DeVincenzo's retirement as an illustration of the operation of the current pension law in the absence of a forfeiture provision.

B. Navigating the Shoals of the New York City Retirement System

1. DE VINCENZO'S DEALINGS WITH THE RETIREMENT SYSTEM

By dint of his authority, DeVincenzo was able to command the personal attention of the senior staff of the New York City Employees' Retirement System ("NYCERS"). Virtually every step of the processing of DeVincenzo's retirement papers was preceded by extensive consultation with retirement system officials designed to maximize the chances that his retirement plans would not be made known to his employer, the Mayor, or to the New York City Department of Investigation ("DOI") and to minimize the likelihood that disciplinary action could be taken against him before he retired.²

Early one morning in January 1989, DeVincenzo met Harold Herkommer, the executive director of NYCERS, at the corner of West Broadway and Chambers Street. This meeting had been arranged at DeVincenzo's

¹The Commission's recommendations for pension forfeiture legislation are set forth in its report, "Crime Shouldn't Pay: A Pension Forfeiture Statute for New York" (May 1988) (chapter 20 of this volume).

²Under the applicable retirement law of New York State, a public employee who perfects his retirement application and retires before any disciplinary action is taken, is entitled to receive a pension, whether or not he or she is subsequently convicted of a crime.

request, on the theory that it would be imprudent for him to be seen at Herkommer's office at 220 Church Street.³

From the corner, they walked to a nearby diner. There, DeVincenzo posed certain questions: Who would be notified of his retirement? When would his retirement become effective? How does NYCERS count the 30-day minimum waiting period between the time an application to retire is first filed and an employee's earliest effective retirement date?⁴

The last question, in particular, was one to which DeVincenzo returned over and over again in the course of the next several weeks. Under the rules of the Uniformed Sanitation Force retirement plan for which DeVincenzo was eligible, a retiring employee must provide the City with a minimum of 30 days notice before his retirement can become effective. According to the retirement system's rules, the employee who puts in for retirement in 30 days must still be on the city payroll on the 29th day of the waiting period in order to collect his pension.⁵ If at any point prior to the 30th day, the employee is discharged, he loses his right to a pension altogether. If he is demoted and his salary reduced, his pension is proportionally diminished, since the lion's share is based on the employee's salary on his last day of service.⁶

Herkommer estimated that he had at least half a dozen discussions with DeVincenzo or his aides in January and February 1989 about how the 30-day minimum waiting period was to be reckoned and what would be his earliest retirement date.⁷ Not once did DeVincenzo personally appear at NYCERS' office. When he wanted to speak with Herkommer, he arranged to meet him out of the office, or called him at home or from a pay phone. Aides delivered and retrieved the necessary retirement papers.

On Friday, January 20, 1989, Jean Ross, DeVincenzo's secretary and administrative assistant, appeared at NYCERS' office with DeVincenzo's retirement application. Both Herkommer and NYCERS' deputy executive director had left for the day. In their absence, DeVincenzo's retirement application was rejected by the supervisor of NYCERS' Information Room

³April Tr. at 279-81. As Herkommer stated in private testimony to the Commission, "If a Commissioner walks into my office, all the phones start ringing that day, and the next thing, the Mayor is told, you know, hey, so and so is leaving you." Herkommer at 24.

⁴April Tr. at 281-82; Herkommer at 46-47.

⁵See Rule 25 of the New York City Employees' Retirement System: "Except as otherwise provided within these rules, service retirement and ordinary disability retirement shall take effect on a date not less than thirty days nor more than ninety days after the date of filing of application for retirement with the Board of Trustees while in city-service, *provided that as to service retirement, applicant was also in city-service on the day prior to the effective retirement date.*" (Emphasis added.)

⁶April Tr. at 299-300.

⁷Id. at 300-301.

because the application was unsigned and the space where the retirement date was to be filled in had been left blank.⁸

Ross reached Herkommer at home by telephone from NYCERS and informed him of the difficulties she was having with the processing of DeVincenzo's retirement papers. After briefly discussing the possibility of taking the papers back to DeVincenzo for his signature and then returning to NYCERS that day, they decided that an aide would bring the papers in on Monday, January 23.⁹ Herkommer assured Ross that he would be in his office, as usual, at 7:30 A.M. to receive DeVincenzo's retirement papers personally.

On Monday, January 23, 1989,¹⁰ Herkommer arrived at the office shortly before 8 A.M. to find that Robert Valenotti, an aide in DeVincenzo's office, had already called to check if Herkommer was in. Minutes later, Valenotti appeared and delivered DeVincenzo's retirement application.¹¹ The effective retirement date chosen by DeVincenzo was 90 days hence—April 23, 1989.¹²

⁸Id. at 287–90.

⁹April Tr. at 289. These arrangements were confirmed over the weekend of January 21 and 22 in the course of several additional telephone calls to Herkommer's home from DeVincenzo and Ross. Id. at 290–91.

¹⁰Herkommer testified that after he received DeVincenzo's retirement application on January 23, he handed it to his deputy, Sara Tufano, and instructed her to deliver it to the Information Room, from which, in the normal course of events, it would have been picked up by an internal messenger on one of several daily mail runs and taken to the mail room to be clocked in. Herkommer at 143–49.

Herkommer was at a loss to explain how DeVincenzo's retirement application, which he testified he received early in the morning of Monday, January 23, 1989, was not clocked into NYCERS until 11:15 A.M. on January 24. (Herkommer at 138–49.) NYCERS prides itself on avoiding this kind of discrepancy, since, as Herkommer explained: "[T]he most important thing at the Retirement System is the clock-in date. Beneficiaries are designated on death beds. Five minutes make a difference between a benefit of a quarter of a million dollars. We live and breathe clock-in days." Herkommer at 138–39.

Herkommer testified that, at his request, his staff checked a sampling of other documents filed at NYCERS on January 23, 1989 and found that they were all clocked in on January 23. The discrepancy in DeVincenzo's case could therefore not be attributed to a failure in the clock-in mechanism. Herkommer at 147; April Tr. at 293–94.

¹¹April Tr. at 286, 291–92.

¹²There is some evidence that, despite the fact that DeVincenzo initially designated a retirement date 90 days away, he intended from the outset to retire in 30 days. Herkommer recalls that prior to January 23, he had discussions with DeVincenzo about how to count the 30-day waiting period and about changing the retirement date between the 90th and the 30th day. In this regard, Herkommer recalls telling DeVincenzo that he did not need the approval of his employer to make that kind of change. Herkommer at 8.

DeVincenzo followed that advice punctiliously: his affidavit to change retirement date from April 23, 1989 to February 22, 1989 was clocked in at 4:59 P.M. on February 21, 1989.²⁰

2. THE MISSING NOTICE TO DOI

One of the concerns DeVincenzo voiced at an early meeting with Herkommer in January 1989 was who would be notified of his retirement. Herkommer told him that DOI was the only agency to be notified. DeVincenzo pressed him, asking how long it would take for DOI to receive notice. Herkommer told him that notice to DOI typically goes out three to eight days after the retirement application is filed.²¹

It was NYCERS' normal practice in January 1989 to send to DOI, on a periodic basis, printouts of the names of all employees who filed for retirement. These printouts were generated by NYCERS and hand-delivered to DOI by the City's Central Messenger Service.²²

A log maintained by NYCERS suggests that the printout for retirement applications clocked in on January 24, 1989, the date DeVincenzo's application was clocked in, was sent to DOI on January 31, 1989, along with printouts for retirement applications received on January 25, January 26, and January 27. However, DOI is missing not only the January 24 printout and the other three printouts which, according to NYCERS' log, were sent to DOI on January 31, but is also missing a subsequent batch of printouts which NYCERS' log indicates were sent on February 6, 1989.²³ As of February, no particular person at DOI was responsible for making sure that a printout was received from NYCERS for each working day.²⁴

3. BELATED NOTICE TO THE MAYOR'S OFFICE

In January 1989, NYCERS changed its practice of notice to and approval by the employing agency of an employee's expression of intent to change retirement dates. Prior to January 1989, it was NYCERS' normal practice to notify the employing agency and to seek the employing agency's approval in the event that an employee wanted—as DeVincenzo did—to change his retirement date.

²⁰April Exhibit 50.

²¹April Tr. at 282, 285–86.

²²Id. at 294–95.

²³DOI also determined that it is missing printouts for over 80 working days in the preceding year.

²⁴In the wake of DeVincenzo's retirement, DOI and NYCERS have modified their procedures for transmitting and receiving the printouts. NYCERS now sends the printouts to DOI by fax machine instead of by messenger; if, for some reason, on a given day no printout is sent, NYCERS faxes a message to DOI to advise them that no printout is being sent that day. (Herkommer at 203–4.) A DOI employee is responsible for calling NYCERS if nothing is received.

the papers necessary to advance his retirement date, but had worked out in detail the precise date and time he would make that change. Although he sought Brezenoff's assurances on February 17 that the Mayor had no immediate plans to fire him,³¹ DeVincenzo took no chances. To Brezenoff's surprise, DeVincenzo informed him on February 23 that he had taken himself off the payroll the previous day.³²

C. Conclusion and Recommendation

In April 1988, the Commission recommended that state law be changed to permit the forfeiture of pension rights of public employees convicted of a felony related to their employment. If such forfeiture was permitted, it would occur upon conviction. The timing of the filing of the employee's retirement papers would not be relevant to the forfeiture determination.

In the absence of such a change in the law, the current New York City system renders critical the timing of the retirement notice and the employee's choice of an effective retirement date. In theory, the current system is designed to allow the City to determine, prior to the employee's retirement date, whether wrongdoing has occurred sufficient to discharge or demote an employee, and thereby affect his pension. In practice, as DeVincenzo's maneuvers demonstrate, that system is seriously flawed. In the absence of the recommended changes in the state law, the Commission concludes that it is imperative that the city system be changed to condition a public employee's pension on the employee providing written notice of intent to retire at least 90 days in advance of the proposed retirement date to the employee's agency head and to DOI. In addition, the City should provide that the designated retirement date may not be accelerated without the written approval of the employee's agency head.

New York City Amalgamated Professional Employees



Affiliated with DISTRICT COUNCIL 37, AFSCME, AFL-CIO, 125 Barclay Street, New York, N.Y. 10007-2179 (212) 815-1040

**Testimony of Juan Fernandez, President, Local 154,
District Council 37, AFSCME
Before the New York State Civil Service Commission
June 10, 2008**

Good morning President Groenwegen and fellow Commissioners. My name is Juan Fernández. I am the President of Local 154, District Council 37, AFSCME. I am here before you today to share some of the concerns of the members of Local 154, the workers I represent. These workers represent the titles of Research Assistant, Human Rights Specialist, Claims Specialist, Special Consultants Level II, Public Records Aide, Title Examiners, Departmental Librarians and a number of other related titles. Our members provide professional, technical and clerical services at over twenty New York City agencies and departments. They audit the quality of contractual services provided by certain community agencies, they investigate Human Rights complaints, they analyze data and produce reports, they investigate claims against the City, and they organize and classify records and provide library services, among other functions.

Today, I would like to present some of the concerns that my members and I have regarding the plan presented by the New York City Department of Citywide Administrative Services (DCAS) for the reduction of provisional workers in the City of New York:

1. **DCAS's plan does not address the State's mandate for a significant reduction of the provisional workforce.** The State of New York mandated the City of New York to present a plan for the reduction of provisional workers. As of December 2007, DCAS reported the presence of 36,000 provisional workers in the City of New York. However, DCAS's figures and schedule of tests and examinations indicates that the plan is intended to reduce only half of the provisional workforce.
2. **DCAS's plan attempts to destroy the concepts of fitness and merit embedded in the Civil service system by targeting over 60,000 competitive positions, one third of the competitive workforce, for reclassifications, consolidations, title broadbanding and/or removal of civil service jurisdiction.** Such a plan attempts to turn competitive workers into a mass of workers in non-competitive positions serving at management discretion and with limited or no civil service protections and no option for participation in competitive promotional test.

3. **DCAS plan will dramatically reduce or eliminate promotional opportunities for competitive employees.** DCAS's proposal includes massive consolidations and broadbanding of titles. Past consolidations and broadbanding of our titles resulted in reduced promotional opportunities and lack of career path for New York City workers. Since level assignments are left to management discretion, those assignments are usually given to very few people in a subjective manner. Level assignments in broadbanded or consolidated titles are the opposite of the intent of a merit and fitness system, which rewards competence and hardwork.
4. **DCAS plan unnecessarily removes dozens of titles from under its own jurisdiction.** DCAS's plan does not list the titles that it expects to remove from under its jurisdiction at Transit Authority. Moreover, DCAS's does not make any suggestions about the future of the titles affected by such action. Removal of the Transit Authority titles from under DCAS jurisdiction would be an unjustified action over the rights of competitive employees at Transit Authority. Also, it would create disparities and inequalities among workers as sometimes the same titles are used among other workers at City Agencies.
5. **DCAS's proposal will remove civil service rights and promotional opportunities for several Local 154 titles.** The proposal will consolidate, reclassify or remove from DCAS jurisdiction some of Local 154 titles:
 - a. **Human Rights Specialist title series workers will have their rights as competitive workers denied.** Since over 90% of these workers were competitively appointed in 2003, DCAS plan to first consolidate and then reclassify this title to non-competitive will reduce or eliminate their promotional opportunities and then denied competitive workers of their rights.
 - b. **Consolidation of the Public Record Officer and Associate Public Record Officer titles will eliminate career opportunities for competitive employees.** Those two titles are the traditional career opportunities for the Public Record Aide workers most of whom were competitively appointed in 2003. These three titles are part of the same occupational Group. The removal of two of these titles will eliminate a career track opportunity for competitive workers in the Public Record Aide title.
 - c. **Consolidation of Departmental Librarian title series and Title Examiners Occupational group title will reduce or eliminate existing promotional opportunities for these workers.** Existing career development for these series include Title Examiner to Supervisor to Principal; for Departmental Librarian is to Supervisor and then to Principal Departmental Librarian. The reclassification to non-competitive of all of these three titles will eliminate promotional opportunities for these workers.
 - d. **Removal of the Claim Specialist title at Transit Authority from under DCAS jurisdiction.** Claim Specialists were appointed to permanent competitive positions in 2003. DCAS's plan would deny competitive

workers of their rights by transferring them to an unspecified jurisdiction.

DCAS's proposal does not address the mandate of the New York State Legislation to create a plan for the effective reduction of the provisional labor force. Also, attempts to infringe over the rights to civil service protections and promotional opportunities of over 60,000 permanent competitive employees in the system.

The New York State Civil Service System as a system of merit and fitness has been able to attract the brightest and the best of workers with the interest of public service at heart. Also the Civil Service system has been the stepping-stone for generation after generation of immigrant workers in their quest to be part of the public service. The Civil Service System has helped to consolidate and give economic stability to New York State middle class.

DCAS proposal will inflict tremendous damage to the values of merit and fitness embedded in the Civil Service System. The plan will remove rights for competitive workers and reduce or denied existing promotional opportunities for the same workers.

Local 154 strongly recommends that the State Civil Service Commission rejects DCAS plan in its entirety. DCAS proposal does not properly address the mandate of the State legislature nor does it benefit the Civil Service System.

We commend and thank the State Civil Service Commission for holding this public hearing regarding DCAS proposal.

I am available to answer any questions you may have.



MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

NOTICE OF EXAMINATION

REQUIRED FORMS

APPLICATION FORM
EDUCATION AND EXPERIENCE
TEST PAPER
FOREIGN EDUCATION
FACT SHEET
(IF APPLICABLE)

CALL CENTER REPRESENTATIVE

Exam. No. 5060
SECOND AMENDED NOTICE - November 22, 2006

WHEN TO APPLY: From: August 2, 2006 **APPLICATION FEE:** \$30.00
To: August 22, 2006 Payable only by money order to D.C.A.S. (EXAMS)
THE TEST DATE: The multiple-choice test is expected to be held on Saturday, April 14, 2007.

The Notice of Examination is amended to change the date of the multiple-choice test from May 19, 2007 to April 14, 2007.

WHAT THE JOB INVOLVES: Call Center Representatives, under supervision in the New York City 3-1-1 Call Center, provide a single point of contact for all non-emergency City services utilizing state-of-the-art telephone and interactive computer systems; respond to phone inquiries from the public, provide customer service and information to callers, take complaints and service requests and forward them for further action, enter inquiries, complaints and requests into appropriate computer systems and perform related clerical and computer support work. All Call Center Representatives perform related work.

Special Working Conditions: Call Center Representatives will be required to work shifts including nights, Saturdays, Sundays and holidays.

Some of the physical activities performed by Call Center Representatives and environmental conditions experienced are: sitting for extended periods of time with headset on while monitoring two computer screens; typing information into the computer using a computer keyboard; coordinating eye/hand movements while handling calls and operating a console and computer; speaking calmly and clearly in order to elicit information and give instructions to a continuous flow of callers under stress; listening carefully to clearly understand information; making responsible decisions where timing is critical; and sitting within hearing distance of other call takers working under similar conditions.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$24,994 per annum. This salary increases to a minimum of \$27,138 upon completion of Call Center Representative training and one year of satisfactory service. This rate is subject to change.

HOW TO APPLY: If you believe that you meet the requirements in the "How to Qualify" section, refer to the "Required Forms" section below for the form(s) that you must fill out. Return all completed form(s) and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007 by mail only. DCAS will not accept applications in person from candidates.

HOW TO QUALIFY:

Education and Experience Requirements: By the last day of the Application Period you must have:

1. A baccalaureate degree from an accredited college; or
2. An associate degree from an accredited college and one year of satisfactory, full-time experience in providing information or customer services to the public; or
3. A four-year high school diploma or its educational equivalent, and two years of satisfactory, full-time experience as described in "2" above. One year of satisfactory, full-time experience working for New York City government in providing information or customer services to the public may be substituted for the two years of experience described above. College credit may be substituted for experience on the basis of 60 semester credits for each year of experience as described in "2" above.

You may be given the test before we verify your qualifications. You are responsible for determining whether or not you meet the qualification requirements for this examination prior to submitting your application. If you are marked "Not Qualified," your application fee will not be refunded and you will not receive a score.

READ CAREFULLY AND SAVE FOR FUTURE REFERENCE

Residency Requirement: You must be a City resident within ninety days of the date you are appointed to this position if the appointing agency requires City residency and;

- (1) You begin City service as a result of this examination; or
- (2) You are currently a City employee and you began City service on or after September 1, 1986.

English Requirement: You must be able to understand and be understood in English.

Proof of Identity: Under the Immigration Reform and Control Act of 1986, you must be able to prove your identity and your right to obtain employment in the United States prior to employment with the City of New York.

REQUIRED FORM(S):

1. **Application for Examination:** Make sure that you follow all instructions included with your application form, including payment of fee. Save a copy of the instructions for future reference.
2. **Education and Experience Test Paper:** Write your social security number in the box at the top right side of the cover page, and the examination title and number in the box provided. Fill out Sections A, A.1, A.2, and B. This form must be filled out completely and in detail for you to receive your proper rating. Keep a copy of your completed Education and Experience Test Paper for your records.
3. **Foreign Education Fact Sheet (Required only if you need credit for your foreign education to meet the education and experience requirements):** If you were educated outside the United States, you must have your foreign education evaluated to determine its equivalence to education obtained in the United States. The services that are approved to make this evaluation are listed on the Foreign Education Fact Sheet included with your application packet. When you contact the evaluation service, ask for a "document-by-document" (general) evaluation of your foreign education. You must have one of these services submit its evaluation of your foreign education directly to the Department of Citywide Administrative Services no later than eight weeks from the last date for applying for this examination.

THE TEST: You will be given a multiple-choice test. Your score on the multiple-choice test will be used to determine your place on an eligible list. You must achieve a score of at least 70% to pass the test. The multiple-choice test may include questions on understanding written information; combining separate pieces of information to form a general conclusion; applying general rules to a specific situation; understanding the order in which things should be done; written communication (including spelling); ability to create accurate records of information exchanged with caller; and other related areas.

If you pass the multiple-choice test, you will be given a qualifying practical test on a date to be announced. This test will assess your proficiency in navigating multiple computer systems using a computer keyboard and mouse. You will be given a call taking scenario and you will be required to navigate a web-based computer application. In order to pass this test, you may be required to do the following within a specified period of time, to be announced on the day of the test: obtain the appropriate information from the simulated caller, navigate to the correct web page, access the requested information from the web page, and transmit the correct information to the simulated caller.

ADMISSION CARD: You should receive an Admission Card in the mail about 10 days before the date of the test. If you do not receive an Admission Card at least 4 days before the test date, you must go to the Examining Service Section, 1 Centre Street, 14th floor, Manhattan, to obtain a duplicate card.

THE TEST RESULTS: If you meet the education and experience requirements and pass both the multiple-choice test and the qualifying practical test, your name will be placed in score order on an eligible list and you will be given a list number. You will be notified by mail of your test results. If you meet all requirements and conditions, you will be considered for appointment when your name is reached on the eligible list.

APPOINTMENT INFORMATION:

Selective Certification for Spanish: If you can speak Spanish, you may be considered for appointment to positions requiring this ability through a process called Selective Certification. If you pass a qualifying test, you may be given preferred consideration for positions requiring this ability. Follow the instructions given to you in the multiple-choice test booklet on the day of the test to indicate your interest in such Selective Certification.

Probationary Period: You will be required to pass a calltaker training course. In accordance with the Personnel Rules and Regulations of the City of New York, probationers who fail to successfully complete such training courses will be terminated.

SPECIAL TEST ACCOMMODATIONS: If you plan to request special testing accommodations due to disability or an alternate test date due to your religious belief, follow the instructions included with the "Application for Examination."

The General Examination Regulations of the Department of Citywide Administrative Services apply to this examination and are part of this Notice of Examination. They are posted and copies are available in the Applications Center of the Division of Citywide Personnel Services, 18 Washington Street, NY, NY.

The City of New York is an Equal Opportunity Employer.
Title Code No. 10260; Call Center Occupational Group

For information about other exams, and your exam or list status, call 212-669-1357.
Internet: nyc.gov/dcas

United Federation of Nurses and Epidemiologists

**Local 436, District Council 37, AFSCME
125 Barclay Street 4th Fl. Professional Division
New York, New York 10007
212-815-1436 L436@verizon.net**

**Testimony to New York State Civil Service Commission
On
New York City's Department of Citywide of Administrative Service Plan
to Decrease Provisionals
June 10, 2008**

Good morning, President Groenwegen and distinguish members of the Commission. I am Judith Arroyo, President of Local 436. We represent the public health nurses and epidemiologists who work for the City of New York.

Thank you for allowing me to testify today on New York City's proposed plan to decrease provisionals within its work force.

I will not take up the Commission's valuable time by repeating things the Commission will have to read as part of your decision making nor going over things that have been or will be said much better by my labor brothers and sisters.

I will take this time to address two items in the City's plan.

The first is the City's plan not to offer examinations where a license or certification is all ready an inherent part of the title. I represent public health nurses. Part of the requirements for this title is a license as a professional registered nurse. The license in this instance only guarantees the person is a professional registered nurse (RN). It does not assure that the candidate has the "merit and fitness" to be a public health nurse. The same can be said of any of the other titles requiring licenses or certification.

The second is the City's intention to reclassify certain titles as exempt or non-competitive because of "discretionary managerial or policymaking decisions." The New York City Department of Health and Mental Hygiene (DOHMH) all ready such criteria in deciding its non Civil Service managerial positions. The result, in one instance, has been that it appointed a lawyer to be the director of a nursing program.

The Nurse-Family Program is a program where a public health nurse works with a first time

mother, usually a teen-age mother, and her infant until the child is two years old. The program has a documented success rate in reducing drug use, decreasing drop rates, taking families off the welfare rolls, etc. At the core of this success is the public health nurse.

While a lawyer has a license and may bring certain “discretionary managerial” skill sets, it does not include the knowledge of a licensed professional registered nurse nor the specific skill sets of a public health nurse. Yet, the New York City of Department of Health and Mental Hygiene chose a lawyer to run a nursing program.

We can expect more such decisions to be made if the City’s plan to address provisionals is approved as is and in its entirety.

Again, thank you for allowing me to testify. I will be happy to answer any questions you may have.

GLADSTEIN, REIF & MEGINNISS, LLP
ATTORNEYS AT LAW

AMY GLADSTEIN
JAMES REIF
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May 27, 2008

* ALSO ADMITTED IN NJ

Hon. Nancy G. Groenwegen, President
New York State Civil Service Commission
New York State Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, NY 12239

Re: NYC Department of Citywide Administrative Services application under
Civil Service Law 65(5)

Dear President Groenwegen:

I am writing on behalf of the Uniformed EMTs and Paramedics, Local 2507, AFSCME ("UEP"), a labor organization representing the EMTs and Paramedics employed by the City of New York in its 911 system. For the reasons set out below, UEP objects to the March 28 proposal of New York City's Department of Citywide Administrative Services ("DCAS"), submitted pursuant to Civil Service Law § 65(5), to reclassify the City's EMTs and Paramedics¹ from the competitive class to the non-competitive class.

For many years, the City of New York has failed to maintain compliance with Civil Service Law and Constitutional mandates requiring that appointments in the civil service be based on merit and fitness. With respect to a number of positions in the competitive class, provisional appointments were continued well in excess of the nine-month limit prescribed by Civil Service Law § 65. In fact, the City has frequently violated that nine-month time limit with respect to EMTs and Paramedics. On more than one occasion over the past three decades, litigation has been brought against the City to compel civil service examinations for these titles.

Within the past year, the Legislature enacted an amendment to § 65 intended to spur DCAS and other local civil service agencies to rectify their long-standing non-compliance with that law. The amendment provides that DCAS will be permitted to bring itself into compliance over a five-year period provided that it submits to the State Civil Service Commission a comprehensive plan with "a schedule for administration of examinations . . . , a determination of

¹ In its application, DCAS refers to the titles as Emergency Medical Specialist-EMT and Emergency Medical Specialist - Paramedic. DCAS application § 2.3.2, p. 14.

Hon. Nancy G. Groenwegen, President

May 27, 2008

Page 2

additional appropriate existing or planned eligible lists, consolidation of titles through appropriate reclassification, and any other lawful and appropriate means of implementation." Civ. Serv. Law § 65(5)(b). The plan that DCAS has submitted does not meet this legislative standard, particularly in regard to its treatment of the EMT and Paramedic titles. Rather than providing for examinations for these titles, DCAS proposes to do away with examinations – it proposes to remove the EMT and Paramedic titles from the competitive class and include them in the non-competitive class. Its proposal is not a "lawful and appropriate means" of implementing the corrective action the Legislature had in mind.

DCAS offers two rationales for its proposal. First, it argues that the EMT and Paramedic titles have been "oversubscribed" – all qualified candidates were offered employment. This is a specious argument. Whether the pool of candidates exceeds the positions to be filled is essentially just a function of the number of positions to be filled. Because exams in these titles were held so infrequently – in fact, the infrequency itself was a violation of the time constraints prescribed by law – the number of vacancies to be filled after eligibles lists were certified was generally exceptionally large. The remedy for this problem is not to do away with exams, but to hold them with the frequency that employee turnover rates and the law require. Indeed, by its "oversubscription" argument, DCAS attempts to profit from its own non-compliance with the law.

The second rationale that DCAS offers for its proposed re-classification is that EMTs and Paramedics are already required to take State certification examinations. DCAS reasons that possession of the State certification insures that Paramedics and EMTs are competent to perform their jobs so that further testing, by way of a civil service exam, is not necessary.

This second rationale contravenes the very purpose of the merit and fitness provision of the Constitution. That purpose was "to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee." *City of Long Beach v. Civil Service Employees Ass'n, Inc.*, 8 N.Y.3d 465, 470 (2007); *see also, Board of Educ. v. Nyquist*, 31 N.Y.2d 468 (1973). A system that permits unfettered discretion in choosing among candidates who meet the minimum qualifications for a job simply permits patronage and other insidious considerations to infect the hiring process. Holding the appropriate State certificate is a minimum qualification for the EMT and Paramedic position; but Civil service examinations insure that the best candidates for the job are hired, and that they are hired in the order of their performance on the examination. Meeting minimum qualifications may go some way to insuring fitness; but only the examination process insures that candidates will be selected on the basis of merit.

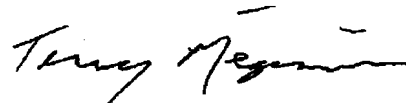
In any event, the Constitution *requires* that merit for appointment be determined by examination "as far as practicable." N.Y. Const. Art. 5, § 6. DCAS makes no claim that holding examinations for the EMT and Paramedic positions is not practicable. Nor can it do so. It has held those examinations, however infrequently, for many years now. The skills and knowledge required to perform the job are readily ascertainable, even if these are ascertained by the a review of experience and education. Notably, the State itself classifies EMTs and Paramedics as part of

Hon. Nancy G. Groenwegen, President
May 27, 2008
Page 3

the competitive civil service and examines candidates using education and experience exams. *See* Exam Nos. 20-349 and 20-523. Examining candidates is the only way to insure that the best are hired first. It is the only way to meet the merit standard contained in the State Constitution.

For these reasons, UEP urges the Commission to reject DCAS's application, or, at the least, to require that its plan be modified to exclude the proposed reclassification of EMTs and Paramedics to the non-competitive class. Please notify me of any hearing that the Commission may schedule on DCAS's application and please be advised that a representative of UEP would like to appear and testify before the Commission at such hearing.

Very truly yours,



Walter M. Meginniss, Jr.

WMM/sh
cc: Patrick Bahnken, President
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Social Service Employees Union Local 371

AFSCME, AFL-CIO



817 BROADWAY • 14TH FLOOR • NEW YORK, NEW YORK. 10003 • (212) 677-3900 • FAX (212) 477-9161

Good morning. My name is Faye Moore and I am the President of the Social Service Employees Union Local 371 representing approximately 18000 workers providing professional social services to the citizens of the City of New York.

I am here today, at your respectful invitation, to formally state our Union's opposition to the plan submitted by the NYC Department of Citywide Administrative Services (DCAS) pursuant to Section 65 of State Civil Service Law. As stated in our letter to the Commission dated June 3, 2008, we ask that DCAS revise this plan or that it be rejected by the State Civil Service Commission.

As you are aware, the DCAS plan has four components that would allegedly combine to reduce the number of provisionals pursuant to Section 65. One part of the plan, to apply additional resources to provide for more testing is long awaited and laudable. The remaining three

President

Faryce Moore

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Michael Ballesteros

Yolanda DeJesus

Melva Scarborough



parts rely on discretionary appointments placing the public at risk of receiving services from a workforce of indeterminate and untested skill instead of the constitutional standard of merit and fitness.

In Local 371, we have seen how the broadbanding component of this plan has a negative impact on the public sector workforce. We have no less than 3 broadbanded titles in our bargaining unit. Where titles are subject to “level promotions” qualified candidates can languish for years in the first level of their title with no opportunity for upward mobility without strenuous intervention and negotiation by the Union. Discretionary appointments within the competitive class can be subject to a change of mission by an Agency Commissioner or at the whim of a low level manager. But too often, they have no basis in merit and fitness.

The most alarming part of the DCAS plan is the proposal to move certain employees from the competitive class to the non-competitive class.

There are 4 title series represented by Local 371 that are being considered for reclassification. They are Child Protective Specialist, Fraud Investigator, Counselor (Addiction Treatment) and the Community Liaison Worker series. The inclusion of 2 of these titles actually defies the recent history DCAS.

In the case of the Child Protective Specialist, there are over 1100 provisionals. However, this is not the result of an inability to test. There are currently 2 established lists in existence and an exam scheduled for Saturday, June 14, 2008. The title, which exists only in the Administration for Children's Services, has always had an attrition/retention problem that is more the result of the difficulty of the job and the hostile work environment. Moving this title to the non-competitive class will do nothing to address either of these problems.

The title is a derivative of the caseworker title and was created in response to a child's death in the mid 90's. The Child Protective Specialist title requires additional educational qualifications,

increased training and a separate Civil Service exam. It appears to be a backward step to now classify the job as non-competitive thereby denying the public a tested workforce to perform this specialized work.

The Fraud Investigator title also has a number of provisionals, albeit not as many as the Child Protective Specialist. The Fraud Investigator title was once housed in one location in Manhattan and now works from offices in all five boroughs. As part of the City's Welfare Reform plan, the NYC Dept of Personnel, the predecessor of DCAS, gave many exams in this title, including education and experience exams, in order to have a tested workforce. There is currently a Fraud Investigator list in existence and we are awaiting the establishment of the promotional list. The inclusion of this title begs the question "what is the rationale?"

All of these dedicated civil servants, incumbents and those yet to be hired would lose certain rights and benefits as a result of a

reclassification. As you are aware, non-competitive employees do not enjoy certain leave rights and do not have the right to due process until they achieve 5 years of service, unless negotiated by their Union. To reclassify workers who have earned these rights by demonstrating merit and fitness in accordance with the State Constitution is unfair to them and to the public that expects demonstrably qualified workers to run their city.

Finally, the DCAS plan as submitted, will weaken and ultimately destroy the Civil Service merit and fitness system. Other than the commitment to additional resources for testing, the plan relies on a system of discretionary appointments that eliminates the level playing field. A workforce predominately comprised of non-competitive employees lends itself to a system of patronage and corruption that will take us back to the days of Tammany Hall.

I ask that the State Civil Service Commission request that DCAS revise its current plan or reject it for the reasons stated today.

**THE LAW OFFICES OF
FAUSTO E. ZAPATA, JR., P.C.**

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May 29, 2008

BY FAX: 212-815-1402
BY EMAIL: ESeinfeld@dc37.net
BY REGULAR MAIL
Evelyn Seinfeld
Associate Director
Research & Negotiations
DC37, AFSCME, AFL-CIO
125 Barclay Street, 5th Floor
New York, NY 10007

**Re: Local 333, United Marine Division,
International Longshoremen's
Association, AFL-CIO,
Response & Comments to the
DCAS Proposed 5-Year Plan**

Dear Ms. Seinfeld,

I am submitting this letter on behalf of Local 333, ILA, AFL-CIO, in connection to the above referenced matter. Below are some of our objections to DCAS proposed 5-year plan.

The proposed elimination of competitive promotional exams for the Ferry Terminal Supervisor (hereinafter "FTS") would adversely impact Local 333 Members serving as Deckhands. To be clear, the FTS title is a direct line of promotion for Deckhands. If the DCAS proposal is accepted with respect to converting this title into a non-competitive title, then it would give management the ability to pick and choose whom to promote without the strict controls provided by a competitive examination. This would infringe upon the Merit and Fitness requirement in that the best candidates will not have the same opportunities as the persons with the internal relationships within the New York City Department of Transportation (DOT), whom could presumably use those relationships to advance his/her career. In other words, by eliminating competitive promotional examinations for the FTS title, DCAS will be creating a situation where personal and political influence will determine civil service appointments.

Moreover, converting the competitive status of the FTS title to a non-competitive title will eliminate a clear line of promotion for Deckhands. Deckhands have an expectation that a promotional exam will provide the opportunity to obtain the FTS position. This expectation is a tangible benefit in that only a certain pool of candidates

can take the exam to achieve the promotion to the FTS title. The pool of candidates is smaller and therefore increases the opportunity to obtain the promotion. The proposed conversion would destroy this expectation.

Currently, the pool of FTS candidates must serve in one of various titles, including Deckhand, for a stated period of time as a qualification prior to sitting for an FTS competitive examination. This ensures that the persons that are ultimately appointed will have demonstrated his/her ability to serve in a closely related title. In the case of Deckhands, they acquire the skills necessary to perform the FTS duties on the job. More specifically, Deckhands are trained in matters that are directly tied to the duties of an FTS.

Additionally, converting the FTS title to non-competitive title will likely impact Deckhands from engaging in protected union activities, like filing grievances, or challenging any DOT policies or actions, for fear of impacting their long-term ability to obtain promotions within the organization.

DCAS argues in its papers that it is justifiable to convert competitive class titles with historically few incumbents into the non-competitive class titles on the grounds, in part, that having such low number of potential candidates makes it impracticable to conduct competitive examinations. For support of this contention, it points to Civil Service Law §42(2) for support. This is a weak argument in that §42(2) exempts small jurisdictions, which it defines as jurisdictions with 5,000 or less residents, and New York City has approximately nine million residents.

It should be noted that the FTS title is not a key high-level management position, nor does this title have any input as to DOT's policies. Moreover, the argument that the exercise of judgment or discretion or the exercise of special skills bolsters DCAS' position that this title should be converted from competitive to non-competitive class is inconsistent in that the duties of this title are analogous to other titles that are in the competitive class. In other words, the level of discretion and specialized skills necessary for the FTS position is not so out of the ordinary from other competitive titles to warrant the conversion proposed by DCAS.

Consolidation of Ferry Titles Title

Currently, Deckhands are eligible to take promotional exams for the following titles: (1) Ferry Terminal Supervisor; (2) Mate; (3) Assistant Captain (Ferry); and, (4) Captain (Ferry); Marine Oilers, a Local 333 title, are eligible to take promotional exams for the Marine Engineer and Chief Marine Engineer titles; and, Dockmasters, a Local 333 title, are eligible to take promotional exams for the Supervising Dockmaster and Chief Dockmaster titles.

Consolidating these titles (3.1.2.066 and 3.1.2.067, of 5-Year Plan) would impact Local 333 members in that it will eliminate, or greatly reduce, promotional opportunities for Deckhands already serving the DOT. Promotions would likely be governed by an

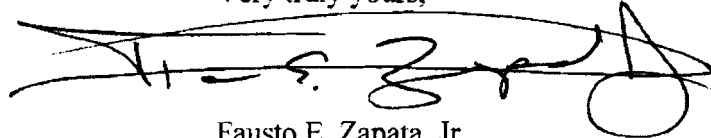
individual's political or personal relationships. This cuts against the Merit & Fitness requirement of the State Constitution in that consolidating and broadbanding the proposed titles in 3.1.2.066 and 3.1.2.067 would distort any clear lines of promotion for Local 333 members and also discourage Local 333 members interested in upward mobility from exercising their union rights to file grievances and engage in other protected activities.

Another concern of Local 333 with respect to the above titles relates to the widely held perception of Local 333 members that the DOT is engaged in an ongoing effort to replace many workers assigned to Ferries with much younger college graduates of Merchant Marine Academies. It is anticipated that if these titles are consolidated and broadbanded, then many of the older workers that have waited many years to obtain a promotions with respect to these title will not have those opportunities because the positions will go to much younger Merchant Marine Academy graduates. It will in effect provide the DOT with a basis to deny promotional opportunities on merit and fitness grounds to the same pool of candidates that previously could have sat for competitive examinations for the very same positions and had a realistic opportunity of being promoted. In other words, the proposed consolidation and broadbanding of the aforementioned titles would greatly increase the freedom of DOT to make discriminatory appointments adversely impacting older Local 333 members.

In conclusion, we believe that the proposed changes would materially alter the protections in place ensuring that appointments are made on the basis of merit and fitness, and more specifically, would adversely impact Local 333 members' promotional opportunities.

If you have any questions, please call me at 212-766-9870.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Fausto E. Zapata, Jr.', with a large circular flourish at the end.

Fausto E. Zapata, Jr.

C: W. Harrigan
M. Brandon
R. Russo
J. Lynch

**New York State Civil Service Commission
Tuesday, June 10, 2008**

Testimony in Opposition to the DCAS Plan to Reduce Provisionals

My name is Dennis Sullivan. I am the Director of Research and Negotiations for District Council 37, AFSCME, AFL-CIO. I am speaking today on behalf of the 121,000 members of DC 37. DC 37 represents the majority of union represented titles that work for the City of New York, and a great number of them will be directly affected by the DCAS Plan.

District Council 37 opposes the DCAS Plan to reclassify competitive class titles to either non-competitive or exempt titles, as a way to reduce the number of provisionals who work for the City. We urge you to disapprove those aspects of the Plan that do anything other than implement an aggressive exam schedule and establish enforcement mechanisms to ensure proper movement of civil service lists.

Approximately 300 of DC 37's titles would be affected by the changes that DCAS proposes in this Plan, which does not include promotion opportunities that will be lost to thousands of employees. In addition, three thousand of our members would be affected by the proposed transfer of the Transit Authority and the Triborough Bridge and Tunnel Authority out of DCAS's jurisdiction.

We are prepared to discuss each one of our titles separately, if you ultimately decide to consider a title for non-competitive status. But at this time, I want to speak in more general terms about the Plan.

151
at
public
hearing

The long history of why 38,000 provisionals work for the City need not be gone into now, but suffice it to say, the backdoor way of reducing the number: by just converting their status out of the competitive class is unacceptable to the Union and does not comport with the merit and fitness principles of the New York State Constitution and the Civil Service Law. Nor, ironically does it comport with the Court of Appeals decision in Long Beach which took that City to task for employing provisionals in place of competitive civil servants.

The Civil Service Law clearly mandates competitive testing for entry-level positions up through managerial positions. Non-competitive appointments are intended to be the exception rather than the rule. As the Constitution makes clear, the reclassification of positions from the competitive class can only occur when it is impracticable to determine merit and fitness by competitive examination. In this Plan, DCAS is asking you to agree to reclassify in one fell swoop, hundreds of titles from the competitive to either the non-competitive or exempt category.

The notion that now, after decades of giving competitive examinations for titles such as Police Communications Technician, Child Protective Specialist, Sewage Treatment Worker, Fraud Investigator, Associate Park Service Worker and on and on, that it is no longer practicable to do so is ridiculous on its face. Simply stated, nothing in the law has changed to make the giving of these examinations not practicable now.

As part of their strategy, DCAS asks you to approve their plan to reclassify competitive class titles where they claim that the State has non-competitive titles performing comparable work. DC 37 performed its own review of the New York State Plan of Titles and we discovered that in fact, the State has more *appropriate* competitive titles doing that same work. It seems to us that in order to achieve the results that DCAS desires, it has ferreted through the State Plan of Titles, with no objective analysis, other than looking for a non-competitive title that could match in words only, a title description in the City.

For example, the Plan proposes to reclassify Police Communications Technician to the non-competitive title of State Police Communications Technician, but there is a comparable competitive title called State Police Communications Specialist which we believe is a more appropriate

comparison. Another example, the Plan proposes to reclassify Child Protective Specialist to the non-competitive State title of Child Abuse Specialist, which is limited to 15 positions in New York State. But the State has a comparable competitive title called Child Protective Specialist. Now we can go on and on with examples of how DCAS cherry-picked titles to support their argument, but we won't because you and your staff know well what is in the New York State Plan of Titles.

Suffice it to say, their justifications are profoundly misleading.

As part of their strategy, DCAS asks you to approve their Plan to set up parallel non-competitive analytical and management high level titles similar to ones that already exist in the competitive class. If that were to occur, promotional opportunities for career civil servants would be eliminated or severely limited. Making mid-level and high-level positions, whether non-competitive or exempt, pulls the rug out from under competitive civil servants who take and pass civil service tests with the knowledge that they have a promotion track to reach those high level positions. Moreover, on the chance that a competitive employee would manage to move up to a non-competitive title, they would lose all their rights as competitive civil servants.

DCAS is also asking you to approve their Plan to reclassify any competitive class title that has fewer than 20 incumbents, justifying it by saying that it is not economically feasible to give so many exams. The Constitution and the State Civil Service Law do not create an exception to the merit and fitness requirement “due to economic feasibility.” This proposal is also problematic because as previously mentioned, it would remove promotion opportunities, since many of the titles in this category are high-level positions.

DCAS also asks you to move titles that already require licenses or certificates out of the competitive class. But while licensing may test for areas of technical expertise, it is not intended as a substitute for the test of fitness for public service which is essential for the merit system. Licensing exams do not measure the kinds of qualities and abilities which are needed for such functions as supervision of other employees or other administrative duties. You already indicated as such; when you disapproved a City proposal some years ago to make certain professional engineering titles that require a State license non-competitive. Clearly, DCAS knows this as well, because they omitted engineering titles in their Plan.

In conclusion, the DCAS Plan as it is constructed proposes to give exams over the next five years sufficient to result in a reduction of provisionals by only half. DC 37 is supportive of that part of the Plan because it upholds the principles of merit and fitness. We believe additional exams, possibly different kinds should be offered to the other fifty percent.

Civil Service Law provides rights to permanent competitive civil servants that do not exist for any other classification. We are not willing to accept the notion that our members can no longer receive those rights just because DCAS does not want to give the exams necessary to make people permanent.

DCAS has put longstanding principles of merit and fitness in jeopardy in order to deal with an immediate problem of too many provisionals. The result will be a civil service system, no different than the spoils system that existed 100 years ago when personal, political and financial influence determined who got civil service appointments.

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May 27, 2008

* ALSO ADMITTED IN NJ

Hon. Nancy G. Groenwegen, President
New York State Civil Service Commission
New York State Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, NY 12239

Re: NYC Department of Citywide Administrative Services application under
Civil Service Law 65(5)

Dear President Groenwegen:

I am writing on behalf of the Uniformed EMTs and Paramedics, Local 2507, AFS-CME ("UEP"), a labor organization representing the EMTs and Paramedics employed by the City of New York in its 911 system. For the reasons set out below, UEP objects to the March 28 proposal of New York City's Department of Citywide Administrative Services ("DCAS"), submitted pursuant to Civil Service Law § 65(5), to reclassify the City's EMTs and Paramedics¹ from the competitive class to the non-competitive class.

For many years, the City of New York has failed to maintain compliance with Civil Service Law and Constitutional mandates requiring that appointments in the civil service be based on merit and fitness. With respect to a number of positions in the competitive class, provisional appointments were continued well in excess of the nine-month limit prescribed by Civil Service Law § 65. In fact, the City has frequently violated that nine-month time limit with respect to EMTs and Paramedics. On more than one occasion over the past three decades, litigation has been brought against the City to compel civil service examinations for these titles.

Within the past year, the Legislature enacted an amendment to § 65 intended to spur DCAS and other local civil service agencies to rectify their long-standing non-compliance with that law. The amendment provides that DCAS will be permitted to bring itself into compliance over a five-year period provided that it submits to the State Civil Service Commission a comprehensive plan with "a schedule for administration of examinations . . . , a determination of

¹ In its application, DCAS refers to the titles as Emergency Medical Specialist-BMT and Emergency Medical Specialist - Paramedic. DCAS application § 2.3.2, p. 14.

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additional appropriate existing or planned eligible lists, consolidation of titles through appropriate reclassification, and any other lawful and appropriate means of implementation." Civ. Serv. Law § 65(5)(b). The plan that DCAS has submitted does not meet this legislative standard, particularly in regard to its treatment of the EMT and Paramedic titles. Rather than providing for examinations for these titles, DCAS proposes to do away with examinations – it proposes to remove the EMT and Paramedic titles from the competitive class and include them in the non-competitive class. Its proposal is not a "lawful and appropriate means" of implementing the corrective action the Legislature had in mind.

DCAS offers two rationales for its proposal. First, it argues that the EMT and Paramedic titles have been "oversubscribed" – all qualified candidates were offered employment. This is a specious argument. Whether the pool of candidates exceeds the positions to be filled is essentially just a function of the number of positions to be filled. Because exams in these titles were held so infrequently – in fact, the infrequency itself was a violation of the time constraints prescribed by law – the number of vacancies to be filled after eligibles lists were certified was generally exceptionally large. The remedy for this problem is not to do away with exams, but to hold them with the frequency that employee turnover rates and the law require. Indeed, by its "oversubscription" argument, DCAS attempts to profit from its own non-compliance with the law.

The second rationale that DCAS offers for its proposed re-classification is that EMTs and Paramedics are already required to take State certification examinations. DCAS reasons that possession of the State certification insures that Paramedics and EMTs are competent to perform their jobs so that further testing, by way of a civil service exam, is not necessary.

This second rationale contravenes the very purpose of the merit and fitness provision of the Constitution. That purpose was "to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee." *City of Long Beach v. Civil Service Employees Ass'n, Inc.*, 8 N.Y.3d 465, 470 (2007); *see also, Board of Educ. v. Nyquist*, 31 N.Y.2d 468 (1973). A system that permits unfettered discretion in choosing among candidates who meet the minimum qualifications for a job simply permits patronage and other insidious considerations to infect the hiring process. Holding the appropriate State certificate is a minimum qualification for the EMT and Paramedic position; but Civil service examinations insure that the best candidates for the job are hired, and that they are hired in the order of their performance on the examination. Meeting minimum qualifications may go some way to insuring fitness; but only the examination process insures that candidates will be selected on the basis of merit.

In any event, the Constitution *requires* that merit for appointment be determined by examination "as far as practicable." N.Y. Const. Art. 5, § 6. DCAS makes no claim that holding examinations for the EMT and Paramedic positions is not practicable. Nor can it do so. It has held those examinations, however infrequently, for many years now. The skills and knowledge required to perform the job are readily ascertainable, even if these are ascertained by the a review of experience and education. Notably, the State itself classifies EMTs and Paramedics as part of

Hon. Nancy G. Groenwegen, President

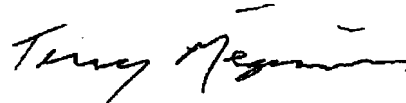
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the competitive civil service and examines candidates using education and experience exams. See Exam Nos. 20-349 and 20-523. Examining candidates is the only way to insure that the best are hired first. It is the only way to meet the merit standard contained in the State Constitution.

For these reasons, UEP urges the Commission to reject DCAS's application, or, at the least, to require that its plan be modified to exclude the proposed reclassification of EMTs and Paramedics to the non-competitive class. Please notify me of any hearing that the Commission may schedule on DCAS's application and please be advised that a representative of UEP would like to appear and testify before the Commission at such hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Walter M. Meginniss, Jr.", written in a cursive style.

Walter M. Meginniss, Jr.

WMM/sh

cc: Patrick Bahnken, President

J:\TM\ems\dcas-applic-reclassification-opp-state-csc.ltr.wpd

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June 9, 2008

VIA FACSIMILE (518-474-0787) AND OVERNIGHT MAIL

Honorable Nicholas J. Vagianelis
Director of Classification and Compensation
New York State Civil Service Commission
Alfred E. Smith Building
Albany, New York 12239

Re: New York City District Council of Carpenters, UBCJA -and-
New York City Department of Citywide Administrative Services
(CSL § 65(5) Reclassification/ Consolidation Proposal)

Dear Mr. Vagianelis:

This firm represents the New York City District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO ("the District Council"). On behalf of the District Council, we hereby submit this statement in opposition to the plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law ("CSL") § 65(5) to (a) reclassify from the Competitive to the Non-Competitive Class all Civil Service titles represented by the District Council in New York City, and (b) eliminate certain of those titles through consolidation ("the DCAS Plan").

As explained more fully below and in the upcoming testimony of William Lacey, the District Council's Director of Civil Service Affairs, it is the District Council's position that the DCAS Plan should be soundly rejected for several reasons, including the following:

A. The DCAS plan would violate New York State Constitution, Article V, § 6 and New York State Civil Service Law ("CSL") §§ 42 and 44, which require that appointments and promotions in the Civil Service be made according to merit and fitness ascertained, as far as practicable, by competitive examination.

B. The DCAS Plan would violate CSL § 65's strict prohibition against long-term

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employment of provisionals by effectively allowing provisional employees to be converted to permanent status without competing in an examination.

C. The DCAS Plan would make a mockery of the stated legislative purpose of CSL § 85(5), namely to further "the constitutional mandate of making appointments and promotions according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive."

D. The DCAS Plan is entirely unnecessary, given the existence of Civil Service eligible lists for the Carpenter and Supervisor Carpenter titles and upcoming examinations for the Dockbuilder and Rigger titles.

E. The DCAS Plan would harm all of the District Council's bargaining unit members, whether selected by examination or otherwise. Further, any attempt to implement the DCAS Plan without bargaining with the District Council over these adverse impacts would violate CSL § 209-a(1), which prohibits unilateral changes in working conditions of represented public employees.

F. The DCAS Plan would harm the public by permitting safety-sensitive work to be performed by individuals who have not demonstrated their merit and fitness for the trade, and by allowing unqualified individuals to attain appointment to such positions by patronage, cronyism and corruption.

BACKGROUND

The District Council represents approximately 25,000 Carpenters and employees in related trades in the New York City metropolitan area, including approximately 850 Civil Service employees, including Carpenters, Supervisor Carpenters, Dockbuilders, Riggers and related titles.

All of the Civil Service titles represented by the District Council are, and always have been, classified in the Competitive Class. For more than sixty years, employees in those titles have been selected on the basis of merit and fitness determined by examinations given approximately every seven years.

Currently, DCAS has established Civil Service eligible lists for the Carpenter and Supervisor Carpenter titles that may be used to replace approximately 134 provisionals in those titles. DCAS has scheduled a Dockbuilder examination in order to replace five provisionals in that title. DCAS has scheduled, but inexplicably has cancelled, a Rigger examination in order to replace four provisionals in that title. The District Council has requested, but DCAS has not yet

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scheduled, a Ship Carpenter examination to replace four provisionals in that title.

On March 28, 2008, DCAS submitted a plan, ostensibly prepared pursuant to CSL § 65(5), under which all of the Civil Service titles represented by the District Council would be reclassified to the Non-Competitive Class, and some of those titles would be eliminated through consolidation. DCAS has not consulted with the District Council concerning that plan.

ARGUMENT

A. The DCAS Plan Would Violate New York State Constitution Article V, § 6 and CSL §§ 42, 44, which Require that Appointments and Promotions in the Civil Service Be Made according to Merit and Fitness Ascertained, as Far as Practicable, by Competitive Examination.

Article V, § 6 of the New York State Constitution provides that appointments and promotions in the Civil Service "shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive...." (emphasis added). This constitutional mandate is reflected in CSL § 44, which defines "the competitive class" as "all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination" and in CSL § 42, which defines the "non-competitive class" as "all positions... for which it is found by the Commission having jurisdiction to be not practicable to ascertain the merit and fitness of applicants by competitive examination."

New York State courts view the competitive examination process "as the foundation of the merit system," which is designed to ensure that "competence, rather than cronyism should determine Civil Service appointments." See McGowan v. Burstein, 71 N.Y.2d 729, 530 N.Y.S.2d 64, 65 (1988); Goodfellow v. Bahou, 92 A.D.2d 1085, 461 N.Y.S.2d 570, 571 (3d Dept. 1983). As the Court of Appeals held in the case that prompted the Legislature to enact the law at issue here, CSL § 65(5): "The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee." The constitutional mandate "may not be blinked or avoided." City of Long Beach v. Civil Service Employees Ass'n, Inc., 8 N.Y.3d 465, 470, 835 N.Y.S.2d 538, 540, 867 N.E.2d 389, 391 (2007) (citations omitted).

Consequently, the requirement that appointments to Civil Service positions be determined by competitive examination is the overriding rule, and exceptions are rare. See Condell v. Jorling, 151 A.D.2d 8, 546 N.Y.S.2d 727, 731 (3d Dept. 1989); Murphy v. Rosenblatt, 140

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Morel, 204 So. 2d 432, 436 (S.Ct. N.Y. Co. 1988); *Andersen v. Rice*, 277 N.Y. 271, 273 (2d Dept. 1934); *14 N.Y.S.2d* 65, 66 (1938). Exceptions to the competitive testing requirement are limited to cases where the position involves: (1) a confidential relationship between the employee and the appointing officer; (2) the exercise of high-level policy-making discretion or authority; or (3) personal qualities or expertise which cannot be measured by competitive examination. See *Duske v. Axelrod*, 90 A.D.2d 577, 456 N.Y.S.2d 135 (3d Dept. 1982); *Murphy*, 531 N.Y.S.2d at 111.

Furthermore, reclassification of a Civil Service title from the Competitive to the Non-Competitive Class is only appropriate where the reclassification is designed to conform the Civil Service appointment process to a pre-existing reality (e.g., to eliminate an examination requirement where the nature of the title has changed, making it impracticable to test the skills of that title). See *Joyce v. Ortiz*, 108 A.D.2d 158, 487 N.Y.S.2d 746, 751 (1st Dept. 1985).

Under these well-established principles, the DCAS Plan to reclassify Carpenter and related titles from the Competitive to the Non-Competitive Class, and to eliminate certain titles by consolidation, violates the governing law. This is so for several reasons:

1. The affected titles, including Carpenter, Supervisor Carpenter, Dockbuilder, Supervisor Dockbuilder, Rigger and Ship Carpenter, all involve skilled trades which, by their nature, can be competitively tested. Such tests can be used to determine an applicant's merit and fitness for the trade by, among other things, examining the applicant's knowledge of tools, materials, work practices and building codes. Such tests have been used for six decades to determine merit and fitness for these positions at New York City mayoral and non-mayoral agencies, and have been routinely used in apprenticeship training programs to determine competency for such positions in the private sector.

2. The affected titles do not involve confidential relationships, high-level policy-making discretion or authority, or personal qualities or expertise which cannot be measured by competitive examination.

3. No change has occurred in the nature of the affected titles or in the work expected of applicants for those titles that would require or justify discontinuance of competitive examinations.

4. DCAS has not and cannot identify any burden that would be imposed by continuing to design and administer examinations for Carpenter and the other affected titles.

5. Unlike Carpenters in the New York State Civil Service, Carpenters and related titles in the New York City Civil Service work in a single geographic area, for which

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examinations can be easily administered.

6. The proposed elimination of certain titles by consolidation with related titles (e.g., reclassifying Supervisor Carpenter in the Competitive Class with "Carpenter Level 2" in the Non-Competitive Class) would unlawfully permit employees to obtain supervisory status without demonstrating their merit and fitness for the higher-level position through examination.

Thus, no factors are present which would, under the governing law, permit reclassification of the affected titles from the Competitive to the Non-Competitive Class, or elimination of positions through consolidation. Absent such factors, the DCAS Plan amounts to nothing more than an attempt to evade the broad constitutional and statutory mandates requiring that merit and fitness for Civil Service positions be determined by competitive examination "as far as practicable."

II. The DCAS Plan Would Violate CSL § 65, which Prohibits Long-Term Employment of Provisionals, by Converting Provisional Employees to Permanent Status without Requiring Them To Compete in Examinations.

The DCAS Plan represents a blatant and unlawful attempt to avoid the requirements of CSL § 65, which prohibits long-term employment of provisionals and requires their replacement by Civil Service eligibles.

CSL § 65 permits provisional appointments only for a limited period of time and only as a "stop-gap" measure. See City of Long Beach, 8 N.Y.3d at 470-71; Joyce, 487 N.Y.S.2d at 748, 750-51, quoting Matter of Hannon v. Bartlett, 63 A.D.2d 810, 405 N.Y.S.2d 513, 515. After a position has been filled provisionally for one month, a Civil Service examination must be ordered for that position; no provisional appointment may continue for more than nine months; and successive provisional appointments may not be made to the same position. See CSL § 65(2)(4).

If DCAS is concerned about the existence of provisionals in New York City's Civil Service carpentry workforce, it should comply with CSL § 65 (a) by having Civil Service examinations administered where necessary and (b) by replacing provisionals with Civil Service eligibles who have demonstrated their merit and fitness through examinations and are awaiting appointment to vacant or provisionally-filled positions. Indeed, for those titles (like Carpenter and Supervisor Carpenter) where eligible lists exist to fill vacant and provisionally-filled positions, the DCAS Plan would abrogate the rights of those candidates who are awaiting appointment from eligible lists, and invite individual lawsuits or class actions on their behalf.

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In short, reclassification of positions in the Competitive Class is not a lawful means of redressing DCAS's failure to timely administer examinations and certify appointments from eligible lists for positions occupied by long-term provisionals. As the Court held in Joyce v. Ortiz, 187 N.Y.S. 2d at 750-51, quoting Matter of Board of Education v. Nyquist, 31 N.Y. 2d 408, 475, 341 N.Y.S.2d 441, 447 (1973):

If there is problem with the competitive process in selecting the most able people for a post, the solution lies, not in the unconstitutional attempt of the Commissioner to bypass the requirements of constitutionally mandated examinations, but in examination procedures which will provide a true test of a candidate's ability and probable performance in the position for which he is being examined.

C. The DCAS Plan Would Make a Mockery of the Stated Legislative Purpose of Recently Enacted CSL § 65(5).

CSL § 65(5) was enacted to respond to the excessive number of long-term provisionals employed by New York City. According to the statement of legislative findings, that law's goal was to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'" To accomplish that goal, the Legislature required DCAS to submit to the Commission a plan to lower the total of provisional employees to five percent of all Competitive Class positions. The Legislature advised DCAS that its plan may include, among other things, an increased number of scheduled examinations and additional eligible lists, CSL § 65(5)(b).

The DCAS plan makes a mockery of that legislative goal by eliminating competitive examinations entirely for more than 22,000 employees in 294 titles – fully 15 percent of all Competitive Class employees in mayoral and non-mayoral agencies – instead of using competitive examinations to remedy the City's past failure to administer its Civil Service system as required by law.

The DCAS plan only nominally increases the total of number of examinations that DCAS administers each year. It takes no account of existing eligible lists that can be used to replace provisionals in titles such as Carpenter and Supervisor Carpenter. And it entirely ignores the practicability standard that the law mandates for determining when a competitive examination must be given for a title. As such, the DCAS plan violates not only the constitutional and statutory provisions governing examination and classification, but also the very law that it was intended to implement.

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D. The DCAS Plan Is Entirely Unnecessary for the Civil Service Titles Represented by the District Council.

As explained above, DCAS has established current Civil Service eligible lists for the Carpenter and Supervisor Carpenter titles and can use those lists to replace provisionals in those titles with permanents. In addition, DCAS has scheduled a Dockbuilder examination and can set a schedule for a Rigger examination (which was inexplicably scheduled but cancelled in February 2008). As for Ship Carpenter, DCAS can schedule an examination for that title, as it has done in the past.

Thus, there is no reason why DCAS should be targeting its illegal and ill-considered plan at the titles represented by the District Council. Through vigilant enforcement of the laws concerning examination, certification and appointment, the District Council has assured that the affected trades positions it represents in New York City are filled with eligibles who have demonstrated their merit and fitness through testing. Hence, there is no policy or purpose to be served by removing these titles from the Competitive Class.

E. Any Attempt To Implement the Proposed Reclassifications without Bargaining with Affected Unions Concerning the Impact of the Reclassifications upon their Bargaining Units Would Be Unlawful

It is well established that, under CSL § 209-a(1), a public employer may not unilaterally implement changes in working conditions which adversely impact upon a Union's bargaining unit members. In the instant case, the DCAS Plan would have enormous and ongoing impacts upon the District Council's bargaining unit members, both those who are currently employed by New York City and those who would become employed by New York City after the proposed plan took effect. Among those impacts are the following:

1. The DCAS Plan would create divided bargaining units, with employees selected through competitive examinations working alongside employees selected by other means. Conflicts surely would arise concerning those employees' relative rights at times of job reassignment, promotion, transfer and layoff.

2. The DCAS Plan would permit employees selected without competitive testing to supervise employees who were selected by other means.

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5. The DCAS Plan would deny employees selected through competitive examinations the job security and due process rights that they have long enjoyed under CSL § 75, and would deny such basic protections to new employees selected by other means.

The practical adverse impacts upon bargaining unit employees posed by the DCAS Plan clearly require bargaining with the District Council pursuant to CSL § 209-a(1). If the plan were to move forward before such bargaining is completed, such action would be unlawful and could be challenged both at the Public Employee Relations Board and in a judicial injunction proceeding.

I. The DCAS Plan Will Harm the Public.

Carpentry, dockbuilding and rigging are all safety-sensitive trades that can pose serious and potentially deadly safety hazards if they are not performed properly. Those hazards can arise during the course of and after the completion of construction. The DCAS Plan nonetheless would allow these trades to be performed by personnel who have not demonstrated their merit and fitness through examination, as their predecessors have been required to do for decades.

Permitting these titles to be filled without competitive examination also invites a return to the cronyism, patronage and corruption that brought about the passage, more than a century ago, of the State's constitutional and statutory merit and fitness requirements.

CONCLUSION

Civil Service Carpenters and employees in related trades in New York City are and have always been selected through competitive examination. This legally required practice has assured public employers a highly competent, skilled and stable workforce, and has prevented corrupt hiring practices that predated the Civil Service system.

The DCAS Plan to remove those titles from the Competitive Class is illegal, unnecessary and destructive of the Civil Service system. We therefore urge you to reject this ill-considered

Honorable Nicholas J. Vagianelis

June 9, 2008

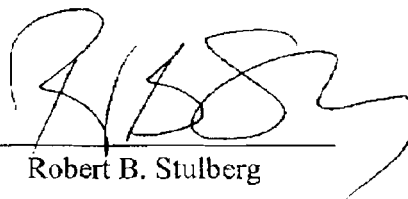
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proposal and to require New York City to obey the laws that require competitive examinations for these titles.

Respectfully submitted,

BROACH & STULBERG, LLP

By:

A handwritten signature in black ink, appearing to read "RBS", is written over a horizontal line.

Robert B. Stulberg

RRS/p

cc: Mr. William Lacey

Good morning, NYS CIVIL SVC COMMISSION AND ALL OTHER THAT ARE PRESENT.

My Name is Thomas Kattou I am the treasurer elect for local 376 , dc-37 AFSCME – AFL-CIO.

ON BEHALF OF LOCAL 376 AND THE PRESIDENT GENE DeMARTINO AND ITS EXECUTIVE BOARD, I'D LIKE TO VOICE SPECIFIC OBJECTIONS TO THE PROPOSED DCAS PLAN.

WHICH ARE PARAGRAPH 2.3.1 OF THE PLAN REGARDING RECLASSIFYING TITLES FROM THE COMPETITIVE TO NON COMPETITIVE CLASS, THIS RECLASSIFICATION WOULD REMOVE THOUSANDS OF ALREADY CIVIL SERVANTS OF DUE PROCESS RIGHTS AND OTHER BENEFITS OF COMPETITIVE STATUS. WHO CURRENTLY HAVE THESE RIGHTS?

LOCAL 376- HIGHWAY REPAIRERS AND CONSTRUCTION LABORERS WHOM FOR MANY YEARS OF BEING COMPETITIVE AND PLACED ON A CIVIL SERVICE LISTS, ARE NOW IN DANGER OF BEING NON COMPETITIVE IT'S WRONG. THE COURTS HAVE ORDERED MORE COMPETITIVE LISTS NOT LESS. BOTH OF THESE TITLES ARE PREVAILING RATE TITLES, THEY ARE RECOGNIZED BY THE NYC CONTROLLERS OFFICE FOR SURVEY PURPOSES THAT QUALIFY FOR PREVAILING RATE BECAUSE THEY DO ALL THE TASKS REQUIRED ON THE JOB, WHERE SIMILAR STATE TITLES DO NOT.

AND THESE 2 TITLES OF HIGHWAY REPAIRER AND CONSTRUCTION LABORER ARE COMPARABLE TO CONSTRUCTION WORK BEING PERFORMED IN THE CONSTRUCTION INDUSTRY. THESE 2 TITLES ARE SPECIFICALLY AFFECTED BY PARAGRAPH 3.3.3.2.06 WHICH PROPOSES RECLASSIFYING THESE TITLES WHICH ARE COMPETITIVE TO NON COMPETITIVE AND REMOVES PERMANENT STATUS. AND ALSO REMOVES DUE PROCESS RIGHTS, AND ALL OTHER BENEFITS OF COMPETITIVE STATUS.

THIS PLAN FOR RECLASSIFICATION WILL HARM THE CITY OF NY'S EFFORTS TO HIRE AND PROMOTE BY MERIT AND QUALIFICATION ,AND MAKE A MOCKERY OF THE CIVIL SERVICE SYSTEM.

THIS PROPOSAL WOULD AFFECT THOUSANDS OF OTHER CIVIL SERVANTS AS WELL.

WE BELIEVE THE DCAS PLAN WOULD VIOLATE CIVIL SERVICE LAW.

AND IT IS CERTAINLY NOT IMPRACTICABLE TO HIRE HIGHWAY REPAIRERS AND CONSTRUCTION LABORERS BY COMPETITIVE EXAMINATION.

THE COURT DECISION WHICH SPARKED THIS PLAN WE BELIEVE, HAD ORDERED MORE COMPETITIVE EXAMS, THE COURT DID NOT SAY REMOVE COMPETITIVE EXAMS AND STATUS FROM CIVIL SERVANTS THAT ARE COMPETITIVE.

WE ASK THAT YOU THE STATE CIVIL SERVICE COMMISSION REJECT THIS PLAN IN ITS ENTIRETY .



NEW YORK STATE
CIVIL SERVICE COMMISSION

TESTIMONY BY
COMMISSIONER MARTHA K. HIRST
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
JUNE 10, 2008

Good morning, Commission President Groenwegen, Commissioner Wall and Commissioner Ahl. I am Martha Hirst, Commissioner of the New York City Department of Citywide Administrative Services ("DCAS"). We have been looking forward to meeting with you, to discuss the Comprehensive Plan which we submitted to the Commission on March 28, 2008 pursuant to Section 65(5) of the New York State Civil Service Law. DCAS has submitted a plan that, consistent with available resources and the need for continuity in public services, provides a timely and practicable implementation schedule in furtherance of the purposes of Section 65(5). I would, therefore, like to thank you for this opportunity to address the Commission today, and to answer any questions you might have.

LONG BEACH DECISION

On May 1, 2007, the New York Court of Appeals rendered its decision in City of Long Beach v. Civil Service Employees Association, 8 NY3d 465 (2007). The City quickly realized the significance of this decision and began, almost immediately, to consider how best to respond.

It is no secret that the City of New York then employed and continues to employ over 30,000 provisionally appointed employees. All of these employees perform *important* work and many of them, in fact, perform *critical* work. Consequently, as impossible as it would have been, practically speaking, to come into compliance quickly with the time frames specified in the Civil Service Law, it would have been unwise, even irresponsible to immediately replace more than 30,000 seasoned, trained and knowledgeable employees who

deliver essential services to the citizens of, and visitors to, our city around the clock, every day.

We were glad to work together with the municipal unions when we approached the Governor's Office and the Legislature to enact legislation which would enable the City to develop a plan to come into substantial compliance with the time frames provided in the Civil Service Law within a period of five years.

THE PLAN

Our Plan is comprised of several major components, each of which is discussed in detail in the Plan and which I will briefly address today: (1) innovative examination strategies which will allow us to significantly increase the number of competitive examinations we administer each year; (2) a series of classification actions; (3) the transfer of civil service administration for the New York City Transit Authority and Triborough Bridge and Tunnel Authority; and (4) aggressive implementation strategies.

In a very real sense, the need to develop a plan provided us with an opportunity to consider fundamentally how we *have been* administering and how we *should be* administering the Civil Service in the City. For example, we have considered whether or not titles in the City of New York, where the scale of the system we administer is so enormous, it is appropriate to have well over 1000 separately classified competitive titles. As you know well, every competitive class title represents a potential civil service examination. What is the rationale for having a competitive class title in which only one or two people typically serve? As my colleagues in DCAS's Bureau of Examinations always remind me, it takes as much effort to develop an examination which will be administered to five candidates as it takes to develop an examination for a thousand. In considering ways to accomplish our objective comprehensively, smartly, and maximizing the resources available to us to do it, these were critical questions for us to consider.

Examinations

We knew from the beginning that the single most significant component of this Plan would have to be the administration of more civil service examinations. And, in fact, it is. Through a series of innovative approaches to exam administration, which I will discuss more fully in a minute, we fully expect that, by the end of the fifth year of the plan, 18,000 new permanent appointments will be made to positions currently held provisionally as a result of the examinations we will be administering over the course of the Plan. And, more importantly, by the end of the five years, we will have institutionalized those innovations so that the City should never again be in the situation we now find ourselves.

Our proposal is to increase our exam schedule with twenty new exams each year. The twenty extra examinations are not just any exams and cannot, in fact, be seen as “just twenty”. They are titles for which we are developing sizable “item banks,” that is, repositories of possible questions which can be used over the course of at least four exams for a particular title. And the titles we have selected for item-banking are precisely those titles where historically the most provisional appointees have been serving (such as our classified title of Principal Administrative Associate), or those title requiring the most frequent examinations. For example, in the second year of the Plan, we expect to develop a four-exam supply of questions (or “items”) for twenty different titles. After administering an examination once for one of those titles, we will be able to offer another examination for the title – actually, *three* additional examinations for the title – almost as soon as the need arises. Add this to the twenty titles marked for item-banking in the second, third, fourth, and fifth years of the Plan. We, therefore, expect to have sizable item banks for nearly eighty titles; giving us the capability to administer 320 exams for these titles. By the end of the five years, we will not only have amassed a huge item bank, we will have also institutionalized this approach to exam development and administration.

Some critics assert this exam proposal is meager, a “drop in the bucket.” Between Fiscal Year 2003 and Fiscal Year 2007, we received applications from about 930,000 individuals to take one of the approximately 100 exams we have given annually. An additional 320 exams

will see many hundreds of thousands more test candidates. We are talking about very large drops and a very large bucket.

In addition to innovative testing strategies, some of our efforts have been literally groundbreaking. DCAS is developing and designing Computerized Testing Centers, the first of which opened in Manhattan in December 2007 with, currently, the daily administration of Police Officer and Correction Officer exams. Over the next few months, DCAS plans to increase the number of exams offered several times each week. Planning for a Center in Brooklyn is well underway and we ultimately expect to have a Center in each of the five boroughs. These Centers will increase the availability of civil service examinations by permitting exam candidates to walk in off the street, file for an exam, take it, and immediately get their test results. ~~We will be able to administer which~~ at the same time, and ~~provide for morning afternoon and evening~~ The Centers will expedite the establishment of civil service lists, which will accelerate a corresponding reduction in provisional appointments. Once the Centers are fully operational and expanded into other boroughs of the City, DCAS expects that the increased ease of taking an exam at a Center will encourage both existing provisional employees and the general public to take examinations.

I would also like to take this opportunity to highlight our “generic managerial examinations,” an initiative we are currently piloting. A “generic managerial examination” recognizes that permanently-appointed employees seeking to enter the managerial ranks in their title series have, more often than not, already demonstrated, through civil service examinations and performance, that they have attained a high degree of technical expertise in an area. The unknown skill – the skill which needs to be examined and ranked – is one’s skill at managing, a skill that transcends particular managerial titles. Consequently, one examination of managerial skills and aptitude can be administered for several different managerial titles, and the results can be used to generate civil service lists for a number of managerial titles. Not only will the use of these exams significantly reduce the number of examinations that DCAS will have to administer, it will assist us in our efforts to reduce the overall number of provisional appointments. Rest assured that any decision to assess a specific managerial title through the use of a generic examination will be based upon the results of a rigorous job

} Battery?

analysis that demonstrates a high degree of similarity among the chosen titles with respect to the individual managerial abilities required by the incumbents serving in those titles.

The impact of these examination proposals cannot be minimized. Our estimation is that over 18,000 permanent appointments are likely to be made to positions currently held provisionally as a result of this initiative. But far more importantly, with our item-banking initiative and the opening of our Computerized Testing Centers, and innovations such as generic managerial exams, we know that, by the end of the fifth year of the Plan, we will have fundamentally changed the way examinations are developed and administered, providing benefits long into the future.

Both senior City management and union representatives have asked DCAS to consider ways to timely afford permanent status to those employees currently serving provisionally for a long period of time, a grandfathering, if you will. We appreciate entirely the sentiment that attention should be paid to these employees, and we will endeavor, to the extent legally possible, to consider ways to recognize the experience and training received by these individuals as employees of the City.

Classification actions

Newly enacted Section 65(5) of the Civil Service Law specifically authorizes classification actions and reclassifications.

Consolidation and Broadbanding

Consistent with that section, we are proposing a modest series of consolidation actions and broadbanding actions. For purposes of clarification, we consider an action to replace separately classified titles in one title series with fewer titles with assignment levels to be a consolidation, and we consider the regrouping of tasks resulting in fewer titles to be a broadbanding. Please note that all these positions remain in the competitive class.

Our records reflect that less than 2% of all provisional employees will be affected by this proposal, but we are aware that approximately 6900 permanents will also be affected. Permanent incumbents, of course, retain their permanent status. With respect to other benefits which may be affected by consolidations and broadbandings, the City has historically worked with its unions to ensure that such benefits are maintained. We intend to continue this policy.

As part of this Plan, we have identified an array of specific titles which we believe present appropriate opportunities for consolidation and broadbanding. They are listed in Appendices III and IV. We know there is great concern about these proposed actions, particularly with respect to consolidations. Every consolidation or broadbanding action will be effectuated with a thorough analysis which supports the action. It will be the result of that analysis, and that result alone, which will drive our actions. No consolidation or broadbanding will take place predicated simply on a desire to consolidate or broadband.

I also offer assurances that we will work with the Mayor's Office of Labor Relations and the unions to consider ways to make the criteria for advancement to higher assignments in a title as objective and transparent as reasonably possible.

Reclassification actions out of the competitive class

As I mentioned earlier, developing this Plan has afforded us an opportunity to analyze our competitive class titles and to consider whether appointments and promotions based upon merit and fitness are most practicably evaluated through competitive examinations in all cases. That, at some point, these titles were classified as competitive does not lead to a conclusion that these titles must, therefore, always remain competitive. This is exactly the time to review the classification of all competitive titles and seek to reclassify those titles where merit and fitness can most effectively be evaluated in a manner other than by competitive examination. An example we have become fond of citing is the competitive class title of Puppeteer, a title in which three employees are currently serving, all provisionally. In that this is a competitive title, we should, by all rights, be developing and administering a competitive civil service exam. And yet, we also think that the time has come

to consider reclassifying this title – and other titles where there have historically been very few incumbents serving. A more serious example is the title of Investment Analyst, in which the entire incumbent population, all of whom are serving provisionally, is fewer than 20.

In developing our Plan, we have also looked to other civil service jurisdictions in the State for ideas and new approaches. We could not help but see that the State, for example, has, with respect to its own civil service administration, classified its skilled trades titles in the non-competitive class, most often with an unlimited number of positions authorized for use statewide. We can only assume that the decision to propose non-competitive classification for these positions and the decision by the Commission to approve such classification was based upon a thoughtful analysis and review which could very well serve as the basis for the City to reclassify its skilled trades titles into the non-competitive class.

As with all our classification decisions, our actions will ultimately be driven by our analysis. Each of these reclassification proposals will undergo a thorough study and recommendation from the DCAS classification and testing professionals prior to submission to me for approval. As you know, proposals for classification in the non-competitive and exempt classes also require your approval. Consequently, I have already directed my staff to analyze with extreme care each and every thoughtfully presented argument from all interested parties. When persuasive arguments are made, we will listen.

Particular concerns have also been raised about the consequences of such reclassification with respect to employee rights and benefits. While it is true that, under our City's time and leave policies, employees serving in non-competitive class positions have different leave benefits from employees serving permanently in competitive class positions. We are fully prepared to work with the Mayor's Office of Labor Relations and the City's unions to consider ways in which those time and leave regulations might be modified to address concerns. I note that in the past the City has supplemented the benefits and rights of non-competitive employees. For example, many non-competitive employees now attain contractual disciplinary rights well in advance of the five years specified in the State Civil


Service Law. I am confident that, working together, the City and the unions will be able to resolve such concerns with respect to specific titles.

Lastly, on this point, I would remind everyone that the process to reclassify any title into the non-competitive class requires a public hearing, and upon my review and recommendation, it will be this Commission that approves or disapproves each reclassification proposal.

Classification of new titles

Possibly no single issue prompted more discussion in the halls of City government with respect to the Long Beach decision than the need to ensure that agencies are not deprived of the opportunity to attract individuals who are looking to do their part to make a particular program or initiative take off and succeed. We heard a great deal about the need to compete with the private sector with respect to attracting individuals with a certain passion for a program or initiative, but who are not necessarily interested in public service as a long-term career. The ability of City agencies in the past to offer provisional appointments to mid- and senior-level experts has allowed agencies to engage in that competition with the private sector. For example, Mayor Bloomberg's plan for a sustainable City has attracted a unique cadre of environmental planning professionals to the government to develop "PlaNYC 2030".

We are, therefore, proposing three new titles to ensure that agencies can continue to attract such individuals to these kinds of positions. And we have, we believe, put adequate checks on this proposal – through limitation on the numbers of appointments and, in one case, a limit on duration – to ensure that these titles are used to meet their intended goals, and no other. It is worth noting again that, when considering the size of our municipal government, raw numbers do not always accurately reflect the impact of an initiative. We are a government of several hundred thousand employees; we are proposing that three titles be created to which, at most, 2,740 individuals can be appointed, 1,500 of them for a maximum term of four years.

A handwritten bracket on the right side of the page, spanning from the sentence "And we have, we believe, put adequate checks on this proposal" down to "1,500 of them for a maximum term of four years." To the right of the bracket are three handwritten 'x' marks.

That this is a new and perhaps radical initiative might be true, but it most definitely is the time to consider new ideas. We have included our proposal for these three titles in our Plan and we will, when our entire analysis is completed, make our formal proposal to you pursuant to Section 20 of the Civil Service Law.

Transfer of civil service administration for the New York City Transit Authority and Triborough Bridge and Tunnel Authority

The New York City Charter provides that the Commissioner of DCAS shall serve as the municipal civil service commission for the City of New York. Accordingly, we administer the New York State Civil Service Law for all municipal agencies. Over time, other entities have been created pursuant to State Law and, in their enabling legislation, they have been placed under the jurisdiction of the City's municipal civil service commission. In some cases, the relationship is natural and obvious and raises no particular issue or concerns. However, with respect to the New York City Transit Authority ("TA") and the New York City Triborough Bridge and Tunnel Authority ("TBTA"), the relationship is more distant, less obvious and, we have concluded, inappropriate. The authorities are constituent entities of the Metropolitan Transportation Authority, an authority over which the Mayor of New York has no direct jurisdiction. The Mayor's Office of Labor Relations plays no role in negotiating their collective bargaining agreements. The NYC Office of Payroll Administration does not administer their payroll.

I should note that there is precedent for the split we propose; in 1979, legislation was enacted authorizing the City University of New York to leave the jurisdiction of the City's municipal commission and to become its own municipal commission.

I am pleased to report that we are in active discussions with the MTA, TA and TBTA. They have expressed a keen interest in leaving DCAS's jurisdiction as municipal civil service commission, and we anticipate we will jointly seek State legislative authority to make this change. These public authorities see many benefits that could accrue from no longer being in the long queue awaiting DCAS's attention to their issues. They would like to be able to

set their own classification and examination priorities and to undertake civil service responsibilities as their own public employment entities.

Aggressive implementation strategies

We are aware that administering examinations and establishing eligible lists will only take us so far with respect to coming into substantial compliance. As important is the implementation of aggressive implementation strategies.

At the Mayor's direction, the Corporation Counsel and I briefed all Agency Heads regarding the Long Beach decision and the necessity to strictly adhere to the Civil Service Law. Since then, my senior staff has met with nearly all agencies to review their particular issues with regard to provisionals and hiring policies and procedures.

DCAS has already begun developing and implementing strategies to reduce the number of provisional appointments. DCAS has been meeting with and advising agencies under its jurisdiction to prepare for the changes that will be required in connection with implementation of this plan and to minimize the impact on agencies' operations. We have established a new group, the Provisional Reduction Analysis Team, dedicated to the single mission of tracking provisional movement. We have added procedures to guard against any provisional appointments in the face of a list. DCAS already hosts and, where appropriate, will continue to host hiring pools, which allow agencies to consider large numbers of candidates from eligible lists to fill vacancies or, where provisional appointments exist, to make permanent appointments. Prior to the official establishment of any eligible list, DCAS has begun publishing lists, or "making lists public." This allows the various appeal processes to begin earlier for those candidates who believe that they have been improperly disqualified or improperly found ineligible or who otherwise believe their scores were miscalculated. Moreover, DCAS has provided agencies with templates for a series of letters being sent to employees currently serving provisionally in titles to proactively notify them of upcoming exams.

CONCLUSION

To conclude, Section 65(5) sets forth a comprehensive approach to the issue of provisional appointments, in recognition of the need to address both the mandates of the State Constitution and the realities of an unparalleled situation. We, in turn, have submitted to this Commission a comprehensive Plan, which strikes a careful balance. Our timetable is aggressive, our ideas are innovative, and our goals are achievable.

That balance which we have struck includes an emphasis on examinations. Our innovative and cost-effective testing strategies represent the single most significant component of our Plan, through which 18,000 new permanent appointments will be made to positions currently held provisionally.

The Plan includes consolidations and broadbandings; while not insignificant, these initiatives are measured when considered against the backdrop of all municipal employment.

It includes reclassifications into the non-competitive class, an initiative which has prompted strong debate, but an initiative which, ultimately, streamlines and strengthens City government operations.

And, lastly, the Plan includes a proposal to have the administration of the civil service for the TA and TBTA transferred to another civil service commission. Given our key responsibility to City agencies, and given our current relationship with those two entities, it is an initiative which just makes sense.

Our obligation in submitting this Plan was to demonstrate how we intend to bring our population of provisional employees to less than five-percent of all our competitive class positions within five years. With your approval of this Plan, we can fulfill this obligation. We fully expect to bring the provisional population of our anticipated 128,000 competitive class positions to fewer than 3,330, or roughly 2.5%. Although our obligation under Section 65(5) may technically be met by attaining this goal at the end of the five year period, we nonetheless approached our development of this Plan with a belief that our challenges go

well beyond these five years. To that end, we have developed and submitted a Plan which will allow us to sustain these efforts.

Again, Commissioners, thank you for providing me with this opportunity to speak about our Plan. My staff and I are available to answer all of your questions.

**New York State Civil Service Commission
Tuesday, June 10, 2008**

Testimony in Opposition to the DCAS Plan to Reduce Provisionals

My name is Dennis Sullivan. I am the Director of Research and Negotiations for District Council 37, AFSCME, AFL-CIO. I am speaking today on behalf of the 121,000 members of DC 37. DC 37 represents the majority of union represented titles that work for the City of New York, and a great number of them will be directly affected by the DCAS Plan.

District Council 37 opposes the DCAS Plan to reclassify competitive class titles to either non-competitive or exempt titles, as a way to reduce the number of provisionals who work for the City. We urge you to disapprove those aspects of the Plan that do anything other than implement an aggressive exam schedule and establish enforcement mechanisms to ensure proper movement of civil service lists.

Approximately 300 of DC 37's titles would be affected by the changes that DCAS proposes in this Plan, which does not include promotion opportunities that will be lost to thousands of employees. In addition, three thousand of our members would be affected by the proposed transfer of the Transit Authority and the Triborough Bridge and Tunnel Authority out of DCAS's jurisdiction.

We are prepared to discuss each one of our titles separately, if you ultimately decide to consider a title for non-competitive status. But at this time, I want to speak in more general terms about the Plan.

The long history of why 38,000 provisionals work for the City need not be gone into now, but suffice it to say, the backdoor way of reducing the number: by just converting their status out of the competitive class is unacceptable to the Union and does not comport with the merit and fitness principles of the New York State Constitution and the Civil Service Law. Nor, ironically does it comport with the Court of Appeals decision in Long Beach which took that City to task for employing provisionals in place of competitive civil servants.

The Civil Service Law clearly mandates competitive testing for entry-level positions up through managerial positions. Non-competitive appointments are intended to be the exception rather than the rule. As the Constitution makes clear, the reclassification of positions from the competitive class can only occur when it is impracticable to determine merit and fitness by competitive examination. In this Plan, DCAS is asking you to agree to reclassify in one fell swoop, hundreds of titles from the competitive to either the non-competitive or exempt category.

The notion that now, after decades of giving competitive examinations for titles such as Police Communications Technician, Child Protective Specialist, Sewage Treatment Worker, Fraud Investigator, Associate Park Service Worker and on and on, that it is no longer practicable to do so is ridiculous on its face. Simply stated, nothing in the law has changed to make the giving of these examinations not practicable now.

As part of their strategy, DCAS asks you to approve their plan to reclassify competitive class titles where they claim that the State has non-competitive titles performing comparable work. DC 37 performed its own review of the New York State Plan of Titles and we discovered that in fact, the State has more *appropriate* competitive titles doing that same work. It seems to us that in order to achieve the results that DCAS desires, it has ferreted through the State Plan of Titles, with no objective analysis, other than looking for a non-competitive title that could match in words only, a title description in the City.

For example, the Plan proposes to reclassify Police Communications Technician to the non-competitive title of State Police Communications Technician, but there is a comparable competitive title called State Police Communications Specialist which we believe is a more appropriate

comparison. Another example, the Plan proposes to reclassify Child Protective Specialist to the non-competitive State title of Child Abuse Specialist, which is limited to 15 positions in New York State. But the State has a comparable competitive title called Child Protective Specialist. Now we can go on and on with examples of how DCAS cherry-picked titles to support their argument, but we won't because you and your staff know well what is in the New York State Plan of Titles.

Suffice it to say, their justifications are profoundly misleading.

As part of their strategy, DCAS asks you to approve their Plan to set up parallel non-competitive analytical and management high level titles similar to ones that already exist in the competitive class. If that were to occur, promotional opportunities for career civil servants would be eliminated or severely limited. Making mid-level and high-level positions, whether non-competitive or exempt, pulls the rug out from under competitive civil servants who take and pass civil service tests with the knowledge that they have a promotion track to reach those high level positions. Moreover, on the chance that a competitive employee would manage to move up to a non-competitive title, they would lose all their rights as competitive civil servants.

DCAS is also asking you to approve their Plan to reclassify any competitive class title that has fewer than 20 incumbents, justifying it by saying that it is not economically feasible to give so many exams. The Constitution and the State Civil Service Law do not create an exception to the merit and fitness requirement “due to economic feasibility.” This proposal is also problematic because as previously mentioned, it would remove promotion opportunities, since many of the titles in this category are high-level positions.

DCAS also asks you to move titles that already require licenses or certificates out of the competitive class. But while licensing may test for areas of technical expertise, it is not intended as a substitute for the test of fitness for public service which is essential for the merit system. Licensing exams do not measure the kinds of qualities and abilities which are needed for such functions as supervision of other employees or other administrative duties. You already indicated as such; when you disapproved a City ~~proposal~~ proposal some years ago to make certain professional engineering titles that require a State license non-competitive. Clearly, DCAS knows this as well, because they omitted engineering titles in their Plan.

In conclusion, the DCAS Plan as it is constructed proposes to give exams over the next five years sufficient to result in a reduction of provisionals by only half. DC 37 is supportive of that part of the Plan because it upholds the principles of merit and fitness. We believe additional exams, possibly different kinds should be offered to the other fifty percent.

Civil Service Law provides rights to permanent competitive civil servants that do not exist for any other classification. We are not willing to accept the notion that our members can no longer receive those rights just because DCAS does not want to give the exams necessary to make people permanent.

DCAS has put longstanding principles of merit and fitness in jeopardy in order to deal with an immediate problem of too many provisionals. The result will be a civil service system, no different than the spoils system that existed 100 years ago when personal, political and financial influence determined who got civil service appointments.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT WRIGHT, KATHLEEN WALKER,
HENRY ROMAN, ELIZABETH ROGERS,
DAVID RAY, ODESSA PORTLETTE,
PAULA LOVING, ANGELO COLON
JACQUELINE BROWN, WALTER BEACH,
CARRIE ANDERSON, individually and as
class representatives,

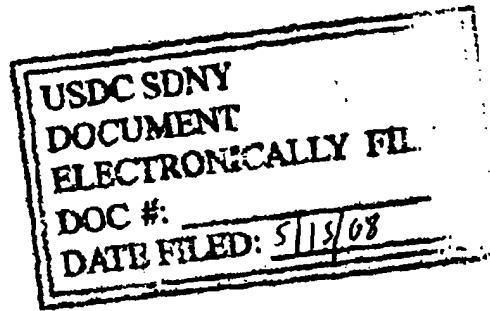
Plaintiffs,

-against-

HENRY J. STERN, individually and in his
official capacity as Commissioner of the New
York City Department of Parks and
Recreation, ADRIAN BENEPE, individually
and in his official capacity as Commissioner of
the New York City Department of Parks and
Recreation, and THE CITY OF NEW YORK,

Defendants.

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01 CV 4437 (DC)

~~PROPOSED~~ STIPULATION AND
ORDER

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT WRIGHT, KATHLEEN WALKER,
HENRY ROMAN, ELIZABETH ROGERS,
DAVID RAY, ODESSA PORTLETTE,
PAULA LOVING, ANGELO COLON
JACQUELINE BROWN, WALTER BEACH,
CARRIE ANDERSON, individually and as
class representatives,

01 CV 4437 (DC)

Plaintiffs,

-against-


STIPULATION AND ORDER

HENRY J. STERN, individually and in his
official capacity as Commissioner of the New
York City Department of Parks and
Recreation, ADRIAN BENEPE, individually
and in his official capacity as Commissioner of
the New York City Department of Parks and
Recreation, and THE CITY OF NEW YORK,

Defendants.

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WHEREAS, Robert Wright, Kathleen Walker, Henry Roman, Elizabeth Rogers,
David Ray, Odessa Portlette, Paula Loving, Angelo Colon, Jacqueline Brown, Walter
Beach, and Carrie Anderson, individually and as class representatives ("plaintiffs"),
commenced this action to enforce the provisions of Title VII of the Civil Rights Act of
1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII"), the Civil Rights Act of 1871,
as amended in 1991, 24 U.S.C. §§ 1981 and 1983, the New York Constitution, the New
York Human Rights Law, N. Y. Exec. Law § 296, the New York City Human Rights
Law, 1 New York City Administrative Code, 8-101 and the New York City Charter,
Chapter 35;



WHEREAS, the plaintiffs allege that the New York City Department of Parks and Recreation ("Parks" or the "Parks Department"), former Parks Commissioner Henry J. Stern, and Parks Commissioner Adrian Benepe have engaged in a pattern or practice of discrimination against African American and Hispanic employees with respect to promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, the maintenance of a segregated workforce, and retaliation against employees who assert their civil rights;

WHEREAS, the defendants deny any and all liability arising out of the plaintiffs' allegations and admit no fault or liability, and specifically deny that defendants engaged in a pattern or practice of discrimination against African Americans and Hispanics with respect to promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, the maintenance of a segregated workforce, and retaliation against employees who assert their civil rights; and

WHEREAS, the parties, having the mutual goals of ensuring equal employment opportunity within the Parks Department and of settling this action to avoid additional protracted, expensive and unnecessary litigation, agree to the entry of this Stipulation and Order to resolve all issues that were or could have been raised in this class action by the plaintiffs individually or as class representatives.

NOW, THEREFORE, in resolution of this action, and with the agreement of all parties it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. PROCEDURAL HISTORY

Beginning in March 1999, plaintiffs and several other African-American and Hispanic Parks' employees filed individual and pattern and practice disparate treatment and impact charges of employment discrimination based upon race, color and national origin with the United States Equal Employment Opportunity Commission ("EEOC"). The Department of Justice ("DOJ") subsequently commenced an investigation.

On January 30, 2001, as amended on March 14, 2001, the EEOC issued a Determination finding reasonable cause to believe that Parks engaged in a pattern and practice of racial discrimination through its promotions and assignments. The EEOC also found segregated supervisory lines of authority and retaliation, and referred its findings to DOJ.

This action was commenced on May 24, 2001. On June 19, 2002, the DOJ filed its own action against New York City ("City"). This Court consolidated the two cases on July 14, 2002.

By Order dated July 7, 2003, this Court certified a class consisting of all present and former African-American and Hispanic employees employed on a full time basis since May 24, 1997.

On June 8, 2005, the DOJ and the City defendants entered into a consent decree in settlement of DOJ's action.

By motion dated December 29, 2005, defendants moved for summary judgment on plaintiffs' class claims and some, but not all, of the plaintiffs' individual claims.

By Decision dated September 15, 2006, the Court denied defendants' motion in part and granted it in part. The Court dismissed plaintiffs' class claims of discriminatory

assignment of employees/allocation of funding and racially hostile work environment. The Court denied defendants' motion with respect to plaintiffs' class claims of promotion and compensation discrimination and retaliation and with respect to plaintiffs' individual claims. The Court subsequently set a trial date for the trial on liability on the class claims for promotion, compensation and retaliation.

In December 2006, the parties commenced mediation before the Hon. Kathleen A. Roberts (Ret.). The mediation process included more than twenty-five (25) in-person negotiation sessions, many of which lasted a full day. Negotiations under Judge Roberts's supervision continued through November, 2007 when the Hon. Denny Chin assumed oversight of the final stages of the settlement talks. The parties resolved all issues of class relief -- both monetary and injunctive relief -- before conducting negotiations regarding an award of reasonable attorneys' fees and expenses. The negotiation process concluded on January 31, 2008.

II. DEFINITIONS

As used in this Stipulation and Order, the following terms shall have the following meanings:

"African-American" shall mean persons who identify themselves as Black or African-American.

"Claims Administrator" is Settlement Services, Inc., 2032-D Thomasville Rd., Tallahassee, Florida 32308.

"Class Members" shall mean all African-American and Hispanic full time employees of the Parks Department employed at any time between May 24, 1997 and June 30, 2004, excepting those employees excluded from the class by the Court's Order

of November 7, 2003 and, fifteen days following the Fairness hearing, also excepting those individuals who exercised their right to opt out in accordance with the procedures set forth in Section XII.

“Class claims” shall mean the claims certified by this Court for class treatment by Order dated July 7, 2003 including claims for compensatory and punitive damages for alleged race, color and national origin discrimination in promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, the maintenance of a segregated workforce, and retaliation against employees who assert their civil rights.

“Class Counsel” shall mean all counsel of record who are signatories to this Stipulation and Order on behalf of the Class.

The “Class Period” is the period between May 24, 1997 and June 30, 2004.

“Class Representatives”, “Plaintiffs” or “Named Plaintiffs” mean Robert Wright, Kathleen Walker, Henry Roman, Elizabeth Rogers, David Ray, Odessa Portlette, Paula Loving, Angelo Colon, Jacqueline Brown, Walter Beach, and Carrie Anderson.

“Day” or “days” refer to calendar and not business days unless otherwise specified.

“Defendants” shall mean the City of New York, the New York City Department of Parks & Recreation, Former Commissioner Stern and Commissioner Benepe.

The “Effective Date” of the terms of this Stipulation and Order shall be the thirtieth day after the entry of this Court’s Final Approval of the Stipulation and Order and either: (1) the expiration of the time for filing an appeal from the Court’s approval of the Stipulation and Order without the filing of a notice of appeal; or (2) if an appeal is

filed, the final resolution of the appeal (including any requests for rehearing and/or petitions for a writ of certiorari), resulting in final judicial approval of the Stipulation and Order.

"EEO" means equal employment opportunity.

"EEO Officer" refers to the individual at Parks designated as such.

"Final Approval Date" shall mean the entry date of the Court's Order granting approval of this Stipulation and Order as fair, reasonable and adequate to the Class as a whole after notice to Class Members, the opportunity to opt out as to monetary relief, and a hearing on the fairness of the settlement ("Fairness Hearing").

"Hispanic" shall mean persons who identify themselves as Mexican, Puerto Rican, Cuban, Central American, South American or of other Hispanic, Spanish or Latino culture or origin, regardless of race.

An "in-house title" refers to a Parks Department job title, other than a civil service title, that is used by an employee in the ordinary course of business or in interacting with the general public.

A "job vacancy" refers to any vacant position within the Parks Department that requires working a full time schedule on a year round basis, either existing or newly created, known either by its civil service or in house title, that the Parks Department has decided to fill, and for which there is no existing civil service list from which the appointment to fill the position must be made.

"Personnel Division" refers to the Parks Department's Central Personnel Office presently located in Arsenal West and headed by the Parks Department's Director of Personnel.

A "posting" refers to any written or electronic notice or advertisement of a job vacancy.

"Preliminary Approval Date" shall mean the entry date of the Court's Order granting preliminary approval of this Stipulation and Order or the date on which the Court authorizes giving notice to the class of the proposed settlement and fairness hearing.

A "promotion" refers to a discretionary appointment to a position of greater rank and responsibility and an accompanying increase in salary within six months after the change in rank and responsibility.

"Uniform Guidelines" refers to the Uniform Guidelines on Employee Selection Procedures (1978) found at 29 C.F.R. sections 1607.1, et seq.

A "wage promotion" means an increase in base pay of 10.3 percent or greater which lasted for more than 6 months, was net of any collective bargaining increase, was not associated with a competitive civil service promotion and need not have been accompanied by a change in job title, excluding step-ups of more than 6 months if the employee receiving the step-up returned to his/her previous job title at the conclusion of the step-up.

III. JURISDICTION, SCOPE OF STIPULATION & ORDER, AND CLASS CERTIFICATION

A. This Court has jurisdiction over the parties and the subject matter of this action. The Court shall retain jurisdiction over the parties to enforce and administer the terms of this Stipulation and Order during the period it, or any of its provisions, remain in effect.

B. If this Stipulation and Order is approved by the Court, all persons within the Class as defined herein are subject to its injunctive and its monetary relief provisions.

C. Pursuant to prior Orders of the Court and the agreement of the parties, the class is defined as all African-American and Hispanic full time employees of the Parks Department employed at any time between May 24, 1997 and June 30, 2004, excepting those employees excluded from the class by the Court's Order of November 7, 2003 and those who exercise their right to opt out in accordance with the procedures set forth in Section XII.

IV. INJUNCTIVE RELIEF – GENERAL

A. Implementation and Term

Unless otherwise provided herein, the provisions of this Stipulation & Order shall remain in effect until December 31, 2009. The following provisions of this Stipulation & Order shall remain in effect until three years after its Final Approval Date: Section IV(D) - Advisory Committee; Section V(A)(3) – Statistically Close Scores; Section V(C) – Review of Practices for Adverse Impact; Section VII (B) – Salary Review; Section XVI (A)(5, 6, 7, 12, & 14) and (B) – Reporting & Monitoring. The City will commence implementation of all provisions of Sections IV through IX and XVI of this Stipulation & Order upon the Final Approval Date. Payments to Class Members pursuant to the terms of this Stipulation & Order shall not be made until after the Effective Date. In the event the distribution of funds provided for in Sections X and XIV of this Stipulation & Order is not completed by December 31, 2009, the parties will consult with the Court regarding the continuation of applicable provisions.

B. Incorporation of Provisions of June 8, 2005 Consent Decree

Sections I, III through X, XI 34(a), XII through XIV of the Consent Decree between the United States of America and the Defendants entered in this Court on June 8, 2005 in the action captioned United States of America v. City of New York, 02 Civ. 4699 ("Consent Decree"), are incorporated into this Stipulation and Order, and shall remain in effect until December 31, 2009, including the Policy for Posting and Filling Job Vacancies ("VAT process") as modified effective December 7, 2007, and including the further modifications as follows: The City shall not be required to produce documents/data specified in paragraphs 41(a) and (j); as to paragraph 41(c), the City shall only be required to produce the VAT tracking database (excluding breakdown) and PMS data as specified below in Section XVI (A) (14); and as to paragraphs 41(f) and (h), the City shall make the documents specified therein available for inspection and will not be required to produce such as part of the periodic reporting process. For purposes of this Stipulation and Order, references in the Consent Decree to the United States shall be deemed to include plaintiffs. The incorporation of these terms is not intended to and does not extend the right of the United States to enforce and administer the terms of the Consent Decree after the Consent Decree's dissolution on or about June 8, 2008.

C. General Injunctive Relief

1. In addition to the injunctive relief granted in Section III.a of the Consent Decree, enjoining the Parks Department, its officials, agents, employees, and successors from engaging in any act or practice that has the purpose or effect of unlawfully discriminating against employees in making promotion decisions based on race, color or national origin including but not limited to adopting or implementing any policy, process or practice for job appointments, promotions, seasonal step-up appointments or hiring

that has the purpose or effect of discriminating against any employee, job applicant or prospective job applicant based on race, color or national origin, and creating or implementing any internship or recruitment program that has the purpose or effect of discriminating against any employee, job applicant or prospective job applicant based on race, color or national origin, the Parks Department, its officials, agents, employees, and successors are enjoined from engaging in any act or practice that has the purpose or effect of unlawfully discriminating against any employee based on race, color or national origin with respect to salary, compensation, or in making compensation decisions.

2. The Parks Department, its officials, agents, employees, and successors are enjoined from retaliating against any person asserting race, color or national origin claims under federal, state or local law or otherwise opposing practices that discriminate based on race, color or national origin.

D. Advisory Committee

1. The Parks Department shall establish a five person Advisory Committee, chaired by its General Counsel, to address employment discrimination and retaliation concerns. In addition to Parks' General Counsel, the Committee members shall include Parks' EEO Officer and three African American and/or Hispanic employees who are employed full-time by Parks. The Commissioner shall select the initial Committee members representing the Class based on the recommendations of the Named Plaintiffs. The Commissioner shall select all replacement members based on the recommendation of the Parks' General Counsel, EEO Officer, and Class Members on the Committee.

2. Committee meetings shall be held quarterly or more frequently as needed.

3. Any committee member may ask the Advisory Committee's Chair to put an item on the agenda or may raise an issue as new business at an Advisory Committee meeting.

4. The Advisory Committee Chair will report back to the Advisory Committee on issues raised with the Advisory Committee provided that a report does not violate any employee's privacy rights.

V. INJUNCTIVE RELIEF – PROMOTIONS

A. Process for Filling Job Vacancies

1. Training & Guidelines for Panel Interview Process

a. Parks will provide training to all panel interviewers who participate in the interview process, pursuant to the Policy for Posting and Filling Job Vacancies ("VAT process")¹ except under unusual or emergency circumstances, such as if the panel is screening candidates for a specialized title that is rarely vacant or if an emergency replacement for a panelist is required; exceptions must be approved by Parks' EEO Officer and Director of Personnel. The training will be similar to that provided for the CPW interview process that occurred in February 2007 ("VAT interview training"). Such training will also be provided to Parks' EEO Officer and advisors/counselors. Such training which started in February 2007 will be substantially completed within one year of the Effective Date of this Stipulation.

b. The VAT interview training will include training, among other things, (i) on how to avoid common scoring errors; (ii) on conferring in advance of any actual interviews regarding anticipated responses to the interview questions; (iii) on

¹ Within a reasonable time after the Effective Date of this Stipulation & Order, Parks will modify the Policy for Posting and Filling Job Vacancies to incorporate changes provided herein.

establishing the criteria for scoring responses in advance, for example, how to distinguish between question responses that deserve a "2", "3" or "4" rating; (iv) on the value of taking notes during the course of the interview to assist in rating the candidates; and (v) on ways to avoid stereotypical thinking. If upon review of panel ratings by the Personnel Division and the EEO Officer it is determined that any panelists are in need of retraining, such retraining will be provided.

c. With respect to interviews conducted as part of the VAT process, Parks will provide standardized instructions to the interviewers in advance of the interviews which will incorporate guidelines taught in the training process. To the extent practicable, Parks will attempt to place on the panel at least one employee within the chain of command of the job title for which the interview is conducted, or other persons with actual job experience in the subject position, in an effort to assure that interviews are conducted with the benefit of the participation of persons with background experience in the job.

d. Within one year of the Effective Date of this Stipulation, Parks will adopt a scoring system based upon the system used for the February 2007 CPW interviews for the titles of Recreation Center Manager and above in Recreation, PRM and above in Maintenance and Operations ("M&O"), and Director and above in Administration and Capital, or for a posting used to fill five or more vacancies, specifically including the following features: the competencies being measured and the questions being used will be established in advance of the interview, the rating scales will be established in advance of the interview for each competency being measured and the process for combining scores will be established in advance.

e. Panel interviewers will make their own independent judgment regarding interview scores and are expected to make notes respecting the interviewees' responses to questions.

f. Parks will consider relevant step-up experience of job applicants who are applying for year-round appointments. An employee with step up experience who applies for but is not selected for a year-round appointment may obtain information from a career counselor as provided in Section VI.

g. Whenever relevant to the job in question as determined by Parks, Parks will consider the tenure at Parks of job applicants who are applying for year-round appointments.

h. After panel members complete their individual interview rating sheets for a job applicant, the scores will be averaged and rounded to the nearest tenth of a decimal point.

i. The minimum and preferred qualifications for job vacancies shall be furnished with selection checklists that will be completed by panel members as part of the screening process for the selection of job applicants for interviews.

j. A panelist will recuse himself from the panel interview of any employee who has filed a written discrimination charge against him within the two year period preceding the date of the job posting.

2. Diversity of Interview Panels

Parks will continue to use its best efforts to diversify the makeup of the panels for job interviews. Through December 31, 2009, Parks agrees to make records identifying

the individuals on each panel available for review by the Advisory Committee and to Class Counsel upon request.

3. Statistically Close Scores

For purposes of ascertaining the names of candidates to be submitted to the selecting official for final selection, persons scoring within 0.3 (three-tenths) points of the highest scorer will be deemed to be tied, or "statistically close" as used in the Parks posting policy, and will be reported to the selecting official as ranking #1. In those instances where there are no candidates deemed tied with the highest scoring candidate, any candidates scoring within 0.3 (three-tenths) points of the second highest scorer will be deemed tied, or "statistically close," and will be reported to the selecting official as ranking #2. Similarly, so long as there are fewer than three candidates reported to the selecting official, any candidates scoring within 0.3 (three-tenths) points of the third highest scorer will be deemed to be tied, or "statistically close", and will be reported to the selecting official as ranking #3. For example, if the average scores of the top three candidates are, respectively, 4.5, 4.4 and 4.0, the candidates scoring 4.5 and 4.4 will be reported as tied at #1, and the candidate scoring 4.0 will be reported as #3. In the instance of four candidates scoring, respectively, 4.5, 4.4, 4.0 and 3.8, the candidates scoring 4.5 and 4.4 will be reported as tied at #1, and the candidates scoring 4.0 and 3.8 will be reported as tied at #3. All candidates reported for consideration by the selecting official will be reported by rank only, without scores from the interview process, except in those instances where the difference in scores is 0.75 (three-quarters) points or higher. In those instances, Parks may report to the selecting official the magnitude of the difference in the rankings.

4. Candidate Lists

Parks will have the option of treating the candidate list created as a result of a panel interview process as a list from which selections will be made for any vacancies occurring in the subject position for a period of 6 (six) months following the completion of the panel interview process. This option will be applicable only to appointments that are subject to the VAT process or for postings that are used to fill five or more vacancies and if there is no significant expansion of the promotable pool.

B. City Park Workers

Except as provided herein, Parks will appoint City Park Workers who pass the Associate Park Service Worker ("APSW") examination and obtain a commercial driver's license to the permanent title of Associate Park Service Worker provided that job vacancies exist, and so long as the City Park Worker does not have a record of drug or alcohol test failure, conflict of interest, insubordination, violence or having made threats of violence, or an absence control record with a "sanctions status." If a candidate who passes the APSW examination is not appointed for any other reason, the basis for the non-appointment will be documented and approved by the Deputy Commissioner for the applicable division.

C. Review of Practices for Adverse Impact

1. Parks will conduct annually an adverse impact study of the selections made for the following job titles: Chiefs, Deputy Chiefs, PRMs, Directors, Team Leaders, Recreation Center Managers and Parks Administrators. Even though Parks does not agree that it is appropriate under the Uniform Guidelines to aggregate job titles or racial groups in performing an adverse impact study, Parks will aggregate job titles and racial groups in this annual study to make an overall determination of whether or not the

selection rate for African-American and Hispanic candidates (combined) is less than four-fifths (4/5) (or eighty percent) of the selection rate for Caucasian candidates.

In each year (if any) in which the aggregate analysis does show a selection rate for African-American and Hispanic candidates (combined) that is less than eighty percent of the selection rate for Caucasian candidates, Parks will conduct a content validity study of one job title amongst those subject to the adverse impact study. The content validity study will include the elements described in the document titled "Steps in Establishing the Content Validity of Interviews" and attached hereto as Exhibit I. In the event the aggregate analysis shows a selection rate for African-American and Hispanic candidates (combined) that is less than eighty percent of the selection rate for Caucasian candidates in more than one year, the content validity study conducted in subsequent year(s) will be for a different title from those previously studied.

For each annual study, Parks will consider all selections for the applicable job titles occurring within a calendar year. The first study will cover selections occurring within calendar year 2008. In each year, Parks will complete the study by March 15 of the subsequent year. In any year in which a content validity study is required, Parks will complete the content validity study within ninety (90) days after the registration of the contract authorizing retention of the expert retained to perform the content validity study. Parks will make its best efforts to register the contract no later than June 15. If the aggregate analysis does not show a selection rate for African-American and Hispanic candidates (combined) that is less than eighty percent of the selection rate for Caucasian candidates, no action by Parks need be taken.

The job titles to be subject to the content validity study described in the preceding paragraph, in order of priority, are as follows: 1) PRM; 2) Recreation Center Manager; and 3) Deputy Chief of Operations.

VI. INJUNCTIVE RELIEF – CAREER DEVELOPMENT & TRAINING

A. Training Program similar to “Parks 40”

1. Parks will reestablish a training program similar to the “Parks 40” Program for the purpose of attempting to develop future agency managers. The program will be offered annually to full-time employees of the Parks Department and will be open to employees with one or more years of experience at Parks who are not holding entry level positions as defined in the VAT process and who have received an overall performance rating of very good or above during the previous two years. If a candidate has not had a performance evaluation during the previous two years, a recommendation from a supervisor can be substituted for the performance rating.

2. Each annual program will have openings for approximately forty (40) employees. The existence of the program shall be publicized throughout Parks. Parks will not be required to conduct the program if fewer than twenty (20) employees enroll in it.

3. The selection process shall consist of a written application and personal interview. Selections for the program will be made by the Director of Training. Training shall be designed to prepare employees for management positions in all divisions of Parks, including M & O. The tentative curriculum for the program is attached hereto as Exhibit 2. Parks will use its best efforts to select a diverse class for each annual program.

B. External Training Programs

Information as to available external training programs such as the Management Academy and Leadership Institute shall be publicized throughout Parks.

C. Civil Service Career Ladders

Parks has prepared charts that show the lines of progression for civil service titles at Parks. The charts will be posted on Parks' intranet and copies of them will be available in Parks' personnel offices and from its career counselors.

Parks has developed a "feeder chart" relative to recreation and M&O titles describing possible avenues for advancement. The chart will be made available to career counselors to share with employees.

D. Organizational Charts

Parks' organizational charts will be posted on Parks' intranet. The charts for positions from Commissioner down to Chief positions shall contain names of the persons occupying the titles and will be updated annually.

E. "Recreation Leadership" as qualifying experience for APRM/PRM, Director Regional Joint Interest Parks, Deputy Chief of Operations and Chief of Operations

Parks will continue to include "recreation leadership" as qualifying experience in postings for the title of APRM/PRM. Parks will treat "recreation leadership" as qualifying experience for the titles of Director Regional Joint Interest Parks and Deputy Chief of Operations and will include that term in its vacancy notices for those titles.

Parks will insert the following statement in each of its postings for Chief of Operations and Deputy Chief of Operations: "Any Parks employee meeting the minimum qualifications for the position of Chief of Operations and Deputy Chief of Operations will

be eligible to apply for such positions without regard to the division in which the employee is employed.”

F. Career Guidance/Career Counselors

This section supplements the provisions of Part IX (“Career Counselors”) of the DOJ Decree as follows:

Parks will designate an individual in the Personnel Division to act as central coordinator to provide guidance to and oversight of the career counselors and to review their reports. Career counselors shall be approved by the Director of Personnel and EEO Officer. Parks will make its best efforts to advertise the availability of career counselors through notices in paychecks, newsletter and postings.

Job applicants will be encouraged to contact a career counselor after an unsuccessful job application. At the employee’s request, the career counselor shall obtain information, including among other information, interview scores to assist such employee in future job applications.

G. Information about Salary for Parks Jobs

The Director of Personnel or his designee shall continue to make himself available to respond to questions from potential job applicants about actual and/or likely salaries for posted positions and will include a statement in postings regarding contacting the Personnel Division to resolve questions employees may have regarding the posted vacancy.

VII. INJUNCTIVE RELIEF – COMPENSATION

A. Salary Adjustments for Certain Recreation Jobs

Effective upon the Final Approval Date, Parks will increase the salaries of each of its Chiefs of Recreation to \$94,000 (other than the Chief for Staten Island) and Deputy

Chiefs of Recreation to \$75,000 as specified in Exhibit 3. Effective upon the Final Approval Date, Parks will increase the salaries of those Recreation Center Managers responsible for large and medium centers to sixty thousand dollars (\$60,000) and those responsible for small centers to fifty thousand dollars (\$50,000). A list of the recreation centers by size and applicable salary level is attached as Exhibit 4.

B. Salary Review

1. Internal Individual complaints of salary disparities

A) During the term of this Stipulation & Order as described in Section IV.A. above, upon the filing of an internal individual complaint of salary disparity by an African American or Hispanic employee, Parks will conduct a study of the alleged disparity. The study will be conducted by Parks' Chief Financial Officer and Director of Personnel. The study will examine the base pay rates of similarly situated employees holding the same in-house title or, where applicable, civil service title. The study will compare pay of employees in the same title with comparable job responsibilities in light of the criteria used by Parks to establish pay upon initial hire or upon entering a job title through transfer or promotion, and criteria used to increase pay for incumbents holding the position. Those criteria may include, among others, the following: a) the terms of applicable collective bargaining agreements; b) the salaries of incumbent employees in the same title and with comparable job responsibilities, c) Parks tenure, c) prior work experience, d) prior merit increases, d) longevity increases, and e) other pay-related factors as applicable. The review will include ethnicity data as reflected in the PMS database in order to ascertain whether any pattern of differential treatment based on ethnicity exists.

If the Chief Financial Officer and Director of Personnel conclude that some or all of a salary disparity is not explained by these criteria, they will recommend to the Commissioner of Parks that a salary adjustment be made increasing the salary of the affected individual to remove the disparity, or that portion of the disparity not attributable to these criteria.

If the Commissioner accepts the recommendation in whole or in part, then the proposed salary adjustment will be subject to the normal New York City budgetary process respecting the implementation of increases in employee salary. Parks will provide the complainant a written statement of the basis for its conclusions reached in the study.

B) Whenever the study conducted for an individual allegation of salary disparity reveals disparities in the pay of other employees that are not explained by application of the criteria set out above, the City will take such remedial actions as are appropriate consistent with paragraph A above.

2. Review of Non-Flat Rate Salaries

A) During the term of this Stipulation & Order as described in Section IV.A. above, the City, through the Parks' Chief Financial Officer and Director of Personnel, shall continue to review the non-flat rate salaries of Parks employees. Such reviews will take place 1) at the time of new hires or promotions into positions, at which time the salaries of incumbent employees in the same position with comparable responsibilities shall be reviewed for unjustified disparities, and 2) as ongoing reviews based on their own observations and feedback from managers. Among the factors to be included in the review are a) the terms of applicable bargaining agreements, b) the salaries of incumbent

employees in the same title and with comparable job responsibilities, c) Parks tenure, d) prior work experience, e) prior merit increases, f) longevity increases, and g) other pay-related factors as applicable. The review will include ethnicity data as reflected in the PMS database in order to ascertain whether any pattern of differential treatment based on ethnicity exists.

B) Whenever the review conducted reveals disparities in pay that are not explained by application of the criteria set out above, the City will take such remedial actions as are appropriate consistent with the standards and procedures outlined in paragraph 1 above.

3. Reports

The City will retain copies of the final reports created as part of the studies conducted pursuant to this part. All Reports for studies conducted during any calendar year subject to this Stipulation & Order will be completed by March 15 of the following year, except that reports for the final year of the Stipulation and Order will be finalized by two months prior to the end of the third year of the Stipulation & Order.

VIII. INJUNCTIVE RELIEF - EEO INVESTIGATIVE PROCESS

A. EEO Policy

Parks agrees that the provisions of the New York City Equal Employment Opportunity Policy are binding on Parks in all respects and this policy is incorporated herein in its entirety.

B. EEO Post-complaint Follow-up

Nine (9) to eighteen (18) months after the filing of a internal EEO complaint of race, color or national origin discrimination, the EEO Officer or his designee shall use his best efforts to contact the complainant to determine whether the complainant believes that

he has been retaliated against for having filed the EEO complaint and if the response is affirmative, the basis for believing that retaliation has occurred. Parks' EEO officer or his designee will investigate all complaints of retaliation. Best efforts in this context shall mean using all available means of contacting the complainant and persuading him to respond voluntarily to all questions concerning any alleged retaliation.

C. EEO Counselors

1. EEO Counselors who have other regularly assigned duties shall be selected by the EEO Officer taking into consideration input and recommendations of the Advisory Committee, which may also have input in how the EEO counselors function. Parks will use its best efforts to make the services of EEO counselors more responsive to employees, including insuring that individuals designated as EEO counselors receive training and have sufficient time and availability to provide effective counseling and are evaluated on their performance in this role.

2. EEO counselors will receive training from the central EEO office with regard to their responsibilities, how to document complaints to insure that they are recorded on the central complaint tracking system and how to conduct initial investigations of complaints, how to interact with the central EEO office, and how to inform complainants about the procedures involved in resolving their complaints, and what recourse complainants may have to outside agencies and the statutory time periods involved for filing.

3. EEO counselors shall have no authority to resolve complaints on their own as all resolutions must come from the Central Office.

IX. INJUNCTIVE RELIEF FOR CERTAIN NAMED PLAINTIFFS

Effective upon the Final Approval Date of this Stipulation & Order, the salaries and/or provisional civil service titles of Kathleen Walker, Angelo Colon, Henry Roman, Odessa Portlette, and Elizabeth Rogers will be adjusted as specified in Exhibit 5. These salaries and provisional civil service titles shall not preclude promotions and salary increases occurring in the future, including in the period up to and including the Final Approval Date of the Stipulation and Order.

Further, effective upon the Final Approval Date of this Stipulation & Order, David Ray will be transferred from Queens to the Bronx.

X. MONETARY RELIEF

A. Class Settlement Amount

The City will pay a total of \$11,869,856.25 in settlement of monetary claims of Class Members, exclusive of attorneys' fees and expenses. The funds will be allocated in the following manner:

1. **Promotion Fund** A total of \$4,951,013.88 will be paid in settlement of promotion claims ("Promotion Fund"). Of that total, \$2,970,156.70 will be paid as back pay, \$432,084.65 will be paid as prejudgment interest and \$1,548,772.53 will be paid as compensatory damages.

2. **Pay Fund** A total of \$5,804,886.12 will be paid in settlement of pay claims ("Pay Fund"). Of that total, \$3,518,242.72 will be paid as back pay, \$901,660.20 will be paid as prejudgment interest and \$1,384,983.20 will be paid as compensatory damages.

3. **Retaliation Fund** A total of \$563,956.25 will be paid in settlement of retaliation claims ("Retaliation Fund"). This entire amount will be paid as compensatory damages.

4. **Service Awards-Named Plaintiffs** \$50,000 will be paid to each of the eleven named plaintiffs as awards, for services provided to the class and for any inconvenience, pain, suffering and other non-pecuniary loss experienced as a result of having been a named plaintiff in this action. Each of the named plaintiffs will, in addition, receive any share of the promotion, pay or retaliation funds for which they meet the eligibility requirements set forth below.

B. Pension Treatment of Awards

Amounts received by class members as "back pay" pursuant to the Final Award List created under this Stipulation & Order will be treated as pensionable amounts, but compensatory damages, interest and incentive awards will not be.

C. Duties of Claims Administrator

1. There shall be a Claims Administrator whose duties will consist of administering that portion of the monetary settlement allocated to the Class Settlement Fund as described below, including the following matters, as described more fully below: (1) issuing notice to Class Members describing this Stipulation & Order and the right to object or opt out of the settlement; (2) locating Class Members who are no longer employed by the City; (3) distributing Releases to, and receiving executed originals of same from Class Members; (4) establishing and administering the Class Settlement Fund and upon conclusion of the process, closing the Fund; (5) paying all federal income taxes owed by the Class Settlement Fund; (6) determining eligibility for awards on the basis of information provided by counsel for the parties and the plaintiffs' labor economist; (7)

supervising the calculation of amounts of awards; (8) writing and mailing checks for the compensatory damages and interest amounts, and issuing and filing all appropriate tax forms and statements; (9) developing procedures and responding to questions from Class Members about this Stipulation & Order and the procedures contained herein including the use of a toll-free number; (10) creating a database of Class Members who have filed timely and valid claims.

2. The City agrees reasonably to facilitate administration of the class settlement fund by, among other things, obtaining and providing to the Claims Administrator, non-privileged information, data, documents and records in the City's possession or otherwise reasonably retrievable by or accessible to the City, which is relevant and appropriate to facilitate the administration of the settlement fund. Within thirty (30) days after Final Approval of the Stipulation and Order, the City shall designate an individual (including telephone and e-mail contact information) to whom inquiries and requests relating to or arising in connection with the administration of the class settlement fund may be referred by the Claims Administrator. The City's determination as to the reasonability, relevance and appropriateness of such requests shall be conclusive. The City shall notify the Claims Administrator regarding any such determination.

D. Establishment of Class Settlement Fund

1. The Claims Administrator will apply for a tax ID number and take all necessary steps for the timely creation of the class settlement fund account ("CSFA") prior to the forty-fifth day from the Final Approval Date of this Stipulation and Order.

2. Provided that the Claims Administrator has given to the City the Employer Identification Number for the Class Settlement Fund, a completed W-9 Form and bank routing information for the trust fund account, the City will, within 45 (forty-five) days of

the Final Approval of this Stipulation and Order, cause to be deposited in the CSFA the sum of \$4,831,456.83, less specific deductions made for Liens (as defined below). The gross amount to be deposited represents the total of prejudgment interest and compensatory damages to be paid pursuant to Part A, above. In the event an appeal is filed from the Order of Final Approval of the Stipulation and Order, payment of the amount to be deposited by the City into the class settlement fund account shall be deferred and, in such event, the City shall deposit the sum in the class settlement fund account within 45 (forty-five) days of the Effective Date as defined herein.

3. Interest accruing to the class settlement fund account from the date of deposit of the funds provided in paragraph 2, above, through a date 10.5 months from the date of such deposit ("the Initial Interest Period") shall be used to pay the costs of and expenses of administration and distribution of funds incurred by the Claims Administrator and the plaintiffs. Costs and expenses shall include all costs and expenses of and incurred by the Claims Administrator, including, but not limited to, federal income taxes payable on the interest earned in the CSFA and costs for the services of plaintiffs' labor economist in assisting the Claims Administrator. If costs of distribution, together with federal income taxes, do not equal or exceed the total amount of CSFA interest accrued during the Initial Interest Period, any excess will be paid to the City Comptroller. Any interest earned beyond the Initial Interest Period will be paid to the City Comptroller.

4. The Claims Administrator will treat federal income taxes as the first priority for payment, and therefore, shall, on a quarterly basis, set aside an amount sufficient to pay all federal income taxes owed by the Trust on interest earned to date.

The Claims Administrator shall pay all federal income taxes on a quarterly basis. The City Comptroller shall have the right to inspect and copy all tax forms (and worksheets), and the monthly bank statement of the CSFA. The Claims Administrator will provide to Class Counsel and the City Comptroller a monthly statement of expenses paid. The City will not be responsible for federal taxes, penalties or interest.

E. Withholding of Amounts for Liens

1. Plaintiffs will provide to the City a complete list of Class Members believed by plaintiffs to be eligible to receive any awards under this Stipulation & Order on or before the thirtieth (30th) day preceding the Fairness Hearing. Within sixty (60) days of the receipt of such list, the City will review the list for the purpose of identifying any persons with child support, recoupment liens (i.e., liens for public assistance payments made in error), state and federal tax levies and Higher Education Loan Liens (federal & state), restraining notices or orders and judgment liens ("Liens"). The City will deduct from the total amount paid into the CSFA, for each Class Member who is subject to a Lien and whose name appears on the October 28, 2007 List as eligible for an award of compensatory damages or interest, an amount which equals the amount owing under the Liens, but in no event shall the amount deducted for each Class Member exceed the October 28, 2007 estimate of the total compensatory damages and interest awards for the Class Member subject to a Lien, as supplemented to include all categories of compensatory damages and interest. The City will provide a list to the Claims Administrator of the names of Class Members subject to Liens and amounts withheld ("First City Lien List").

2. Subsequently, after the completion of the process of receiving Releases from eligible Class Members as described below, the Claims Administrator will provide a

revised list of Class Members for the City to review to identify any additional Liens against any persons on the list. ("Preliminary Award List"). The Claims Administrator will, at the same time, provide the City with a breakdown, by year, of each Class Member's back pay amount in the form attached as Exhibit 6.

3. The City will have forty-five (45) days from receipt of the Preliminary Award List to review the list for additional Liens or increases in Lien amounts and provide a list of names and amounts to be withheld by the Claims Administrator from any award ("Second City Lien List.") to the Claims Administrator. Based upon the information provided in the Second City Lien List, the Claims Administrator shall prepare the Final Award List. The Claims Administrator will pay over to the City the lien amounts identified in Second City Lien List within fifteen (15) days of the its receipt of the Second City Lien List.

4. In the event that the Lien amounts deducted from the CSFA in accordance with paragraph X. E. (1) & (3) are insufficient to satisfy the Liens against a particular Class Member's awards, the City shall have the right, consistent with applicable law, to deduct any remaining Lien balances as of the date of payment of the back pay awards from that Class Member's back pay award.

F. Eligibility Criteria & Allocation Plan

1. **Promotion Fund** To be eligible to receive a share of the Promotion Fund, it is necessary for a Class Member (i) to have been employed for a minimum of six (6) months during the Class Period (May 24, 1997 – June 30, 2004) and (ii) to have completed at least two years of full-time work experience with Parks prior to June 30, 2004 and (iii) not to have received two or more Wage Promotions during the Class Period. City records will be conclusive with respect to a Class Member's dates of

employment. All Class Members meeting these eligibility requirements will share equally in the Promotion Fund. However, no person otherwise eligible under the terms of this paragraph will be eligible to receive a share of the Promotion Fund if a state or federal court has dismissed or ruled adversely on promotion claims raised by the Class Member, or the Class Member has settled a state or federal court action raising promotion claims, unless the dismissal was to permit the Class Member to pursue claims in this action. Further, however, if plaintiffs' regression analyses conducted for the plaintiffs in support of their claims in this action, show estimated losses for a time period not covered by the state or federal court action, the Class Member may recover for such time period(s) within the Class Period.

2. **Pay Fund** To be eligible to receive a share of the Pay Fund, it is necessary for a Class Member to have held a position in a non-flat rate title during the Class Period, and be shown to have experienced a deficiency in pay, when compared to the average pay of Caucasian employees in the same civil service or in-house job titles, as shown by plaintiffs' regression analyses conducted for the plaintiffs in support of their claims in this action, including the analysis conducted for the mediation of this lawsuit. (hereinafter "Estimated Pay Damages.") City records will be conclusive with respect to job positions held by a Class Member. If those regression analyses show that a Class Member has experienced a loss for any year of the Class Period (May 24, 1997 – June 30, 2004), the Class Member is eligible for a share of the Pay Fund. Any Class Member whose Estimated Damages are greater than \$0 but less than \$1,000 will receive a minimum gross award of \$1,000 (back pay and prejudgment interest combined) and proportionate distributions described below will be calculated so that no recovery from

this fund (prior to applicable deductions) shall be less than \$1,000. Employees receiving more than \$1,000 will receive a proportionate share of the back pay and interest amounts based upon the proportion of their Estimated Pay Damages to the total Estimated Pay Damages. However, no person otherwise eligible under the terms of this paragraph will be eligible to receive a share of the Pay Fund if a state or federal court has dismissed or ruled adversely on pay claims raised by the Class Member, or the Class Member has settled a state or federal court action raising pay claims, unless the dismissal was to permit the Class Member to pursue claims in this action. Further, however, if plaintiffs' regression analysis shows Estimated Pay Damages for a time period not covered by the state or federal court action, the Class Member may recover for such time period(s) within the Class Period.

The compensatory damage component of the Pay Fund will be distributed on the basis of a formula providing recoveries ranging from \$0 to \$5,250, factored upon the basis of the amount of Estimated Pay Damages as shown by plaintiffs' regression analyses. That formula is subject to adjustment based upon the total number of eligible claimants at the time the Claims Administrator makes the final calculations of amounts payable to Class Members following the mailing of notices to the class and the opt-out period. The Claims Administrator will adjust each of the formula amounts to adjust for increases or decreases in the number of class members receiving awards.

3. **Retaliation Fund** To be eligible to receive a share of the Retaliation Fund, it is necessary for a Class Member to have filed (i) a charge of discrimination alleging race, color and/or national origin discrimination or (ii) a charge of retaliation arising from the filing of a charge of race, color and/or national origin discrimination or

(iii) a charge of retaliation arising from opposition to practices alleged to be discriminatory on the basis of race, color and/or national origin. Such charge must either have been filed by the Class Member between May 24, 1997 and the Preliminary Approval Date or if filed prior to May 24, 1997 but not earlier than January 1, 1997, the charge must have remained pending after May 24, 1997. It is sufficient for purposes of eligibility under this paragraph that the charge was filed internally with the Parks Department or externally with the New York City Commission on Human Rights, the New York State Division of Human Rights or the United States Equal Employment Opportunity Commission. Eligibility will be based upon contemporaneous written documentation. However, no person otherwise eligible under the terms of this paragraph will be eligible to receive a share of the Retaliation Fund if a state or federal court has dismissed or ruled adversely on any claims of retaliation that were raised by the Class Member in the court litigation, unless the dismissal was to permit the Class Member to pursue claims in this action, or unless, subsequent to such court ruling, the Class Member has filed a subsequent charge of discrimination or retaliation meeting the eligibility requirements set out in the first sentence of this paragraph. Further, in order to be eligible to recover a share of the Retaliation Fund, any Class Member whose eligibility is based solely upon a discrimination charge as described in subpart (i) of the first sentence of this paragraph shall be eligible only if he or she files a statement with the Claims Administrator affirming the Class Member's belief that he/she experienced retaliation at the Parks Department after filing the charge of discrimination. No such assertion is required for Class Members meeting the eligibility criteria established in subparts (ii) and/or (iii) of the first sentence of this paragraph, i.e., those who filed retaliation charges.

Each Class Member eligible for a share of the Retaliation Fund shall receive an equal share of the fund.

4. **Final Determination of Eligibility** The Claims Administrator will make the final determination as to whether a Class Member meets the criteria for eligibility for an award under each of the funds established herein.

G. Procedures for Distribution of Funds

The Claims Administrator shall use his best efforts to deliver requisite notices, including the Class Notice and Releases to all Class Members. Those efforts will include re-mailing notices and Releases to any Class Member whose mailing is returned as undeliverable. Class Counsel's determination whether the efforts of the Claims Administrator in this regard constitute "best efforts" shall be conclusive.

1. **Mailing of Notice of Settlement and Fairness Hearing** On the basis of the list of Class Members provided by plaintiffs to the City on October 28, 2007, the City will provide to the Claims Administrator the last known addresses of Class Members within fifteen (15) days of the Preliminary Approval of the Stipulation and Order. The initial mailing to Class Members will consist of the Notice to Class Members of Settlement and Fairness Hearing ("Class Notice") (attached hereto as Exhibit 8). The Class Notice will include information regarding eligibility and a preliminary estimate of amounts of awards for each eligible Class Member. The Claims Administrator will mail such notice, first class mail, within twenty-one (21) days of the receipt of Class Member addresses from the City.

Class Members who wish to file an objection to the settlement agreement, or to Opt-out, shall file such objections or Opt-out notices within forty-five (45) days from the

mailing of the Class Notice, but in no event later than ten (10) days prior to the Fairness Hearing.

2. **Mailing of Notice to Eligible Class Members** Within twenty-one (21) days of the Effective Date, the Claims Administrator will mail to eligible Class Members a Release in the form attached hereto as Exhibit 7. The Claims Administrator will also provide a self-addressed prepaid envelope for the return of the Release. The Release shall be returned within forty-five (45) days from the date of postmark of the mailing of the Release.

3. **Claims Administrator Follow-Up**

The Claims Administrator will have up to one-hundred-twenty (120) days from the due date for return of Eligible Class Member Forms to address any defects in the Release forms (e.g. where there is no signature or incomplete information on the form) and to conduct re-mailing & tracing of mail to eligible Class Members that is undeliverable and to contact eligible Class Members who do not respond to mail containing the Release Form.

Upon the completion of all reasonable efforts to contact eligible Class Members, or the passage of one hundred twenty (120) days from the due date for return of Release Forms (whichever is sooner), the Claims Administrator shall have an additional thirty (30) days within which to address defects in the Forms. At the end of such period, the Claims Administrator will provide the originals to the City. Class Counsel's determination whether the efforts of the Claims Administrator in this regard constitute "reasonable efforts" shall be conclusive.

The Claims Administrator shall have an additional thirty (30) days in which to complete the process of determining eligibility and calculating individual awards. As necessary, the Claims Administrator will confer with plaintiffs' labor economists and/or Class Counsel to resolve any ambiguities with respect to individual calculations, or, as necessary, to obtain calculations for any Class Member's claims not previously addressed in plaintiffs' regression analyses. As noted above, the Claims Administrator's determination of eligibility and the amount of awards will be final and not subject to appeal. The City will cooperate with the plaintiffs and the Claims Administrator to assure the broadest possible distribution of funds to eligible Class Members.

The Release shall contain language by which the eligible Class Member affirms that he/she is a Class Member. Moreover, the Claims Administrator will require those eligible for a share of the Retaliation Fund pursuant to Paragraph X(F)(3) above, but who did not file a claim of retaliation, to complete a statement affirming the Class Member's belief that he/she experienced retaliation at the Parks Department after filing his/her charge of discrimination.

Each eligible Class Member's share of the respective funds will be determined once the Claims Administrator and Class Counsel are satisfied that all reasonable efforts have been made to locate eligible Class Members and Release Forms have been received. Each eligible Class Member who has not opted out and has timely submitted a Release pursuant to the procedure set forth above shall receive the amounts calculated according to the distribution formulas set forth above, subject to deductions for Liens as provided for in Section X above. Upon completion of those calculations, the Claims Administrator will provide to the City a list of awards by fund (promotion, pay and

retaliation) which includes (i) Class Member name, (ii) social security number and (iii) back pay amount. ("Final Award List") The Claims Administrator will also provide to the City a separate statement of back pay amounts to be paid to each Class Member, with a breakdown by year in the form attached as Exhibit 6.

H. Waiver of Confidentiality & Access to Records of Lawsuits

Any Class Member who seeks to recover an award under this Stipulation & Order and who has previously maintained his own lawsuit against defendants alleging race, color or national origin discrimination, or retaliation for having filed a charge of race, color or national origin discrimination, and has settled the lawsuit on confidential terms, will be required, upon request of the Claims Administrator, to provide a copy of any Court Order granting summary judgment or otherwise dismissing the action and/or any settlement agreement if such documents are in the possession of the Class Member and to sign a waiver of confidentiality permitting the City to provide to the Claims Administrator and Class Counsel a copy of any such Settlement Agreement. If the Class Member fails to provide available copies of such Orders or agreements, or fails to sign the applicable waiver, the Claims Administrator may find that the Class Member is ineligible to recover any funds under this Stipulation & Order. However, notwithstanding the foregoing, the Class Member is presumptively entitled to recover an award for any time period he/she is otherwise eligible under the terms of the distribution formulas set forth above, for any period following the date of entry of any order of dismissal in the Class Member's lawsuit.

The City separately waives any claim of confidentiality with respect to any such settlement agreements for the limited purpose of providing copies to the Claims Administrator and Class Counsel solely for the purpose of determining the Class

Member's eligibility (if any) for relief under this Stipulation & Order. Class Counsel and the Claims Administrator will treat the terms of any such agreements as confidential and will use the information only for the purpose of calculating awards under this Stipulation & Order. The City will also make its best efforts to provide copies of any order of dismissal of any lawsuit known by the City to have been filed by a Class Member raising claims of race, color or national origin discrimination during any part of the Class Period, or retaliation related to claims of race, color or national origin discrimination during any part of the Class Period.

I. Records of EEO Filings

The City will make its best efforts to provide to the Claims Administrator and Class Counsel written documentation of internal or external EEO charges to assist in the determination of eligibility for awards under the Retaliation Fund. That documentation will be provided as soon as possible, but no later than fifteen (15) days after the Final Approval of this Stipulation & Order.

J. Payment by City of Back Pay Amounts

1. The City will be responsible for the payment to Class Members of all back pay amounts and service awards less all applicable payroll deductions and Lien deductions, if any. The City will make individual back pay and service award payments to Class Members using a supplemental payroll that coincides with a regular pay period for Parks. The payments will be made over two payrolls starting on the third Parks pay date following the receipt of the Final Award List from the Claims Administrator. Payments will not be made during payroll periods occurring during the months of October and November. Required employee deductions for federal, state, and local taxes, employee retirement account contributions, Medicare taxes and any other routine payroll

deduction required by law, as determined by the City, and Lien amounts, if any, as defined herein, shall be deducted from back pay and service awards.

2. The City will provide an itemized statement of all deductions made with each back pay and service award. The City will provide to Class Counsel, within 10 business days of payment to Class Members, a report of all checks issued to Class Members, showing net amounts paid and deductions taken, together with such other information as to enable Class Counsel to understand the amount of the award paid. Neither Class Counsel nor the Claims Administrator shall be responsible for calculating the applicable taxes or withholding or reporting to the government any amount so withheld

K. Distribution of Compensatory Damages & Interest Awards by Claims Administrator

The Claims Administrator will be responsible for paying out to Class Members from the CSFA all amounts calculated as prejudgment interest and compensatory damages pursuant to Part A. The Claims Administrator will cause the payment to be made by first class mail within 30 days, or as soon as practicable after completion of the Final Award List. The Claims Administrator will provide each recipient a 1099 form and a statement identifying the amounts distributed from each fund.

Any amounts designated as interest shall not be subject to withholding and shall be reported by the Claims Administrator to the IRS. The amounts paid for compensatory damages shall not be subject to withholding and shall be reported to the IRS. The Claims Administrator will be responsible for filing all appropriate forms including tax forms relative to the management of the money deposited into the CSFA and the distribution of those amounts to Class Members.

L. Survival of Claims

Rights and claims hereunder shall survive the death of Class Members. If a Class Member who is eligible to receive monetary relief under this Consent Decree is deceased at the time of the distribution of awards, the amount payable to such deceased Class Member shall be paid to the appropriate representative of his/her estate. If the Claims Administrator determines, after reasonable opportunity has been given, that there is insufficient information or proof regarding the deceased person's estate to permit such payment, the deceased person's share shall be distributed in accordance with the terms provided for the distribution of unclaimed shares or returned checks.

M. Unclaimed Shares/Uncashed Checks

In the event of opt-outs and unclaimed shares known to the Claims Administrator prior to the final calculation of amount of awards, the Claims Administrator will distribute any total amounts resulting from such unclaimed shares proportionately amongst the other eligible Class Members receiving awards under the applicable monetary fund. If a Class Member fails to cash an award check within one hundred eighty (180) days following the date of the check, then the Claims Administrator and the City will issue supplemental checks of \$250 each to award recipients, in order from lowest to highest in terms of total awards, until the excess funds are exhausted. The Claims Administrator will determine eligibility for supplemental checks, payable either by the Claims Administrator or the City. In the event the Claims Administrator must choose between Class Members receiving equal total awards, the Class Member with the lower social security number will receive priority for the payment of supplemental checks.

For any checks issued by the City and not cashed within 180 days, the City will advise the Claims Administrator of the total of the gross amounts involved, and the Claims Administrator will provide the City with a list of the next available Class Members who, pursuant to the procedure described in the preceding paragraph, would be eligible for supplemental checks of \$250. Only Class Members eligible to receive a back pay award will be eligible for receipt of a supplemental check of \$250 from the City.

N. Report from Claims Administrator & the City

Within thirty (30) days of the distribution of the monies from the monetary funds established above, the Claims Administrator and the City shall furnish an accounting of all distributions to the Court with copies to counsel for the class plaintiffs and the defendants. The accounting provided by the Claims Administrator at this time will include a breakdown, by year, of each Class Member's back pay amount.

XI. PROCEDURES FOR NOTICE TO THE CLASS OF SETTLEMENT AND FAIRNESS HEARING

A. On the basis of the list of Class Members provided by plaintiffs to the City on October 28, 2007, within fifteen (15) days of the Preliminary Approval of this Stipulation and Order by the United States District Court, the City will provide to the Class Counsel and the Claims Administrator, the last known addresses of Class Members. The Claims Administrator will make his best efforts as is customary to locate all Class Members based upon lists of names and last known mailing address provided to him by the City. Within twenty-one (21) days of receipt of the Class Members' names and addresses, the Claims Administrator shall provide notice to the members of the Class, in the form attached hereto as Exhibit 8 ("Class Notice"). Class Members will be given notice of the terms of the settlement agreement, their opportunity to object to the

settlement and/or opt-out of the class and the date of the fairness hearing. The notice to Class Members will include a preliminary determination of each Class Member's eligibility to receive a monetary award under any of the funds, and, if a Class Member is determined to be eligible, a preliminary estimate of the range of such an award. As set forth in paragraph XIV(C), the parties agree to request that the Court schedule the fairness hearing at the earliest practicable time on or after seventy-five (75) days from the Preliminary Approval of this Stipulation & Order. Class Members will also be given notice of their obligation to notify the Claims Administrator of any changes in their mailing address.

B. The Claims Administrator will provide for publication of a notice of the settlement and the fairness hearing in no fewer than three newspapers. Within twenty-one (21) days of the Preliminary Approval Date, the Claims Administrator will complete arrangements for publication of the notice.

XII. OPT OUTS

A. Opt-Out Procedure

Any Class Member who chooses to opt-out of the class and thereby receive no monetary benefits from this Stipulation and Order may do so only by filing an "Opt-out" Statement in the form described below and mailed to the Claims Administrator, Settlement Services, Inc., 2032-D Thomasville Road, Tallahassee, Florida 32308, postmarked no later than ten (10) days before the fairness hearing. To opt out of this lawsuit, a Class Member must submit the following Opt-out Statement containing his/her full name, address, date and signature sworn to before a notary public:

"I am a Class Member in the lawsuit of Wright v. Stern. I understand that in choosing to opt out of the class and settlement in this case, I will not be entitled to any

money under the settlement. I also understand that if I file a separate lawsuit or other legal proceeding:

- I may lose my case and receive nothing;
- It may take several years to obtain any money or other relief, if I receive any relief at all;
- I may have to pay my own attorneys' fees and the costs of litigation;
- I may obtain less money than I can get under this settlement;
- I also understand that, if the Court approves the settlement, Class Members who do not opt out may be eligible to receive a monetary payment under the settlement. I still choose to opt out and to be excluded from the settlement.

The Claims Administrator shall stamp the date received on the original of any Opt-out Statement and serve copies on Class Counsel and Counsel for Defendants no later than five (5) business days prior to the date of the Fairness hearing. The Claims Administrator will also file the date-stamped originals with the Clerk of the Court no later than five (5) business days prior to the date of the Fairness hearing. The Claims Administrator shall retain copies of all Opt-Out Statements until such time as the Claims Administrator is relieved of its duties and responsibilities under this Stipulation & Order.

B. Rescission of Class Member Opt-Outs

The parties recognize that some class members who initially submit Opt-out forms seeking exclusion may, upon further reflection, wish to withdraw or rescind such Opt-out Statements. The parties agree that Class Members shall be permitted to withdraw or rescind their Opt-out Statements by submitting a "Rescission of Opt-out"

Statement to the Claims Administrator. The Rescission of Opt-out Statement shall include the following language:

"I previously submitted an Opt-out statement seeking exclusion from the class monetary settlement. I have reconsidered and wish to withdraw my Opt-out statement. I understand that by rescinding my Opt-out I may be eligible to receive an award from one or more of the funds and may not bring a separate legal action against the defendants seeking damages.

The Claims Administrator shall stamp the date received on the original of any Rescission of Opt-out Statement and serve copies on Class Counsel and Counsel for Defendants no later than two (2) days after receipt thereof. The deadline for filing a Rescission of Opt-Out Statement is fifteen (15) days after the Fairness Hearing. The Claims Administrator shall retain copies of all Rescissions of Opt-Out Statements until such time as the Claims Administrator is relieved of duties and responsibilities under this Stipulation & Order.

XIII. CITY OPTION TO VOID AGREEMENT

The City may unilaterally declare this settlement null and void and shall not be obligated to comply with any of the terms of this Stipulation and Order upon the occurrence of either of the events described in Sealed Exhibit 9, filed with the Court under seal concurrently with this Stipulation & Order. The City shall inform Class Counsel prior to the date of the Fairness Hearing whether it believes it is entitled to exercise this clause and whether it is considering doing so and shall exercise this clause, if at all, not later than thirty (30) day after the Fairness Hearing. For purposes of this provision, "Class Member" is defined as those individuals who were identified as Class

Members on the list of Class Members provided by plaintiffs to the City on October 28, 2007.

XIV. PROCEDURES FOR FAIRNESS HEARING

A. Subject to approval by the Court, the parties hereby agree to the following procedures and schedule for notice to Class Members and submission of this Stipulation and Order to the Court for approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

B. At the time this Stipulation and Order is submitted to the Court, the parties each agree to opine to the Court that it is fair, reasonable, and adequate to the Class as a whole, within the meaning of that phrase contemplated by Rule 23(e) of the Federal Rules of Civil Procedure. Counsel for the parties shall request prompt judicial approval of this Stipulation and Order as written.

C. The parties agree to request that the Court schedule a hearing to determine whether this Stipulation and Order is fair, reasonable, and adequate to the Class as a whole (the "Fairness Hearing"), as required by Rule 23(e) of the Federal Rules of Civil Procedure, at the earliest practicable time on or after seventy-five (75) days following Preliminary Approval of this Stipulation & Order.

D. Any Class Member who wishes to object to the terms of this Stipulation & Order, or its implementation, shall be required to submit to the Court, not later than ten (10) days before the fairness hearing (the "Cutoff Date"), which will be stated as a "date certain" in the Notice of Proposed Class Action Settlement and Fairness Hearing mailed to the Class, a written statement of any objections, with copies to counsel for both parties. The statement shall comport with the procedures set forth in the Notice of Proposed Class

Action Settlement and Fairness Hearing. The statement shall contain the individual's name, address and telephone number, along with a statement of his objection(s) to the Stipulation & Order and the reason(s) for those objection(s), and an express statement of whether the Class Member wishes to speak at the Fairness Hearing.

E. Any attorney retained by an individual Class Member at his own expense to submit objections and/or appear at the Fairness Hearing on his behalf must, not later than the Cutoff Date, identify himself in writing to the Court, submit written objections, with copies to counsel for both parties, and state expressly whether he desires to speak at the Fairness Hearing. The statement shall comport with the procedures set forth in the Notice of Proposed Class Action Settlement and Fairness Hearing. Objections raised at the Fairness Hearing shall be limited to those matters addressed in timely written objections.

XV. RELEASES

A. Named Plaintiffs

The Named Plaintiffs agree that they will not opt-out of the class, will not object to the settlement and will accept the settlement amounts calculated in accordance with the allocation plan described in Section X.

B. Release of Claims

1. **Release of Claims by Class Members.** Except with respect to any persons who have effectively exercised a right to opt out of this Stipulation and Order, upon the Final Approval of this Stipulation and Order, and payment by the City as described in this Stipulation and Order, Defendants and their employees, supervisors, managers and agents shall be fully released and forever discharged from any and all individual and/or class-wide claims, demands, charges, actions, complaints, rights and

causes of action, suits, damages, liabilities, assessments, judgments, costs, losses, debts, obligations and expenses, of any and every nature whatsoever, whether seeking monetary and/or equitable relief of any sort, whether or not known, by the Class Representatives, Charging Parties, or Class Members ("Releasers"), and the Releasers' representatives, agents, heirs, estates, executors, administrators, successors and assigns, which arise out of conduct from May 24, 1997 through the Preliminary Approval Date relating to race, color or national origin discrimination against African-Americans or Hispanics with respect to promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, the maintenance of a segregated workforce, and retaliation for asserting civil rights or opposing civil rights violations, any terms and conditions of employment that were or could have been raised in this action under any federal, state, city or local law prohibiting race, color or national origin discrimination, whether statutory, regulatory, pursuant to local law or ordinance, or at common law against Defendants. As used in this release, claims "for monetary relief" shall include all claims for economic or non-economic monetary damages of any kind including, without limitation, interest, compensatory and punitive damages. This release shall survive the expiration of the term of this Stipulation and Order. This release does not operate to release any rights, benefits or claims to benefits under New York City's retirement plans, health plans or other benefit plans and fringe benefit programs.

2. Release of Named Plaintiffs' Claims. Upon Final Approval of this Stipulation and Order, and payment by the City as described in this Stipulation and Order, for and in consideration of the mutual promises, terms and conditions by and between the Named Plaintiffs and Defendants set forth herein, the sufficiency of which

consideration is expressly acknowledged, the Named Plaintiffs and each of their representatives, agents, heirs, estates, executors, administrators, successors or assigns, whether seeking monetary and/or equitable relief of any sort, do hereby fully, finally and forever release and discharge the Defendants and their employees, supervisors, managers and agents from any and all individual and/or class-wide claims, demands, charges, actions, complaints, rights and causes of action, suits, damages, liabilities, assessments, judgments, costs, losses, debts, obligations and expenses, of any and every nature whatsoever, whether seeking monetary and/or equitable relief of any sort, whether or not known by the Class Representatives, Charging Parties or Class Members, that they have had, now have, or may have from May 24, 1997 to the Preliminary Approval Date, arising in any way out of the alleged facts, circumstances and occurrences underlying those allegations of violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII"), the Civil Rights Act of 1981, as amended in 1991, 24 U.S.C. §§ 1981 and 1983, the New York Constitution, the New York Human Rights Law, the New York City Human Rights Law, and the New York City Charter that were asserted or might have been asserted by or on behalf of the Named Plaintiffs against Defendants either in the class action complaint filed in this action or in the charges filed by the Named Plaintiffs with the Equal Employment Opportunity Commission ("EEOC") or the New York State Human Rights Division or the New York City Commission of Human Rights. As used in this release, claims "for monetary relief" shall include all claims for economic or non-economic monetary damages of any kind including, without limitation, interest, compensatory and punitive damages. This Release shall survive the expiration of the term of this Stipulation and Order. This release does not operate to

release any rights, benefits or claims to benefits under New York City's retirement plans, health plans or other benefit plans and fringe benefit programs.

C. Requirement and Effect of Releases

No individual, including the Named Plaintiffs, shall be entitled to any distribution from the Settlement Fund unless and until he has executed and submitted a Release in the form attached as Exhibits 7 and 10. All claims of Class Members eligible to receive a monetary award under this Stipulation & Order are released and discharged as of the date of the delivery to the City of the Final Award List, whether or not the Class Member has signed a Release. In the event the City and/or the Claims Administrator has withheld amounts from the award to an eligible Class Member who does not sign a Release, the amounts withheld will be paid by the City toward the satisfaction of the Liens.

XVI. REPORTING & MONITORING

A. The City will provide to plaintiffs' counsel the following documents and information evidencing its performance of the terms of this Stipulation & Order:

1) Training materials used in the training ("VAT training") provided panel interviewers who participate in the VAT process for titles of Recreation Center Manager and above in Recreation, PRM and above in M&O, and Director and above in Administration and Capital, Parks' EEO Officer and advisors/counselors; [Section V]. The City will provide such materials upon their initial use and subsequently only if substantive changes are made in the training materials;

2) Names of persons who received VAT training;

3) Standard instructions provided to interviewers in advance of the interviews; [Section V-A] The City will provide such instructions upon their initial use and subsequently only if changes are made in the standard instructions;

4) Scoring system adopted for VAT titles of Recreation Center Manager and above in Recreation, PRM and above in M&O, and Director and above in Administration and Capital; [Section V-A] For the titles of Recreation Center Manager and above in Recreation, PRM and above in M&O, and titles above director in Administration and Capital, the City will provide scoring systems upon their initial use and subsequently only if changes are made in the scoring system. For director titles, the City will provide the scoring systems upon request of Class Counsel;

5) Scoring information reported to the selecting official after a panel interview process; [Section V-A]

6) Summary memorandum reflecting the results of the City's annual adverse impact study including data on job titles, names of applicants, ethnicity of applicants, and names of persons selected; [Section V-C]

7) Summary report of any content validity study conducted by Parks; [Section V-C]

8) An outline of training materials used in the training program similar to Parks 40; [Section VI-A]

9) Copies of announcements used to publicize the opportunity to apply for such training program; [Section VI-A]

10) Names of applicants for the "Parks 40" training program; [Section VI-A]

11) Names of persons selected for the "Parks 40" training program; [Section VI-A]

12) Final reports concerning all pay studies; [Section VII-B]

13) Summary Memo or Chart reflecting EEO post-complaint follow-up; [Section VIII] This Summary Memo or Chart shall be provided to Class Counsel as part of the annual reporting cycle.

14) PMS data for Parks in the format provided to the experts in this litigation. The City will provide this data annually on March 31. Two months prior to the expiration of the term of this Stipulation & Order, the City will provide a final update of the PMS data. If the PMS data is not retrievable as such due to systems changes, modifications, or replacements, the City will provide the same data, to the extent available, in the City's successor format.

B. For the term of this Stipulation & Order, the City will retain all postings and "Job Appointment Packets" created pursuant to the Parks Department's Policy for Posting and Filling Job Vacancies and will make such available to plaintiffs' counsel for inspection and copying upon request.

C. The City will produce all reports and other materials required to be produced by the terms of this Stipulation & Order annually on March 31, or such other date as mutually agreed upon by the parties within thirty days of the Final Approval Date. The City will produce the reports and other materials for the final 12 months of the three-year period referred to in Section IV (A) two months prior to the end of that period, or such other date as mutually agreed upon by the parties within thirty days of the Final Approval Date. Notwithstanding the foregoing, any content validity study produced in the third year of this Stipulation and Order will be produced within 30 days of its completion.

XVII. MISCELLANEOUS

A. Before any payment is made to an individual Class Member, the Class Member shall execute and deliver to the Claims Administrator all documents deemed necessary by counsel for the parties, including without limitation, executed releases and stipulations of dismissal with prejudice in pending individual actions, all in a form that is satisfactory to counsel.

B. The City agrees not to assert any liens, other than Liens as defined above, which the City itself may have respecting a Class Member and/or the Class Member's award(s) from the funds established under this Stipulation & Order.

C. Counsel for the parties agree that they will take all reasonable steps to ensure that this settlement is approved by the Court and becomes effective.

D. If any collateral challenge to this settlement or Stipulation and Order arises in a court, the parties are obligated to inform one another of such a challenge and defend each and every term.

E. The Named Plaintiffs, Class Counsel and the Defendants and the Office of the Corporation Counsel each agree that they shall use their best efforts to defend this settlement and Stipulation and Order from any legal challenge, whether by objection, appeal or collateral attack.

F. Any amendments or modifications to this Stipulation and Order shall be in writing and signed by Defendants' Counsel and Class Counsel on behalf of their respective clients.

G. Only Class Counsel may bring a motion to enforce any provision of this Stipulation and Order, including a motion alleging a violation of the Stipulation and Order or for contempt.

H. The parties shall attempt to resolve informally any dispute, concerns, or perceived violations that may arise under this Stipulation and Order. To that end, Class Counsel will notify Defendants' Counsel in writing of any perceived instances of non-compliance by the Parks Department with the Stipulation and Order's terms. The parties also agree to meet and confer in good faith to discuss such matters and try to resolve them prior to any party seeking court intervention.

I. If Class Counsel has reason to believe that Defendants have violated the terms of this Stipulation and Order, it shall notify counsel for Defendants, in writing, thirty (30) days prior to bringing any motion to enforce the Stipulation and Order, including a motion for contempt, provided however, it may give less notice if it demonstrates to the Court that an emergency need prevented it from giving the thirty (30) days notice and that the amount of notice it did give was warranted under the circumstances.

J. Any application to the Court in connection with this Stipulation and Order shall be on notice to Defendants and Named Plaintiffs.

K. Nothing contained herein shall be deemed to be an admission by Defendants that they have in any manner or way violated the rights of any person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or by-laws of any department or subdivision of the City of New York.

L. The parties agree that this Stipulation and Order is subject to Rule 408 of the Federal Rules of Evidence. It is therefore the parties' understanding that the Stipulation and Order is not admissible to prove Defendants' liability for any of the individual or Class Claims that allege that Defendants engaged in a pattern or practice of discrimination against African American and Hispanic employees on the basis of their race, color or national origin with respect to promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, in maintaining a segregated workforce, and by retaliating against employees who assert their civil rights.

M. The terms and conditions contained herein do not constitute an official policy or practice of the City of New York for purposes other than enforcement of this Stipulation and Order.

N. Copies of all notices, correspondence, reports or documents required to be provided by one party to the other under this Stipulation and Order shall be mailed to:

Cynthia Rollings
Beldock Levine & Hoffman LLP
99 Park Ave.
New York, NY 10016-1503

Lewis M. Steel, Esq.
3 Park Ave., 29th Floor
New York, NY 10016

Robert H. Stroup, Esq.
NAACP Legal Defense and Education Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013

The City of New York Law Department
100 Church Street
New York, NY 10007-2601
Attn: Chief of Labor and Employment Law Division

O. Each party acknowledges that it has not relied upon any representations, warranties or statements of any nature whatsoever, whether written or oral, made by any person, except as specifically set forth herein and that this Stipulation and Order represents the entire agreement of the parties. No prior agreements, oral representations or statements shall be considered a part of this Stipulation and Order.

XVIII. ATTORNEYS' FEES AND COSTS

The City will pay plaintiffs' attorneys' fees in the following amounts: NAACP Legal Defense and Educational Fund, Inc., -- \$1,500,000; Beldock Levine & Hoffman, LLP -- \$3,440,000, Lewis M. Steel (and associated firms) -- \$3,040,000, and Steve Goldman -- \$20,000. These amounts were agreed upon after negotiations between the parties and were based upon the plaintiffs' counsels' contemporaneous time records, and consideration of what would constitute a reasonable fee given the history of this litigation and applicable legal precedent.

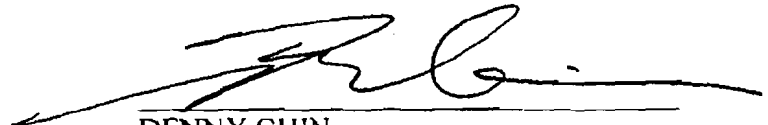
The City will also pay plaintiffs' expenses of litigation in an amount totaling \$999,999.79. This amount, too, was agreed upon after negotiations between the parties and is based upon actual costs incurred by the plaintiffs' counsel. This total includes, among others, the plaintiffs' expert witness fees.

The City will issue one check to the NAACP Legal Defense & Educational Fund, Inc., for plaintiffs' attorneys' fees and expenses of litigation, and LDF will be responsible for disbursements of those amounts in accord with the agreement of plaintiffs' counsel as to their allocation.

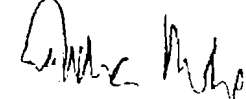
The City will pay the amounts agreed upon for fees and costs within 45 days of the Final Approval Date of this Stipulation & Order, or, if an appeal is filed from the

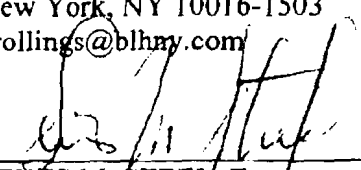
Order of Final Approval, within 45 days of the Effective Date of this Stipulation & Order. Each of plaintiffs' counsel will provide a release relating to their professional services in this action in a form agreed upon by the parties, no later than 45 days prior to the date provided herein for payment of attorneys' fees and expenses.

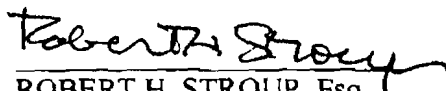
IT IS SO ORDERED, this 15th day of May, 2008.


DENNY CHIN,
United States District Judge

AGREED TO:
For the Plaintiffs:

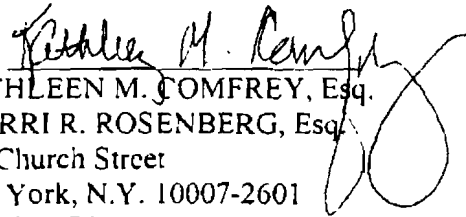

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For the Defendants:

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York

BY: 
KATHLEEN M. COMFREY, Esq.
SHERRI R. ROSENBERG, Esq.

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New York, N.Y. 10007-2601
kcomfrey@law.nyc.gov
shrosenb@law.nyc.gov

TESTIMONY BEFORE
THE NEW YORK STATE CIVIL SERVICE COMMISSION
New York Network, Suite 146, South Concourse
Empire State Plaza, Albany, New York
Tuesday, June 10, 2008

Good morning Mr. Chairman and members of the Civil Service Commission. My name is Maf Misbah Uddin and I represent DC 37's Local 1407 - the unionized Accountants, Actuaries, Bookkeepers, Business Promotion Coordinators, Economists, Investment Analysts, Management Auditors, Retirement Benefits Examiners, Statisticians, System Analysts, Tax Auditors, and Workers' Compensation Benefits Examiners of The City of New York.

As you know the DCAS Provisional Plan will have a severe impact on Local 1407 titles including:

- Accountant,
- Associate Accountant,
- Bookkeeper I and II,
- Associate Bookkeeper,
- Assistant Economist,
- Economist, Senior Economist,
- Supervising Economist,
- Investment Analyst Trainee,
- Investment Analyst,
- Senior Investment Analyst,
- Supervising Investment Analyst,
- Assistant Statistician,
- Statistician,
- Senior Statistician,
- Principal Statistician,

Management Auditor Trainee,
 Management Auditor,
 Associate Management Auditor,
 Business Promotion Coordinator,
 Associate Business Promotion Coordinator,
 Senior Business Promotion Coordinator,
 Principal Business Promotion Coordinator,
 Assistant Retirement Benefits Examiner,
 Associate Retirement Benefits Examiner I, II, and III.

In the proposal DCAS wants to achieve the goal of substantially *reducing* the number of provisionals in City government which has always been supported by the union. However in order to achieve this goal DCAS is virtually *proposing* to destroy the civil service system as we know it. They want to *consolidate* different titles to one title with levels, but allowing advancement to those levels to fall under management's discretion. They want to *re-classify* competitive titles into non-competitive titles because the State has such titles! They want to *broadband* titles by eliminating currently used titles. As a union, representing civil service titles, we cannot and will not support this policy.

If the City and DCAS really want to reduce provisionals they must cooperate and work with the union to achieve that goal within the next five years. We are ready to support this effort if DCAS is ready to work with us in partnership.

In this regard Local 1407 is proposing that *the titles be consolidated while the advancement into higher levels be based on maturity (within five years of each Level) or Management's discretion whichever is earlier.*

For example Assistant Economist, Economist, Senior Economist, and Supervising Economist will be consolidated into Economist Levels I, II, III, and IV. A civil service examination will be conducted for Economist; those who will be appointed will be promoted to Level II, III, and IV within 5, 10, and 15 years or Management's discretion whichever is earlier. This will help to reduce *four titles to one title, four exams to one exam, and no provisionals will remain in the title* beyond the entry level.

Clearly this will reduce the number of provisionals in the title and give management time-sensitive discretion to promote within five years of the employees' tenure. This approach will obtain full support from the unions while management enjoys sole discretion to promote or not within each of those five year periods.

In the case of a title series where there is no more than 2 or 3 titles such as Accountant and Associate Accountant or Management Auditor Trainee, Management Auditor, and Associate Management Auditor we propose that new levels be created. The Accountant and Management Auditor Examinations be given and the titles be expanded to Levels I, II, III and IV.

The salary range of these new and additional levels within titles will be determined within the minimum and maximum of the current salary structure, subject to salary adjustments in the future.

As before the promotion to each level should be based on maturation at the end of five years or management's discretion whichever is earlier. This is applicable to all Local 1407 titles under the DCAS proposal.

Clearly, our proposal helps DCAS to achieve their goal of reducing provisionals. It will work better, faster, and without creating any undue pressure on unions and

employees alike. Above all this will help create a stronger Civil Service System while reducing provisionals across the City by 2013!

It would be highly appreciated if you would incorporate all of Local 1407's suggestions into your report regarding DCAS. Please contact us if you have any questions or comments.

I entreat you to consider a real program that will help DCAS make all provisionals, permanent within the City Government by the end of the plan. The City of New York will benefit greatly in general and the employees who serve the people of the City of New York will also benefit greatly in particular.

American Federation of State, County & Municipal Employees, AFL-CIO

125 BARCLAY STREET • NEW YORK, NY 10007-2179

Telephone: 212-815-1470

Fax: 212-815-1402

District Council

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LILLIAN ROBERTS

Executive Director

VERONICA MONTGOMERY-COSTA

President

CLIFFORD KOPPELMAN

Secretary

MAF MISBAH UDDIN

Treasurer

June 6, 2008

Vice Presidents:

Leonard Allen

Colleen Carew-Rogers

Carmen Charles

Santos Crespo

Sirra Crippen

Michael L. DeMarco

Cuthbert B. Dickenson

Alfred Edwards

Charles Ensley

Charles Farrison

Claude Fort

Michael Hood

Morris R. Johnson

David F. Moog

Eileen M. Muller

Walthene Primus

Darryl A. Ramsey

Eddie Rodriguez

Jackie Rowe-Adams

Kevin D. Smith

Cleveland G. Terry

John Townsend

James J. Tucciarelli

Esther (Sandy) Tucker

Shirley A. Williams

Commissioner Martha K. Hirst

Department of Citywide Administrative Services

17th Floor, Municipal Building

1 Centre Street

New York, N.Y. 10007

Dear Commissioner Hirst:

As a follow-up to our meeting of May 13th, where you explained the DCAS Plan to Reduce Provisionals to the affected unions, and listened to our concerns, we want to state in very bold and specific terms our opposition to the global approach you have taken in reducing provisionals through the various reclassification measures.

The amendment to Civil Service Law Section 65, enacted in January, states in part:

“Such plan may include but shall not be limited to a schedule for administration of exams and establishment of eligible lists, a determination of additional appropriate existing or planned eligible lists that may be used, consolidation of titles through appropriate reclassifications and any other lawful and appropriate means of implementation.”

Following is our analysis. Although we mention some titles specifically to illustrate our point, in fact, the examples we give can be used for almost every title.

Examination Administration

The Union believes that administering more exams and allowing an expanded use of eligible lists to make appointments for more than one title should be the primary way to reduce provisionals. To that end, the unions will support increased funding to DCAS for the purposes of exam administration.

Associate Director

Oliver Gray

Retirees Association

Stuart Leibowitz

The Plan anticipates that exam administration will only reduce provisionals by fifty percent. For the reasons set forth in detail below, the Union objects to the manner in which the DCAS plan seeks to use mechanisms such as reclassification of titles as a means by which to reduce the number of provisional employees. The Court of Appeals decision in *City of Long Beach v. CSEA* was unequivocal. The Court wrote:

Our State Constitution mandates that civil service appointments and promotions "shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive" (NY Const, Art.V. Section 6). "The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee" (*Montero v. Lum*, 68 NY2d 253, 258 [1986]). This constitutional mandate "may not be blinked or avoided" (*Board of Ed. Of City of New York v. Nyquist* 31 NY2d 468 [1973]).

Thus, while the Constitution's merit and fitness requirement is hardly a new one, the Court of Appeals in *Long Beach* made clear that efforts to subvert or undermine the requirement will be struck down. Ironically, the DCAS plan, which proposes to reduce the remaining 50% of provisional employees through a series of reclassification measures, is plainly as contrary to the Constitution's merit and fitness provisions as the use of provisionals.

As the Constitution makes plain, the reclassification of positions from the competitive to the non-competitive class can only occur when it is impracticable to determine merit and fitness by competitive examination. The notion that now, after decades of giving competitive examinations for titles such as Police Communications Technician, Sewage Treatment Worker, Child Protective Specialist, Graphic Artist, Associate Park Service Worker, Fraud Investigator, that it is no longer practicable to give such competitive exam is ridiculous on its face. Simply stated, nothing in the law has changed to make the giving of these examinations not practicable now.

Reclassifying Current Competitive Titles to the Non-Competitive Class where the State has Non-Competitive Class Titles Performing Comparable Work

The Plan contemplates the reclassification of current competitive titles to the non-competitive class where the State has non-competitive class titles performing comparable work. The Plan claims that DCAS has conducted a detailed review of these State non-competitive class titles and that those titles are comparable to the City's titles in scope.

DC 37 has performed its own review of the New York State Plan of Titles, and we discovered that in fact most of the City titles that you claim to be non-competitive in the State have a more *appropriate* competitive counterpart. In order to achieve the results DCAS desires, it has parsed the State Plan of Titles, with no objective analysis of the number of employees, the duties they perform or the fact that a competitive class title performs the work which most closely resembles that performed by City employees. Therefore, to conclude that the City titles should be non-competitive is profoundly misleading.

Some examples of what we found:

- The Plan calls for the conversion of the City's competitive class title of Child Protective Specialist to the non-competitive State title of Child Abuse Specialist. The fact is that although the State may include it as a non-competitive title in their Plan of Titles, they also include a title called Child Protective Specialist and it is in the competitive class. Moreover, their non-competitive title of Child Abuse Specialist is limited to 15 positions in the entire state. Clearly, a fair comparison cannot be made to our Child Protective Specialists of which there are hundreds.
- The Plan matches the City's competitive Juvenile Counselor to a non-competitive State title called Youth Facility Assistant, but the more appropriate comparison should be the State's Youth Counselor, which is of course in the competitive class.
- The Plan proposes to reclassify Police Communications Technicians to the non-competitive class title of State Police Communications Technician is similarly misleading because the New York State Plan of Titles has a comparable competitive title called State Police Communications Specialists which should be the appropriate comparison. In fact, the Communications Technician that DCAS refers to is only authorized for 3 positions in State government. That very fact would indicate that the comparison is not a valid comparison.
- The Plan proposes that the City's Highway Repairer and Supervising Highway Repairer be reclassified to the non-competitive Highway Equipment Operator and Highway Maintenance Worker. In fact, the New York State Plan of Titles uses the competitive title of Highway Maintenance Supervisor. As for the Highway Maintenance Worker, although it is a non-competitive title, it earns approximately \$28,000 to start, and does not equate to the job duties and responsibilities that our Highway Repairers do.
- The Plan argues that since the State Civil Service title of Human Rights Specialist is non-competitive, the City title should be also. However, the New York State Plan of Titles lists their title of Human Rights Specialist in the competitive class title.
- The Plan matches the City's competitive class title of Mental Health Worker to the State's non-competitive title of Assisted Outpatient Treatment Compliance Specialist. However, there is also a competitive class title in the State called Mental Health Program Specialist which resembles in scope our competitive title more closely.
- The Plan proposes reclassifying Dental Hygienists to the State's non-competitive title of Dental Technician. There is no justifiable reason for this. There is already a competitive class title of Dental Hygienist in the State.

- The proposal to reclassify competitive class Sewage Treatment Worker to the State non-competitive class title of Wastewater Treatment Plant Operator is similarly suspect, since the State uses competitive class titles like Water Quality Plant Specialist, Waterways Maintainer and Plant Supervisors.
- The Plan proposes to reclassify Associate Park Service Workers to the non-competitive State title of Parks Operations Supervisor, but the State has a competitive class title called Park Operations Supervisor which closely resembles our Associate Park Service Worker.
- The Plan's proposal to reclassify the competitive class title of Fraud Investigator to the non-competitive Revenue Crimes Specialist is similarly misleading, since the State has a competitive class title of Consumer Fraud Representative.
- The proposal to reclassify the City's Graphic Artist to the State's non-competitive class title of Artist Designer is similarly misleading, since the State already uses the competitive title of Graphic Technician.
- The Plan proposes to reclassify Traffic Device Maintainers to the State's non-competitive title of Traffic Signal Mechanic. However, the State already has a comparable competitive class title called Traffic Signal Equipment Specialist.

As noted earlier, it seems that DCAS wanted to come up with a justification to make competitive class titles, non-competitive, and so ferreted through the New York State Plan of Titles to find non-competitive titles that might resemble the City's titles, despite the existence of many more equivalent or even identical competitive titles in the New York State Plan of Titles.

In conclusion, your rationale that the State uses the non-competitive status for these titles is disingenuous and intellectually dishonest. We strongly urge you to drop this part of the Plan. The unions will fight all baseless reclassification measures.

Reclassifying Competitive Class Titles with Historically Few Incumbents into the Non-Competitive Class

The Plan's next rationale that titles with 20 or fewer employees serving should be made non-competitive, since it is not economically feasible to give all those exams is wrongheaded. The Constitution and Civil Service Law do not create an exception of the merit and fitness requirement "due to economic feasibility". This proposal is also problematic because by converting Administrative titles to the non-competitive class, the promotional opportunities for employees in the lower competitive class title are extinguished. Administrative titles are at the top of the career ladder and those titles must continue to serve as promotion opportunities for civil servants in their occupational group. We will fight any attempt to reclassify Administrative positions out of the competitive class into the non-competitive class.

Classifying New Titles Into the Exempt Class or Reclassifying Current Competitive Titles to the Exempt Class where New York State has Exempt Class Titles Performing Comparable Work

Similarly, the establishment of new exempt titles in place of current competitive titles for high level work or the reclassification of competitive titles to non-competitive or exempt titles for high level work, (e.g. Administrative positions) will result in civil servants losing their ability to move up the career ladder, a right inherent in the civil service law, and we will oppose those plans. Making these titles non-competitive or exempt pulls the rug out from all those competitive civil servants who took and passed civil service tests with the knowledge that they have a promotion track to reach those administrative positions. And on the chance that a permanent competitive class employee accepts a non-competitive position, they will lose the rights they had as competitive class employees. For these reasons, we ask that you advise the State Civil Service Commission that you will modify the Plan to take into account the Unions' concerns.

Reclassifying Current Competitive Titles to the Non-Competitive Class where the State or an Industry-Accepted Organization Administers Examinations for Required Licenses or Certificates

The Plan's next argument is that titles that already require licenses should be taken out of the competitive class. But while licensing may test for areas of technical expertise, it is not intended as a substitute for the test of fitness for public service which is essential for the merit system. The State has already disapproved an earlier proposal to make certain professional engineering titles that require a State license non-competitive. Clearly, you knew that because your Plan omits engineering titles.

Resolving Classification Status of Temporary Titles

The Plan also seeks to make non-competitive those temporary titles where provisionals serve. This is circular logic. The reason that the titles have provisionals serving in them is precisely because DCAS never applied to the State Civil Service Commission to argue the case that they should be non-competitive. DCAS is completely to blame for close to 3,000 provisionals serving in these titles, because although DCAS proposed they be non-competitive, it never did the work to achieve that end. Could it be that DCAS did not have legitimate arguments to make to the State Civil Service Commission that will support its claim that these titles should be non-competitive? If, however, after appropriate analysis and a determination that it is not practicable to give an examination for the title, it is determined that the title should be non-competitive, the union would want agreement from the City to jointly support legislation that would give non-competitive class employees the same rights that competitive class employees receive.

Finally, the reclassification of titles from the competitive to non-competitive class has a profound effect on the due process rights enjoyed by employees. Under the Civil Service Law, a non-competitive employee receives due process rights under CSL Section 75 after five years on the job, compared to one year for an employee holding a title in the competitive

class. Thus, the Plan not only eviscerates an individual's ability to secure employment on the basis of his or her merit and fitness, it undermines his or her ability to retain her employment after they have secured the job.

For these reasons, we ask that DCAS revise the Plan and advise the State Civil Service Commission that it will modify the Plan to take into account the Unions' concerns.

Consolidation of Competitive Titles

Another proposal in the Plan to reduce provisionals is to consolidate titles which would, by your own accounting, reduce the current number of provisionals by only 1.14% percent. Certainly this tiny percent does not warrant the immense labor relations problems which would be created by taking away promotion opportunities for civil servants. The Union's experience in this regard is that consolidating titles results in advancement based not on an objective measure, but on the whim of a supervisor. Moreover, recent lawsuits by city employees over discrimination complaints in promotions that have been settled in their favor, should if nothing else, should encourage DCAS to use objective testing measures to determine promotions and advancements. These consolidation measures could only work if there are objective measures to determine eligibility for advancement which is jointly agreed to by the union and management. In addition, the Union would seek an agreement to reduce the current lock-in language in the contract to one year.

Consolidation of Titles Represented by Different Unions

Another aspect of the Plan calls for merging of titles that belong to different unions and different bargaining units into one title. For example, you propose to reclassify Construction Laborers, Crane Operators and Tractor Operators and their Supervisors into Construction Equipment Operators, Construction Equipment Operators-Light and Heavy. Besides the obvious difference in skill sets, they are all in different unions. Removing titles and members from one union's jurisdiction to another is problematic and each union will take appropriate action to prevent such reclassifications.

Transfer of Civil Service Administration for NYC Transit Authority and Triborough Bridge & Tunnel Authority

We are also opposed to your proposal to remove the Transit Authority and the TBTA from your aegis. There are thousands of provisionals in those two entities, and the DCAS proposal does nothing to help them attain permanent civil service status. Removing them from DCAS authority only insulates DCAS from having to account for them as provisionals, and in no way solves the issues raised by the Long Beach decision. The Union will not support legislation that leaves these Authorities to their own devices as it relates to civil service administration. The Transit Authority especially, has a dismal record when it comes to moving civil service lists. As far as we are concerned, allowing them to police themselves is akin to having the fox guard the hen house.

Moreover, there are a number of contractual issues involved including the current right of employees to transfer between entities without loss of seniority and leave balances. Employees now have the right to special transfer to and from these entities when faced with

layoffs. The union is concerned that all of these benefits would be lost if the TA and the TBTA were removed from the authority of DCAS. For these reasons the union would be opposed to this aspect of the Plan.

Union Recommendations

Instead of moving provisional employees and titles into the non-competitive class, we believe that a better alternative is to give current provisional employees who have worked for a certain period of time an exam in place, so that they can become permanent. Their experience as provisional employees should count as good time in scoring an exam. We think that such an exam in place should be done on a one-time basis, in order to reduce the provisional numbers immediately, without turning the entire civil service system on its head.

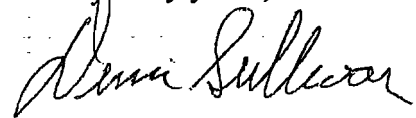
As you well know, the civil service law provides rights to permanent competitive civil servants that do not exist for any other classifications. We are not willing to accept the notion that our members can no longer receive those rights just because DCAS does not want to give the exams necessary to make people permanent.

To conclude, the union supports that portion of the Plan that calls for increases in the number of exams, and your methods to achieve that increase. We think that going forward this is the best way to reduce provisionals. To deal with the current situation of close to 38,000 provisionals, we propose that, on a one-time basis, give those employees a special "experience" exam where their provisional experience will allow them to become permanent competitive civil servants. Once this number is reduced to a manageable number, we recommend a thorough review of those exams where historically, the resulting eligible lists result in too few candidates. In those situations, education and experience exams should become the standard.

I have included correspondence that we received from a number of locals and unions. They are unanimous in their opposition to the Plan.

We have been asked to testify at the State Civil Service Commission regarding the Plan, and intend to explain why we are opposed to major aspects of it. We have also been asked to testify at the City Council regarding the Plan and intend to do so as well. In any event, we are available to discuss any changes you wish to make in the Plan that can address our concerns.

Very truly yours,



Dennis Sullivan

Enclosure

Cc: Lillian Roberts

Union Presidents

Nancy G. Groenwegen

James Hanley

United Federation of Nurses and Epidemiologists

**Local 436, District Council 37, AFSCME
125 Barclay Street 4th Fl. Professional Division
New York, New York 10007
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**Testimony to New York State Civil Service Commission
On
New York City's Department of Citywide of Administrative Service Plan
to Decrease Provisionals
June 10, 2008**

Good morning, President Groenwegen and distinguish members of the Commission. I am Judith Arroyo, President of Local 436. We represent the public health nurses and epidemiologists who work for the City of New York.

Thank you for allowing me to testify today on New York City's proposed plan to decrease provisionals within its work force.

I will not take up the Commission's valuable time by repeating things the Commission will have to read as part of your decision making nor going over things that have been or will be said much better by my labor brothers and sisters.

I will take this time to address two items in the City's plan.

The first is the City's plan not to offer examinations where a license or certification is all ready an inherent part of the title. I represent public health nurses. Part of the requirements for this title is a license as a professional registered nurse. The license in this instance only guarantees the person is a professional registered nurse (RN). It does not assure that the candidate has the "merit and fitness" to be a public health nurse. The same can be said of any of the other titles requiring licenses or certification.

The second is the City's intention to reclassify certain titles as exempt or non-competitive because of "discretionary managerial or policymaking decisions." The New York City Department of Health and Mental Hygiene (DOHMH) all ready such criteria in deciding its non Civil Service managerial positions. The result, in one instance, has been that it appointed a lawyer to be the director of a nursing program.

The Nurse-Family Program is a program where a public health nurse works with a first time

mother, usually a teen-age mother, and her infant until the child is two years old. The program has a documented success rate in reducing drug use, decreasing drop rates, taking families off the welfare rolls, etc. At the core of this success is the public health nurse.

While a lawyer has a license and may bring certain “discretionary managerial” skill sets, it does not include the knowledge of a licensed professional registered nurse nor the specific skill sets of a public health nurse. Yet, the New York City of Department of Health and Mental Hygiene chose a lawyer to run a nursing program.

We can expect more such decisions to be made if the City’s plan to address provisionals is approved as is and in its entirety.

Again, thank you for allowing me to testify. I will be happy to answer any questions you may have.

BROACH & STULBERG, LLP

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June 9, 2008

VIA FACSIMILE (518-474-0787) AND OVERNIGHT MAIL

Honorable Nicholas J. Vagianelis
Director of Classification and Compensation
New York State Civil Service Commission
Alfred E. Smith Building
Albany, New York 12239

Re: New York City District Council of Carpenters, UBCJA -and-
New York City Department of Citywide Administrative Services
(CSL § 65(5) Reclassification/ Consolidation Proposal)

Dear Mr. Vagianelis:

This firm represents the New York City District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO ("the District Council"). On behalf of the District Council, we hereby submit this statement in opposition to the plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law ("CSL") § 65(5) to (a) reclassify from the Competitive to the Non-Competitive Class all Civil Service titles represented by the District Council in New York City, and (b) eliminate certain of those titles through consolidation ("the DCAS Plan").

As explained more fully below and in the upcoming testimony of William Lacey, the District Council's Director of Civil Service Affairs, it is the District Council's position that the DCAS Plan should be soundly rejected for several reasons, including the following:

A. The DCAS plan would violate New York State Constitution, Article V, § 6 and New York State Civil Service Law ("CSL") §§ 42 and 44, which require that appointments and promotions in the Civil Service be made according to merit and fitness ascertained, as far as practicable, by competitive examination.

B. The DCAS Plan would violate CSL § 65's strict prohibition against long-term

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employment of provisionals by effect vely allowing provisional employees to be converted to permanent status without competing in an examination.

C. The DCAS Plan would make a mockery of the stated legislative purpose of CSL § 65(5), namely to further "the constitutional mandate of making appointments and promotions according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive."

D. The DCAS Plan is entirely unnecessary, given the existence of Civil Service eligible lists for the Carpenter and Supervisor Carpenter titles and upcoming examinations for the Dockbuilder and Rigger titles.

E. The DCAS Plan would harm all of the District Council's bargaining unit members, whether selected by examination or otherwise. Further, any attempt to implement the DCAS Plan without bargaining with the District Council over these adverse impacts would violate CSL § 209-a(1), which prohibits unilateral changes in working conditions of represented public employees.

F. The DCAS Plan would harm the public by permitting safety-sensitive work to be performed by individuals who have not demonstrated their merit and fitness for the trade, and by allowing unqualified individuals to attain appointment to such positions by patronage, cronyism and corruption.

BACKGROUND

The District Council represents approximately 25,000 Carpenters and employees in related trades in the New York City metropolitan area, including approximately 850 Civil Service employees, including Carpenters, Supervisor Carpenters, Dockbuilders, Riggers and related titles.

All of the Civil Service titles represented by the District Council are, and always have been, classified in the Competitive Class. For more than sixty years, employees in those titles have been selected on the basis of merit and fitness determined by examinations given approximately every seven years.

Currently, DCAS has established Civil Service eligible lists for the Carpenter and Supervisor Carpenter titles that may be used to replace approximately 134 provisionals in those titles. DCAS has scheduled a Dockbuilder examination in order to replace five provisionals in that title. DCAS has scheduled, but inexplicably has cancelled, a Rigger examination in order to replace four provisionals in that title. The District Council has requested, but DCAS has not yet

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scheduled, a Ship Carpenter examination to replace four provisionals in that title.

On March 28, 2008, DCAS submitted a plan, ostensibly prepared pursuant to CSL § 65(5), under which all of the Civil Service titles represented by the District Council would be reclassified to the Non-Competitive Class, and some of those titles would be eliminated through consolidation. DCAS has not consulted with the District Council concerning that plan.

ARGUMENT

**A. The DCAS Plan Would Violate
New York State Constitution Article V, § 6
and CSL §§ 42, 44, which Require that
Appointments and Promotions in the Civil
Service Be Made according to Merit and
Fitness Ascertained, as Far as Practicable,
by Competitive Examination.**

Article V, § 6 of the New York State Constitution provides that appointments and promotions in the Civil Service "shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive...." (emphasis added). This constitutional mandate is reflected in CSL § 44, which defines "the competitive class" as "all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination" and in CSL § 42, which defines the "non-competitive class" as "all positions... for which it is found by the Commission having jurisdiction to be not practicable to ascertain the merit and fitness of applicants by competitive examination."

New York State courts view the competitive examination process "as the foundation of the merit system," which is designed to ensure that "competence, rather than cronyism should determine Civil Service appointments." See McGowan v. Burstein, 71 N.Y.2d 729, 530 N.Y.S.2d 64, 65 (1988); Goodfellow v. Bahou, 92 A.D.2d 1085, 461 N.Y.S.2d 570, 571 (3d Dept. 1983). As the Court of Appeals held in the case that prompted the Legislature to enact the law at issue here, CSL § 65(5): "The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee." This constitutional mandate "may not be blinked or avoided." City of Long Beach v. Civil Service Employees Ass'n, Inc., 8 N.Y.3d 465, 470, 835 N.Y.S.2d 538, 540, 867 N.E.2d 389, 391 (2007)(citations omitted).

Consequently, the requirement that appointments to Civil Service positions be determined by competitive examination is the overriding rule, and exceptions are rare. See Condell v. Jorling, 151 A.D.2d 8, 546 N.Y.S.2d 727, 731 (3d Dept. 1989); Murphy v. Rosenblatt, 140

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Misc.2d 450, 531 N.Y.S.2d 432, 436 S.Ct. N.Y. Co. 1988); Andersen v. Rice, 277 N.Y. 271, 274, 277, 14 N.E.2d 65, 66 (1938). Exceptions to the competitive testing requirement are limited to cases where the position involves: (1) a confidential relationship between the employee and the appointing officer; (2) the exercise of high-level policy-making discretion or authority; or (3) personal qualities or expertise which cannot be measured by competitive examination. See Burke v. Axelrod, 90 A.D.2d 577, 456 N.Y.S.2d 135 (3d Dept. 1982); Murphy, 531 N.Y.S.2d at 436

Furthermore, reclassification of a Civil Service title from the Competitive to the Non-Competitive Class is only appropriate where the reclassification is designed to conform the Civil Service appointment process to a pre-existing reality (e.g., to eliminate an examination requirement where the nature of the title has changed, making it impracticable to test the skills of that title). See Joyce v. Ortiz, 108 A.D.2d 158, 487 N.Y.S.2d 746, 751 (1st Dept. 1985).

Under these well-established principles, the DCAS Plan to reclassify Carpenter and related titles from the Competitive to the Non-Competitive Class, and to eliminate certain titles by consolidation, violates the governing law. This is so for several reasons:

1. The affected titles, including Carpenter, Supervisor Carpenter, Dockbuilder, Supervisor Dockbuilder, Rigger and Ship Carpenter, all involve skilled trades which, by their nature, can be competitively tested. Such tests can be used to determine an applicant's merit and fitness for the trade by, among other things, examining the applicant's knowledge of tools, materials, work practices and building codes. Such tests have been used for six decades to determine merit and fitness for these positions at New York City mayoral and non-mayoral agencies, and have been routinely used in apprenticeship training programs to determine competency for such positions in the private sector.

2. The affected titles do not involve confidential relationships, high-level policy-making discretion or authority, or personal qualities or expertise which cannot be measured by competitive examination.

3. No change has occurred in the nature of the affected titles or in the work expected of applicants for those titles that would require or justify discontinuance of competitive examinations.

4. DCAS has not and cannot identify any burden that would be imposed by continuing to design and administer examinations for Carpenter and the other affected titles.

5. Unlike Carpenters in the New York State Civil Service, Carpenters and related titles in the New York City Civil Service work in a single geographic area, for which

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examinations can be easily administered

6. The proposed elimination of certain titles by consolidation with related titles (e.g., replacing Supervisor Carpenter in the Competitive Class with "Carpenter Level 2" in the Non-Competitive Class) would unlawfully permit employees to obtain supervisory status without demonstrating their merit and fitness for the higher-level position through examination.

Thus, no factors are present which would, under the governing law, permit reclassification of the affected titles from the Competitive to the Non-Competitive Class, or elimination of positions through consolidation. Absent such factors, the DCAS Plan amounts to nothing more than an attempt to evade the broad constitutional and statutory mandates requiring that merit and fitness for Civil Service positions be determined by competitive examination "as far as practicable."

B. The DCAS Plan Would Violate CSL § 65, which Prohibits Long-Term Employment of Provisionals, by Converting Provisional Employees to Permanent Status without Requiring Them To Compete in Examinations.

The DCAS Plan represents a blatant and unlawful attempt to avoid the requirements of CSL § 65, which prohibits long-term employment of provisionals and requires their replacement by Civil Service eligibles.

CSL § 65 permits provisional appointments only for a limited period of time and only as a "stop gap" measure. See City of Long Beach, 8 N.Y.3d at 470-71; Joyce, 487 N.Y.S.2d at 748, 750-51, quoting Matter of Hannon v. Bartlett, 63 A.D.2d 810, 405 N.Y.S.2d 513, 515. After a position has been filled provisionally for one month, a Civil Service examination must be ordered for that position; no provisional appointment may continue for more than nine months; and successive provisional appointments may not be made to the same position. See CSL § 65(2), (4).

If DCAS is concerned about the existence of provisionals in New York City's Civil Service carpentry workforce, it should comply with CSL § 65 (a) by having Civil Service examinations administered where necessary and (b) by replacing provisionals with Civil Service eligibles who have demonstrated their merit and fitness through examinations and are awaiting appointment to vacant or provisionally-filled positions. Indeed, for those titles (like Carpenter and Supervisor Carpenter) where eligible lists exist to fill vacant and provisionally-filled positions, the DCAS Plan would abrogate the rights of those candidates who are awaiting appointment from eligible lists, and invite individual lawsuits or class actions on their behalf.

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In short, reclassification of positions in the Competitive Class is not a lawful means of addressing DCAS's failure to timely administer examinations and certify appointments from eligible lists for positions occupied by long-term provisionals. As the Court held in Joyce v. Ortiz, 487 N.Y.S. 2d at 750-51, quoting Matter of Board of Education v. Nyquist, 31 N.Y. 2d 468, 475, 341 N.Y.S.2d 441, 447 (1973):

If there is problem with the competitive process in selecting the most able people for a post, the solution lies, not in the unconstitutional attempt of the Commissioner to bypass the requirements of constitutionally mandated examinations, but in examination procedures which will provide a true test of a candidate's ability and probable performance in the position for which he is being examined.

C. The DCAS Plan Would Make a Mockery of the Stated Legislative Purpose of Recently Enacted CSL § 65(5).

CSL § 65(5) was enacted to respond to the excessive number of long-term provisionals employed by New York City. According to the statement of legislative findings, that law's goal was to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'" To accomplish that goal, the Legislature required DCAS to submit to the Commission a plan to lower the total of provisional employees to five percent of all Competitive Class positions. The Legislature advised DCAS that its plan may include, among other things, an increased number of scheduled examinations and additional eligible lists, CSL § 65(5)(b).

The DCAS plan makes a mockery of that legislative goal by eliminating competitive examinations entirely for more than 21,000 employees in 294 titles – fully 15 percent of all Competitive Class employees in mayoral and non-mayoral agencies – instead of using competitive examinations to remedy the City's past failure to administer its Civil Service system as required by law.

The DCAS plan only nominally increases the total of number of examinations that DCAS administers each year. It takes no account of existing eligible lists that can be used to replace provisionals in titles such as Carpenter and Supervisor Carpenter. And it entirely ignores the practicability standard that the law mandates for determining when a competitive examination must be given for a title. As such, the DCAS plan violates not only the constitutional and statutory provisions governing examination and classification, but also the very law that it was intended to implement.

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D. The DCAS Plan Is Entirely Unnecessary for the Civil Service Titles Represented by the District Council.

As explained above, DCAS has established current Civil Service eligible lists for the Carpenter and Supervisor Carpenter titles and can use those lists to replace provisionals in those titles with permanents. In addition, DCAS has scheduled a Dockbuilder examination and can set a schedule for a Rigger examination (which was inexplicably scheduled but cancelled in February 2008). As for Ship Carpenter, DCAS can schedule an examination for that title, as it has done in the past.

Thus, there is no reason why DCAS should be targeting its illegal and ill-considered plan at the titles represented by the District Council. Through vigilant enforcement of the laws concerning examination, certification and appointment, the District Council has assured that the skilled trades positions it represents in New York City are filled with eligibles who have demonstrated their merit and fitness through testing. Hence, there is no policy or purpose to be served by removing these titles from the Competitive Class.

E. Any Attempt To Implement the Proposed Reclassifications without Bargaining with Affected Unions Concerning the Impact of the Reclassifications upon their Bargaining Units Would Be Unlawful

It is well established that, under CSL § 209-a(1), a public employer may not unilaterally implement changes in working conditions which adversely impact upon a Union's bargaining unit members. In the instant case, the DCAS Plan would have enormous and ongoing impacts upon the District Council's bargaining unit members, both those who are currently employed by New York City and those who would become employed by New York City after the proposed plan took effect. Among those impacts are the following:

1. The DCAS Plan would create divided bargaining units, with employees selected through competitive examinations working alongside employees selected by other means. Conflicts surely would arise concerning those employees' relative rights at times of job assignment, promotion, transfer and layoff.
2. The DCAS Plan would permit employees selected without competitive testing to supervise employees who were selected by other means.

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3. The DCAS Plan would deny employees selected through competitive examinations the job security and due process rights that they have long enjoyed under CSL § 75, and would deny such basic protections to new employees selected by other means.

The practical adverse impacts upon bargaining unit employees posed by the DCAS Plan clearly require bargaining with the District Council pursuant to CSL § 209-a(1). If the plan were to move forward before such bargaining is completed, such action would be unlawful and could be challenged both at the Public Employee Relations Board and in a judicial injunction proceeding.

F. The DCAS Plan Will Harm the Public.

Carpentry, dockbuilding and rigging are all safety-sensitive trades that can pose serious and potentially deadly safety hazards if they are not performed properly. Those hazards can arise during the course of and after the completion of construction. The DCAS Plan nonetheless would allow these trades to be performed by personnel who have not demonstrated their merit and fitness through examination, as their predecessors have been required to do for decades.

Permitting these titles to be filled without competitive examination also invites a return to the cronyism, patronage and corruption that brought about the passage, more than a century ago, of the State's constitutional and statutory merit and fitness requirements.

CONCLUSION

Civil Service Carpenters and employees in related trades in New York City are and have always been selected through competitive examination. This legally required practice has assured public employers a highly competent, skilled and stable workforce, and has prevented corrupt hiring practices that predated the Civil Service system.

The DCAS Plan to remove these titles from the Competitive Class is illegal, unnecessary and destructive of the Civil Service system. We therefore urge you to reject this ill-considered

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proposal and to require New York City to obey the laws that require competitive examinations for these titles.

Respectfully submitted,

BROACH & STULBERG, LLP

By:

Robert B. Stulberg

RBS:ps

cc: Mr. William Lacey

**OUTLINE OF TESTIMONY BY
WILLIAM LACEY, DIRECTOR OF CIVIL SERVICE AFFAIRS,
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS,
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
TO THE NEW YORK STATE CIVIL SERVICE COMMISSION**

JUNE 10, 2008

I. Introduction

A. My name is William Lacey, Director of Civil Service Affairs for the District Council of New York City and Vicinity, United Brotherhood of Carpenters and Joiners of America, and Chair of the New York City Civil Service Coalition of Building Trades and Municipal Unions.

B. The District Council represents approximately 25,000 Carpenters and employees in related trades in the New York City metropolitan area, including approximately 850 Civil Service employees, including Carpenters, Supervisor Carpenters, Dockbuilders, Riggers and related titles.

C. All of the Civil Service titles represented by the District Council are, and always have been, classified in the Competitive Class. For more than sixty years, employees in those titles have been selected on the basis of merit and fitness determined by examinations.

II. Summary of Position

For five reasons, the District Council strenuously opposes the proposal by the New York City Department of Citywide Administrative Services ("DCAS") to reclassify the Civil Service skilled trades titles it represents, from the Competitive to the Non-Competitive Class, and to eliminate certain of those titles through consolidation ("the DCAS Plan").

A. First, the DCAS Plan would be illegal under the New York State Constitution and the New York State Civil Service Law ("CSL") (see Section III below).

B. Second, the DCAS Plan would make a mockery of the stated legislative purpose of recently enacted CSL § 65(5), namely to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive.'" (See Section IV below).

C. Third, the DCAS Plan is entirely unnecessary, given the existence of Civil Service eligible lists for the Carpenter and Supervisor Carpenter titles and upcoming examinations for the Dockbuilder and Rigger titles (see Section V below).

D. Fourth, the DCAS Plan would harm all of the Union's bargaining unit members, whether selected by examination or otherwise (see discussion in Section VI below).

E. Fifth, the DCAS Plan would harm the public by permitting safety-sensitive work to be performed by individuals who have not demonstrated their merit and fitness for the trade, and by allowing unqualified individuals to attain appointment to such positions by patronage, cronyism or corruption. (See Section VII below).

III. The DCAS Plan Would Be Illegal

A. Article V, Section 6 of the New York State Constitution and CSL §§ 42, 44 require appointments and promotions in the civil service to be made according to merit and fitness determined, "as far as practicable," by competitive examination. This requirement is the cornerstone of the Civil Service Law. It is designed to assure that competence, not cronyism, determines civil service appointments.

1. The affected titles all involve skilled trades which can be competitively tested. Tests can determine an applicant's merit and fitness for the trade by, among other things, examining the applicant's knowledge of tools, materials, work practices and building codes. Civil Service tests always have been used to determine merit and fitness for these skilled trades positions at New York City mayoral and non-mayoral agencies. Tests also have been used routinely to determine qualification for these trades in private sector apprenticeship training programs.

2. Nothing has made it "impracticable" to hold tests to determine merit and fitness of Carpenters and the other affected titles.

a. DCAS and its predecessor, the New York City Department of Personnel, have routinely designed and administered examinations for Carpenter and the other affected titles. Such examinations have been given approximately every seven years for the past six decades (due primarily to the District Council's vigilant efforts to enhance the CSL).

b. The nature of the work of Carpenters and the other affected titles has not changed.

c. DCAS has not and cannot identify any burden that would be imposed by continuing to design and administer examinations for Carpenter and the other affected titles.

d. Unlike Carpenters in the New York State Civil Service, Carpenters and related titles in the New York City Civil Service work in a single geographic area, for which examinations can be easily administered.

B. Using reclassification to convert provisionals to permanent status would violate the CSL's prohibition against long-term employment of provisionals.

1. The DCAS Plan will effectively allow New York City to convert provisionals to permanent status, without requiring them to take and pass competitive examinations.

2. This goal represents a flagrant violation of CSL §65, which requires that: (a) after a position has been filled provisionally for one month, a civil service exam must be ordered for the position; and (b) no provisional appointment may continue for more than nine months.

3. If DCAS is concerned about the existence of provisionals in any affected title, it should (a) promptly replace those provisionals with eligibles from existing Civil Service lists, and (b) give examinations for those titles where provisionals exist but no eligible list exists. It is illegal to use reclassification as a substitute for timely civil service examinations and certification of eligible lists.

IV. The DCAS Plan Would Make a Mockery of the Stated Legislative Purpose of Recently Enacted CSL § 65(5)

A. CSL §65(5) was enacted to respond to the excessive number of long-term provisionals employed by New York City. According to the statement of legislative findings, that law's goal was to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'"

B. The DCAS plan makes a mockery of that legislative goal by eliminating competitive examinations for tens of thousands of City employees, including those represented by the District Council, instead of using competitive examinations to remedy the City's past failure to administer its Civil Service system as required by law.

V. The DCAS Plan Is Entirely Unnecessary for the Carpenter and Related Titles

A. DCAS has established current Civil Service eligible lists for the Carpenter and Supervisor Carpenter titles and can use those lists to replace provisionals in those titles with permanents.

B. DCAS has scheduled a Dockbuilder examination and can set a schedule for a Rigger examination (which was inexplicably scheduled but cancelled in February 2008).

VI. The DCAS Plan Will Harm the District Council's Bargaining Unit Members

A. The reclassification and consolidation scheme will have adverse effects on both

incumbents and newly-hired workers in the affected titles.

1. The DCAS Plan would create divided bargaining units, with employees selected through competitive examinations working alongside employees selected by other means. Conflicts surely would arise concerning those employees' relative rights at times of job assignment, promotion, transfer and layoff.

2. The DCAS Plan would permit employees selected without competitive testing to supervise employees who were selected by other means.

4. The DCAS Plan would deny employees selected through competitive examinations the job security and due process rights that they have long enjoyed under CSL § 75 and would deny such basic protections to new employees selected by other means.

B. All of these adverse impacts require bargaining with the District Council. If the New York City fails to bargain, it will be inviting years of improper practice litigation.

VII. The DCAS Plan Will Harm the Public

A. Carpentry, dockbuilding and rigging are all safety-sensitive trades that can pose serious and potentially deadly safety hazards if they are not performed properly. Those hazards can arise during the course of and after the completion of construction. The DCAS Plan nonetheless would allow these trades to be performed by personnel who have not demonstrated their merit and fitness through examination, as their predecessors have been required to do for decades.

B. Permitting these titles to be filled without competitive examination also invites a return to the cronyism, patronage and corruption that brought about the passage, more than a century ago, of the State's constitutional and statutory merit and fitness requirements.

VI. Conclusion

Carpenters and employees in related trades are and have always been selected through competitive examination. This legally required practice has assured public employers a highly competent, skilled and stable workforce, and has prevented corrupt hiring practices that predated the Civil Service system.

The DCAS Plan to remove those titles from the Competitive Class is illegal, unnecessary and destructive of the Civil Service system. We urge you to reject this ill-considered proposal and to require New York City to obey the laws that require competitive examinations for these titles.

American Federation of State, County & Municipal Employees, AFL-CIO

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District Council

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LILLIAN ROBERTS

Executive Director

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June 6, 2008

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Oliver Gray

Retirees Association

Stuart Leibowitz

Commissioner Martha K. Hirst
Department of Citywide Administrative Services
17th Floor, Municipal Building
1 Centre Street
New York, N.Y. 10007

Dear Commissioner Hirst:

As a follow-up to our meeting of May 13th, where you explained the DCAS Plan to Reduce Provisionals to the affected unions, and listened to our concerns, we want to state in very bold and specific terms our opposition to the global approach you have taken in reducing provisionals through the various reclassification measures.

The amendment to Civil Service Law Section 65, enacted in January, states in part:

“Such plan may include but shall not be limited to a schedule for administration of exams and establishment of eligible lists, a determination of additional appropriate existing or planned eligible lists that may be used, consolidation of titles through appropriate reclassifications and any other lawful and appropriate means of implementation.”

Following is our analysis. Although we mention some titles specifically to illustrate our point, in fact, the examples we give can be used for almost every title.

Examination Administration

The Union believes that administering more exams and allowing an expanded use of eligible lists to make appointments for more than one title should be the primary way to reduce provisionals. To that end, the unions will support increased funding to DCAS for the purposes of exam administration.

DEPARTMENT OF RESEARCH AND NEGOTIATIONS

Dennis Sullivan, Director

2008-06-06 x23

The Plan anticipates that exam administration will only reduce provisionals by fifty percent. For the reasons set forth in detail below, the Union objects to the manner in which the DCAS plan seeks to use mechanisms such as reclassification of titles as a means by which to reduce the number of provisional employees. The Court of Appeals decision in *City of Long Beach v. CSEA* was unequivocal. The Court wrote:

Our State Constitution mandates that civil service appointments and promotions “shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive” (NY Const, Art.V. Section 6). “The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee” (*Montero v. Lum*, 68 NY2d 253, 258 [1986]). This constitutional mandate “may not be blinked or avoided” (*Board of Ed. Of City of New York v. Nyquist* 31 NY2d 468 [1973]).

Thus, while the Constitution’s merit and fitness requirement is hardly a new one, the Court of Appeals in *Long Beach* made clear that efforts to subvert or undermine the requirement will be struck down. Ironically, the DCAS plan, which proposes to reduce the remaining 50% of provisional employees through a series of reclassification measures, is plainly as contrary to the Constitution’s merit and fitness provisions as the use of provisionals.

As the Constitution makes plain, the reclassification of positions from the competitive to the non-competitive class can only occur when it is impracticable to determine merit and fitness by competitive examination. The notion that now, after decades of giving competitive examinations for titles such as Police Communications Technician, Sewage Treatment Worker, Child Protective Specialist, Graphic Artist, Associate Park Service Worker, Fraud Investigator, that it is no longer practicable to give such competitive exam is ridiculous on its face. Simply stated, nothing in the law has changed to make the giving of these examinations not practicable now.

Reclassifying Current Competitive Titles to the Non-Competitive Class where the State has Non-Competitive Class Titles Performing Comparable Work

The Plan contemplates the reclassification of current competitive titles to the non-competitive class where the State has non-competitive class titles performing comparable work. The Plan claims that DCAS has conducted a detailed review of these State non-competitive class titles and that those titles are comparable to the City’s titles in scope.

DC 37 has performed its own review of the New York State Plan of Titles, and we discovered that in fact most of the City titles that you claim to be non-competitive in the State have a more *appropriate* competitive counterpart. In order to achieve the results DCAS desires, it has parsed the State Plan of Titles, with no objective analysis of the number of employees, the duties they perform or the fact that a competitive class title performs the work which most closely resembles that performed by City employees. Therefore, to conclude that the City titles should be non-competitive is profoundly misleading.

Some examples of what we found:

- The Plan calls for the conversion of the City's competitive class title of Child Protective Specialist to the non-competitive State title of Child Abuse Specialist. The fact is that although the State may include it as a non-competitive title in their Plan of Titles, they also include a title called Child Protective Specialist and it is in the competitive class. Moreover, their non-competitive title of Child Abuse Specialist is limited to 15 positions in the entire state. Clearly, a fair comparison cannot be made to our Child Protective Specialists of which there are hundreds.
- The Plan matches the City's competitive Juvenile Counselor to a non-competitive State title called Youth Facility Assistant, but the more appropriate comparison should be the State's Youth Counselor, which is of course in the competitive class.
- The Plan proposes to reclassify Police Communications Technicians to the non-competitive class title of State Police Communications Technician is similarly misleading because the New York State Plan of Titles has a comparable competitive title called State Police Communications Specialists which should be the appropriate comparison. In fact, the Communications Technician that DCAS refers to is only authorized for 3 positions in State government. That very fact would indicate that the comparison is not a valid comparison.
- The Plan proposes that the City's Highway Repairer and Supervising Highway Repairer be reclassified to the non-competitive Highway Equipment Operator and Highway Maintenance Worker. In fact, the New York State Plan of Titles uses the competitive title of Highway Maintenance Supervisor. As for the Highway Maintenance Worker, although it is a non-competitive title, it earns approximately \$28,000 to start, and does not equate to the job duties and responsibilities that our Highway Repairers do.
- The Plan argues that since the State Civil Service title of Human Rights Specialist is non-competitive, the City title should be also. However, the New York State Plan of Titles lists their title of Human Rights Specialist in the competitive class title.
- The Plan matches the City's competitive class title of Mental Health Worker to the State's non-competitive title of Assisted Outpatient Treatment Compliance Specialist. However, there is also a competitive class title in the State called Mental Health Program Specialist which resembles in scope our competitive title more closely.
- The Plan proposes reclassifying Dental Hygienists to the State's non-competitive title of Dental Technician. There is no justifiable reason for this. There is already a competitive class title of Dental Hygienist in the State.

- The proposal to reclassify competitive class Sewage Treatment Worker to the State non-competitive class title of Wastewater Treatment Plant Operator is similarly suspect, since the State uses competitive class titles like Water Quality Plant Specialist, Waterways Maintainer and Plant Supervisors.
- The Plan proposes to reclassify Associate Park Service Workers to the non-competitive State title of Parks Operations Supervisor, but the State has a competitive class title called Park Operations Supervisor which closely resembles our Associate Park Service Worker.
- The Plan's proposal to reclassify the competitive class title of Fraud Investigator to the non-competitive Revenue Crimes Specialist is similarly misleading, since the State has a competitive class title of Consumer Fraud Representative.
- The proposal to reclassify the City's Graphic Artist to the State's non-competitive class title of Artist Designer is similarly misleading, since the State already uses the competitive title of Graphic Technician.
- The Plan proposes to reclassify Traffic Device Maintainers to the State's non-competitive title of Traffic Signal Mechanic. However, the State already has a comparable competitive class title called Traffic Signal Equipment Specialist.

As noted earlier, it seems that DCAS wanted to come up with a justification to make competitive class titles, non-competitive, and so ferreted through the New York State Plan of Titles to find non-competitive titles that might resemble the City's titles, despite the existence of many more equivalent or even identical competitive titles in the New York State Plan of Titles.

In conclusion, your rationale that the State uses the non-competitive status for these titles is disingenuous and intellectually dishonest. We strongly urge you to drop this part of the Plan. The unions will fight all baseless reclassification measures.

Reclassifying Competitive Class Titles with Historically Few Incumbents into the Non-Competitive Class

The Plan's next rationale that titles with 20 or fewer employees serving should be made non-competitive, since it is not economically feasible to give all those exams is wrongheaded. The Constitution and Civil Service Law do not create an exception of the merit and fitness requirement "due to economic feasibility". This proposal is also problematic because by converting Administrative titles to the non-competitive class, the promotional opportunities for employees in the lower competitive class title are extinguished. Administrative titles are at the top of the career ladder and those titles must continue to serve as promotion opportunities for civil servants in their occupational group. We will fight any attempt to reclassify Administrative positions out of the competitive class into the non-competitive class.

Classifying New Titles Into the Exempt Class or Reclassifying Current Competitive Titles to the Exempt Class where New York State has Exempt Class Titles Performing Comparable Work

Similarly, the establishment of new exempt titles in place of current competitive titles for high level work or the reclassification of competitive titles to non-competitive or exempt titles for high level work, (e.g. Administrative positions) will result in civil servants losing their ability to move up the career ladder, a right inherent in the civil service law, and we will oppose those plans. Making these titles non-competitive or exempt pulls the rug out from all those competitive civil servants who took and passed civil service tests with the knowledge that they have a promotion track to reach those administrative positions. And on the chance that a permanent competitive class employee accepts a non-competitive position, they will lose the rights they had as competitive class employees. For these reasons, we ask that you advise the State Civil Service Commission that you will modify the Plan to take into account the Unions' concerns.

Reclassifying Current Competitive Titles to the Non-Competitive Class where the State or an Industry-Accepted Organization Administers Examinations for Required Licenses or Certificates

The Plan's next argument is that titles that already require licenses should be taken out of the competitive class. But while licensing may test for areas of technical expertise, it is not intended as a substitute for the test of fitness for public service which is essential for the merit system. The State has already disapproved an earlier proposal to make certain professional engineering titles that require a State license non-competitive. Clearly, you knew that because your Plan omits engineering titles.

Resolving Classification Status of Temporary Titles

The Plan also seeks to make non-competitive those temporary titles where provisionals serve. This is circular logic. The reason that the titles have provisionals serving in them is precisely because DCAS never applied to the State Civil Service Commission to argue the case that they should be non-competitive. DCAS is completely to blame for close to 3,000 provisionals serving in these titles, because although DCAS proposed they be non-competitive, it never did the work to achieve that end. Could it be that DCAS did not have legitimate arguments to make to the State Civil Service Commission that will support its claim that these titles should be non-competitive? If, however, after appropriate analysis and a determination that it is not practicable to give an examination for the title, it is determined that the title should be non-competitive, , the union would want agreement from the City to jointly support legislation that would give non-competitive class employees the same rights that competitive class employees receive.

Finally, the reclassification of titles from the competitive to non-competitive class has a profound effect on the due process rights enjoyed by employees. Under the Civil Service Law, a non-competitive employee receives due process rights under CSL Section 75 after five years on the job, compared to one year for an employee holding a title in the competitive

class. Thus, the Plan not only eviscerates an individual's ability to secure employment on the basis of his or her merit and fitness, it undermines his or her ability to retain her employment after they have secured the job.

For these reasons, we ask that DCAS revise the Plan and advise the State Civil Service Commission that it will modify the Plan to take into account the Unions' concerns.

Consolidation of Competitive Titles

Another proposal in the Plan to reduce provisionals is to consolidate titles which would, by your own accounting, reduce the current number of provisionals by only 1.14% percent. Certainly this tiny percent does not warrant the immense labor relations problems which would be created by taking away promotion opportunities for civil servants. The Union's experience in this regard is that consolidating titles results in advancement based not on an objective measure, but on the whim of a supervisor. Moreover, recent lawsuits by city employees over discrimination complaints in promotions that have been settled in their favor, should if nothing else, should encourage DCAS to use objective testing measures to determine promotions and advancements. These consolidation measures could only work if there are objective measures to determine eligibility for advancement which is jointly agreed to by the union and management. In addition, the Union would seek an agreement to reduce the current lock-in language in the contract to one year.

Consolidation of Titles Represented by Different Unions

Another aspect of the Plan calls for merging of titles that belong to different unions and different bargaining units into one title. For example, you propose to reclassify Construction Laborers, Crane Operators and Tractor Operators and their Supervisors into Construction Equipment Operators, Construction Equipment Operators-Light and Heavy. Besides the obvious difference in skill sets, they are all in different unions. Removing titles and members from one union's jurisdiction to another is problematic and each union will take appropriate action to prevent such reclassifications.

Transfer of Civil Service Administration for NYC Transit Authority and Triborough Bridge & Tunnel Authority

We are also opposed to your proposal to remove the Transit Authority and the TBTA from your aegis. There are thousands of provisionals in those two entities, and the DCAS proposal does nothing to help them attain permanent civil service status. Removing them from DCAS authority only insulates DCAS from having to account for them as provisionals, and in no way solves the issues raised by the Long Beach decision. The Union will not support legislation that leaves these Authorities to their own devices as it relates to civil service administration. The Transit Authority especially, has a dismal record when it comes to moving civil service lists. As far as we are concerned, allowing them to police themselves is akin to having the fox guard the hen house.

Moreover, there are a number of contractual issues involved including the current right of employees to transfer between entities without loss of seniority and leave balances. Employees now have the right to special transfer to and from these entities when faced with

layoffs. The union is concerned that all of these benefits would be lost if the TA and the TBTA were removed from the authority of DCAS. For these reasons the union would be opposed to this aspect of the Plan.

Union Recommendations

Instead of moving provisional employees and titles into the non-competitive class, we believe that a better alternative is to give current provisional employees who have worked for a certain period of time an exam in place, so that they can become permanent. Their experience as provisional employees should count as good time in scoring an exam. We think that such an exam in place should be done on a one-time basis, in order to reduce the provisional numbers immediately, without turning the entire civil service system on its head.

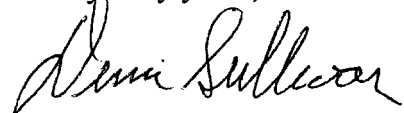
As you well know, the civil service law provides rights to permanent competitive civil servants that do not exist for any other classifications. We are not willing to accept the notion that our members can no longer receive those rights just because DCAS does not want to give the exams necessary to make people permanent.

To conclude, the union supports that portion of the Plan that calls for increases in the number of exams, and your methods to achieve that increase. We think that going forward this is the best way to reduce provisionals. To deal with the current situation of close to 38,000 provisionals, we propose that, on a one-time basis, give those employees a special "experience" exam where their provisional experience will allow them to become permanent competitive civil servants. Once this number is reduced to a manageable number, we recommend a thorough review of those exams where historically, the resulting eligible lists result in too few candidates. In those situations, education and experience exams should become the standard.

I have included correspondence that we received from a number of locals and unions. They are unanimous in their opposition to the Plan.

We have been asked to testify at the State Civil Service Commission regarding the Plan, and intend to explain why we are opposed to major aspects of it. We have also been asked to testify at the City Council regarding the Plan and intend to do so as well. In any event, we are available to discuss any changes you wish to make in the Plan that can address our concerns.

Very truly yours,



Dennis Sullivan

Enclosure

Cc: Lillian Roberts
Union Presidents

Nancy G. Groenwegen
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June 9, 2008

VIA FACSIMILE (518-474-0787) AND OVERNIGHT MAIL

Honorable Nicholas J. Vagianelis
Director of Classification and Compensation
New York State Civil Service Commission
Alfred E. Smith Building
Albany, New York 12239

Re: District Council 9, New York IUPAT, Painters and Allied Trades -and-
New York City Department of Citywide Administrative Services
(CSL §65(5) Reclassification/ Consolidation Proposal)

Dear Mr. Vagianelis:

This firm represents District Council 9, New York IUPAT, Painters and Allied Trades ("the District Council"). On behalf of the District Council, we hereby submit this statement in opposition to the plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law ("CSL") § 65(5) to (a) reclassify from the Competitive to the Non-Competitive Class all Civil Service titles represented by the District Council, and (b) eliminate certain of those titles through consolidation ("the DCAS Plan").

As explained more fully below, it is the District Council's position that the DCAS Plan should be soundly rejected for several reasons, including the following:

A. The DCAS plan would violate New York State Constitution, Article V, § 6 and New York State Civil Service Law ("CSL") §§ 42 and 44, which require that appointments and promotions in the Civil Service be made according to merit and fitness ascertained, as far as practicable, by competitive examination.

B. The DCAS Plan would violate CSL § 65's strict prohibition against long-term

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employment of provisionals by effectively allowing provisional employees to be converted to permanent status without competing in examinations.

C. The DCAS Plan would make a mockery of the stated legislative purpose of CSL § 65(5), namely to further “the constitutional mandate of making appointments and promotions ‘according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive.’”

D. The DCAS Plan is entirely unnecessary, given existence of Civil Service eligible lists for the Painter and Glazier titles, and the Civil Service eligible list that is expected shortly for the Supervisor Glazier title.

E. The DCAS Plan would harm all of the District Council’s bargaining unit members, whether selected by examination or otherwise. Further, any attempt to implement the DCAS Plan without bargaining with the District Council over these adverse impacts would violate CSL § 209-a(1), which prohibits unilateral changes in working conditions of represented public employees.

F. The DCAS Plan would harm the public by permitting safety-sensitive work to be performed by individuals who have not demonstrated their merit and fitness for the trade, and by allowing unqualified individuals to attain appointment to such positions by patronage, cronyism and corruption.

BACKGROUND

The District Council represents approximately 8,000 Painters and employees in related trades in the New York City metropolitan area, including approximately 580 Civil Service employees, including Painters, Supervisor Painters, Bridge Painters, Supervisor Bridge Painters, Glaziers and Supervisor Glaziers.

All of the Civil Service titles represented by the District Council, are, and always have been, classified in the Competitive Class. For more than sixty years, employees in those titles have been selected on the basis of merit and fitness determined by examinations.

Currently, DCAS has established a Civil Service eligible list for the Painter and Glazier titles that may be used to replace approximately twelve provisionals in those titles. DCAS is expected to establish shortly a Civil Service eligible list for the Supervisor Glazier title to replace two provisionals in that title. DCAS has commenced but not yet concluded a Bridge Painter examination in order to replace nine provisionals in that title.

On March 28, 2008, DCAS submitted a plan, ostensibly prepared pursuant to CSL § 65(5), under which all of the Civil Service titles represented by the District Council would be reclassified to the Non-Competitive Class, and some of those titles would be eliminated through consolidation. DCAS has not consulted with the District Council concerning that plan.

ARGUMENT

**A. The DCAS Plan Would Violate
New York State Constitution Article V, § 6
and CSL §§ 42, 44, which Require that
Appointments and Promotions in the Civil
Service Be Made according to merit and
Fitness Ascertained, as Far as Practicable,
by Competitive Examination.**

Article V, § 6 of the New York State Constitution provides that appointments and promotions in the Civil Service "shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive...." (emphasis added). This constitutional mandate is reflected in CSL § 44, which defines "the competitive class" as "all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination" and in CSL § 42, which defines the "non-competitive class" as "all positions... for which it is found by the Commission having jurisdiction to be not practicable to ascertain the merit and fitness of applicants by competitive examination."

New York State courts view the competitive examination process "as the foundation of the merit system," which is designed to ensure that "competence, rather than cronyism should determine Civil Service appointments." See McGowan v. Burstein, 71 N.Y.2d 729, 530 N.Y.S.2d 64, 65 (1988); Goodfellow v. Bahou, 92 A.D.2d 1085, 461 N.Y.S.2d 570, 571 (3d Dept. 1983). As the Court of Appeals held in the case that prompted the Legislature to enact the law at issue here, CSL §65(5): "'The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee.' This constitutional mandate 'may not be blinked or avoided.'" City of Long Beach v. Civil Service Employees Ass'n, Inc., 8 N.Y.3d 465, 470, 835 N.Y.S.2d 538, 540, 867 N.E.2d 389, 391 (2007)(citations omitted).

Consequently, the requirement that appointments to Civil Service positions be determined by competitive examination is the overriding rule, and exceptions are rare. See Condell v. Jorling, 151 A.D.2d 8, 546 N.Y.S.2d 727, 731 (3d Dept. 1989); Murphy v. Rosenblatt, 140 Misc.2d 450, 531 N.Y.S.2d 432, 436 (S.Ct. N.Y. Co. 1988); Andersen v. Rice, 277 N.Y. 271, 274, 277, 14 N.E.2d 65, 66 (1938). Exceptions to the competitive testing requirement are limited

to cases where the position involves: (1) a confidential relationship between the employee and the appointing officer; (2) the exercise of high-level policy-making discretion or authority; or (3) personal qualities or expertise which cannot be measured by competitive examination. See Burke v. Axelrod, 90 A.D.2d 577, 456 N.Y.S.2d 135 (3d Dept. 1982); Murphy, 531 N.Y.S.2d at 436.

Furthermore, reclassification of a Civil Service title from the Competitive to the Non-Competitive Class is only appropriate where the reclassification is designed to conform the Civil Service appointment process to a pre-existing reality (e.g., to eliminate an examination requirement where the nature of the title has changed, making it impracticable to test the skills of that title). See Joyce v. Ortiz, 108 A.D.2d 158, 487 N.Y.S.2d 746, 751 (1st Dept. 1985).

Under these well-established principles, the DCAS Plan to reclassify Plumber and related titles from the Competitive to the Non-Competitive Class, and to eliminate certain titles by consolidation, violates the governing law. This is so for several reasons:

1. The affected titles, including Painter, Supervisor Painter, Bridge Painter, Supervisor Bridge Painter, Glazier and Supervisor Glazier, all involve skilled trades which, by their nature, can be competitively tested. Such tests can be used to determine an applicant's merit and fitness for the trade by, among other things, examining the applicant's knowledge of tools, materials, work practices and building codes. Such tests have been used for six decades to determine merit and fitness for these positions at New York City mayoral and non-mayoral agencies, and have been routinely used in apprenticeship training programs to determine competency for such positions in the private sector.
2. The affected titles do not involve confidential relationships, high-level policy-making discretion or authority, or personal qualities or expertise which cannot be measured by competitive examination.
3. No change has occurred in the nature of the affected titles or in the work expected of applicants for those titles that would require or justify discontinuance of competitive examinations.
4. DCAS has not and cannot identify any burden that would be imposed by continuing to design and administer examinations for Painter and related titles.
5. Unlike Painters and related titles in the New York State Civil Service, Painters and related titles in the New York City Civil Service work in a single geographic area, for which examinations can be easily administered.

6. The proposed elimination of certain titles by consolidation with related titles (e.g., replacing Supervisor Painter in the Competitive Class with "Painter Level 2" in the Non-Competitive Class) would unlawfully permit employees to obtain supervisory status without demonstrating their merit and fitness for the higher-level position through examination.

Thus, no factors are present which would, under the governing law, permit reclassification of the affected titles from the Competitive to the Non-Competitive Class, or elimination of positions through consolidation. Absent such factors, the DCAS Plan amounts to nothing more than an attempt to evade the broad constitutional and statutory mandates requiring that merit and fitness for Civil Service positions be determined by competitive examination "as far as practicable."

B. The DCAS Plan Would Violate CSL § 65, which Prohibits Long-Term Employment of Provisionals, by Converting Provisional Employees to Permanent Status without Requiring Them To Compete in Examinations.

The DCAS Plan represents a blatant and unlawful attempt to avoid the requirements of CSL § 65, which prohibits long-term employment of provisionals and requires their replacement by Civil Service eligibles.

CSL § 65 permits provisional appointments only for a limited period of time and only as a "stop gap" measure. See City of Long Beach, 8 N.Y.3d at 470-71; Joyce, 487 N.Y.S.2d at 748, 750-51, quoting Matter of Hannon v. Bartlett, 63 A.D.2d 810, 405 N.Y.S.2d 513, 515. After a position has been filled provisionally for one month, a Civil Service examination must be ordered for that position; no provisional appointment may continue for more than nine months; and successive provisional appointments may not be made to the same position. See CSL § 65(2), (4).

If DCAS is concerned about the existence of provisionals in New York City's Civil Service plumbing workforce, it should comply with CSL § 65 (a) by having Civil Service examinations administered where necessary and (b) by replacing provisionals with Civil Service eligibles who have demonstrated their merit and fitness through examinations and are awaiting appointment to vacant or provisionally-filled positions. Indeed, for those titles (like Plumber, Supervisor Plumber, Plumber's Helper and Thermostat Repairer), where eligible lists exist or are expected shortly, to fill vacant and provisionally-filled positions, the DCAS Plan would abrogate the rights of candidates who are awaiting appointment from eligible lists, and invite individual lawsuits or class actions on their behalf.

In short, reclassification of positions in the Competitive Class is not a lawful means of

addressing DCAS's failure to timely administer examinations and certify appointments from eligible lists for positions occupied by long-term provisionals. As the Court held in Joyce v. Ortiz, 487 N.Y.S. 2d at 750-51, quoting Matter of Board of Education v. Nyquist, 31 N.Y. 2d 468, 475, 341 N.Y.S.2d 441, 447 (1973):

If there is problem with the competitive process in selecting the most able people for a post, the solution lies, not in the unconstitutional attempt of the Commissioner to bypass the requirements of constitutionally mandated examinations, but in examination procedures which will provide a true test of a candidate's ability and probable performance in the position for which he is being examined.

C. The DCAS Plan Would Make a Mockery of the Stated Legislative Purpose of Recently Enacted CSL §65(5).

CSL §65(5) was enacted to respond to the excessive number of long-term provisionals employed by New York City. According to the statement of legislative findings, that law's goal was to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'" To accomplish that goal, the Legislature required DCAS to submit to the Commission a plan to lower the total of provisional employees to five percent of all Competitive Class positions. The Legislature advised DCAS that its plan may include, among other things, an increased number of scheduled examinations and additional eligible lists, CSL §65(5)(b).

The DCAS plan makes a mockery of that legislative goal by eliminating competitive examinations entirely for more than 22,000 employees in 294 titles – fully 15 percent of all Competitive Class employees in mayoral and non-mayoral agencies – instead of using competitive examinations to remedy the City's past failure to administer its Civil Service system as required by law.

The DCAS plan only nominally increases the total of number of examinations that DCAS administers each year. It takes no account of existing and expected eligible lists that can be used to replace provisionals in titles such as Painter and Glazier. And it entirely ignores the practicability standard that the law mandates for determining when a competitive examination must be given for a title. As such, the DCAS plan violates not only the constitutional and statutory provisions governing examination and classification, but also the very law that it was intended to implement.

**D. The DCAS Plan Is Entirely Unnecessary for the
Civil Service Titles Represented by District Council**

As explained above, DCAS has established Civil Service eligible lists for the Painter and Glazier titles and can use those lists to replace provisionals in those titles with permanents. In addition, DCAS is expected to issue shortly a Civil Service eligible list for Supervisor Glazier. DCAS also is in the process of administering an examination for the Bridge Painter title

Thus, there is no reason why DCAS should be targeting its illegal and ill-considered plan at the titles represented by the District Council. Through vigilant enforcement of the laws concerning examination, certification and appointment, District Council has assured that the skilled trades positions it represents in New York City are filled with eligibles who have demonstrated their merit and fitness through testing. Hence, there is no policy or purpose to be served by removing these titles from the Competitive Class.

**E. Any Attempt To Implement the Proposed
Reclassifications without Bargaining
with Affected Unions Concerning the
Impact of the Reclassifications upon
their Bargaining Units Would Be Unlawful**

It is well established that, under CSL § 209-a(1), a public employer may not unilaterally implement changes in working conditions which adversely impact upon a Union's bargaining unit members. In the instant case, the DCAS Plan would have enormous and ongoing impacts upon the District Council's bargaining unit members, both those who are currently employed by New York City and those who would become employed by New York City after the proposed plan took effect. Among those impacts are the following:

1. The DCAS Plan would create divided bargaining units, with employees selected through competitive examinations working alongside employees selected by other means. Conflicts surely would arise concerning those employees' relative rights at times of job assignment, promotion, transfer and layoff.

2. The DCAS Plan would permit employees selected without competitive testing to supervise employees who were selected by other means.

3. The DCAS Plan would deny employees selected through competitive examinations the job security and due process rights that they have long enjoyed under CSL § 75, and would deny such basic protections to new employees selected by other means.

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The practical adverse impacts upon bargaining unit employees posed by the DCAS Plan clearly require bargaining with the District Council pursuant to CSL § 209-a(1). If the plan were to move forward before such bargaining is completed, such action would be unlawful and could be challenged both at the Public Employee Relations Board and in a judicial injunction proceeding.

F. The DCAS Plan Will Harm the Public.

Painting, glazing and bridge painting are all safety-sensitive trades that can pose serious and potentially deadly safety and health hazards if they are not performed properly. Those hazards can arise during the course of and after the completion of construction. The DCAS Plan nonetheless would allow plumbing and related trades to be performed by personnel who have not demonstrated their merit and fitness through examination, as their predecessors have been required to do for decades.

Permitting these titles to be filled without competitive examination also invites a return to the cronyism, patronage and corruption that brought about the passage, more than a century ago, of the State's constitutional and statutory merit and fitness requirements.

CONCLUSION

Painters and employees in related trades in New York City are and have always been selected through competitive examination. This legally required practice has assured public employers a highly competent, skilled and stable workforce, and has prevented corrupt hiring practices that predated the Civil Service system.

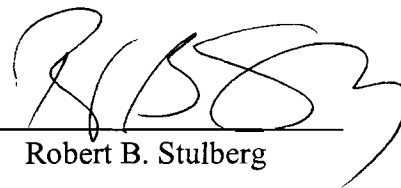
The DCAS Plan to remove those titles from the Competitive Class is illegal, unnecessary and destructive of the Civil Service system. We therefore urge you to reject this ill-considered

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proposal and to require New York City to obey the laws that require competitive examinations for these titles.

Respectfully submitted,

BROACH & STULBERG, LLP

By: 
Robert B. Stulberg

RBS:ps
cc (via e-mail): Mr. Stephen Melish, Jr.

June 5, 2008

Nancy G. Groenwegen, Commissioner
NYS Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

JUN 2008
CSC
Commissioner's Office

Dear Nancy G. Groenwegen, Commissioner,

BROADBANDING AND CONSOLIDATION OF NYC CIVIL SERVICE TITLES

As a Civil Service Carpenter, Carpenter Supervisor, and member of the Carpenters' union for 20 years, I view the broadbanding and consolidation proposals of New York City DCAS with alarm.

.Perhaps some titles need broadbanding and consolidation (if there are only a few jobs for puppeteers, they can become parks recreation workers).

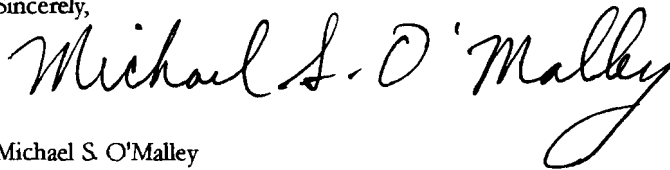
And titles that require a professional degree and/or license (architects, lawyers, engineers) probably do not need an additional Civil Service test.

But union journeymen and apprentices in the trades have more training and experience than non-union ones, and are probably in the majority on Civil Service lists established from Civil Service tests.

At a time when construction accidents, both on union and non-union jobs are in the news, the last thing needed for public safety is the hiring of unqualified, untested tradesmen. Without a list established by Civil Service Testing, appointments may be made by cronyism, nepotism, and favoritism. Promotions to Trades Supervisory positions should also be by test-established lists. I know that Civil Service tests have forced me to study my trade harder in order to excel. In exchange, I have been appointed, served probation, and been promoted from title to title. If there are no Civil Service tests all appointments will in fact be provisional, limiting the Civil Service rights of trades workers.

Perhaps DCAS is incapable of administering all the tests they are presently responsible for. In fact, the most recent tests for Carpenter and Supervisor of Carpenters (which were written without any trades input) were so badly designed as to have an initial pass rate so low that the grades had to be "curved." This led to long delays in establishing the lists. But the answer is not to broadband and consolidate in building trade titles where mistakes can jeopardize public safety, as we have recently seen.

Sincerely,



Michael S. O'Malley
Member, Local 608
United Brotherhood of Carpenters and Joiners of America

June 3, 2008

Ms. Nancy G. Groenwegen, Commissioner
NYS Department of Civil Service
Alfred E Smith State Office Building
Albany, NY 12239

Dear Ms. Groenwegen:

I am writing to you in reference to the new proposal of not hiring skilled tradesworkers through testing. There are various reasons, that I would like to mention.

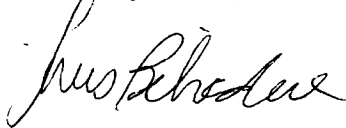
First, is the amount of time and effort it takes to secure a job at this level. In 1996 2,500 carpenters attempted the exam, only 849 passed and only 15% were granted a interview and the possibility of employment. If a person does not put in time to study and pay the cost (\$300.00) for all the books, they will not pass the exam. Through dedication comes an appreciation for the job. If you can walk in off the street and get this job it will not be appreciated.

Secondly, Safety after 24 years in the industry, 10 years being with the city, it is imperative that all trade workers have adequate training in how to work safely around the public in occupied areas and with coworkers. Does the proposal from D.C.A.S. include a costly safety training program for new employees.

Third, a promotional exam is and always will be the correct way to grant someone a advance in their field. The D.C.A.S. proposal allows the possibility of favortisim, which doesn't work. In 2005, 80 carpenters attempted the Supervisor Carpenter Exam, 24 passed. At the Health and Hospital Corporation, 10 were given jobs. Those ten will appreciate the title because they earned it the right way.

Please send the D.C.A.S. proposal to t he shredder as soon as it enters your office.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Louis Belvedere".

Louis Belvedere
Civil Service Carpenter
Kings County Hospital



MUNICIPAL HIGHWAY INSPECTORS LOCAL UNION 1042

136-25 37th Avenue Flushing, New York 11354
Phone: (718) 779-8850, ext. 12 • Fax: (718) 779-8857

Anthony M. Cocchiola
President

Cell 516-661-4424

New York State Civil
Service Commission
Robert Ruvoletto
Business Manager
Cell 516-662-2417

Al Bosco
Civil Service Representative

JUN 2008
CSC
Commission on Civil Service

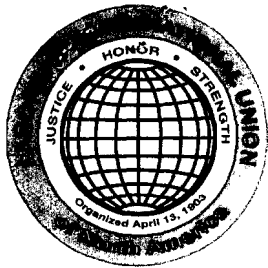
Re: DCAS Provisional Reduction Plan

Gentlepersons:

Municipal Highway Inspectors Local Union 1042 ("Local 1042") is the duly certified bargaining representative of the Highway & Sewer Inspectors and Associate Inspectors (Highway and Sewers) employed by the City of New York. These are competitive civil service titles. We hereby write to you to emphatically object to the plan of the City, by and through its Department of Citywide Administrative Services' ("DCAS"), to reduce or eliminate the number of provisional employees employed in the City workforce.

It is our understanding that DCAS' plan includes, among other things, to consolidate several titles into one title, and then create different assignment levels. DCAS argues in support of its proposal that this can be done because the knowledge, skills and abilities needed for the more senior titles are no different than those in lower titles. Furthermore, because examinations are not necessary to assign individuals in a title to a higher assignment level, the agency will then be able to assign individuals in a title to a higher assignment level without the need of an exam.

The Associate Inspector consists of two levels, i.e. Level I and Level II. The individuals holding these titles perform supervisory work in the inspection of construction, repair and maintenance of the City's roads, sewers, sidewalks, etc. For example, Associate Level I Inspectors supervise the work of inspectors engaged in, among other things, the inspection of the grading, paving and repaving of streets, the maintenance, repair and construction of sewers and their appurtenances, retaining walls, streets and street openings and other related work. Associate Level II Inspectors, among other things, serve as Deputy Directors for the City's Highway and Sewers Inspection Program; they assist in formulating program policy and in service training for inspectors and Apprentice Inspectors. They coordinate with Highway operations concerning capital improvement programs and legal notice of construction work.



MUNICIPAL HIGHWAY INSPECTORS LOCAL UNION 1042

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Anthony M. Cocchiola
President
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Robert Ruvolo
Business Manager
Cell 516-662-2417

Al Bosco
Civil Service Representative

Article V, § 6 for the New York State Constitution and the Civil Service Laws and Rules mandate that civil service appointments be made according to merit so that individual employees are protected. They require that public employees are selected on merit; education and experience is the guidepost for every step in the merit system.

We understand that DCAS is proposing that the Highway and Sewer Inspector title and the Associate Level title (supervisors) be made one, with different assignment levels. DCAS argues that by doing so, the City agency could then move public employees from lower assignment levels to higher assignment levels without the benefit of an exam; it will, in other words, be at the whim of the Agency head or his/her subordinates. In the case of our members' titles, it will allow the City Agency to appoint lesser qualified public employees or even unqualified employees to be the supervisors of more experience and educated inspectors. DCAS is asking the Commission to ignore the mandates of the State Constitution and the Civil Service Law and Rules, and return to the spoil system.

The civil service system rests on the principle of the application of the merit system, and not the spoils system; we submit that were the Commission to approve DCAS' plan it would be violating the State Constitution, and the Civil Service Laws, something that is clearly contrary to the purpose for which it was created. We submit that DCAS's plan should be rejected in its entirety.

Respectfully yours,

Anthony M. Cocchiola
President Local Union 1042
Municipal Highway & Sewer Inspectors
Pavers & Road Builders District Council
Laborers' International Union of N.A.

LOCAL 1180

6 Harrison Street



COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

NEW YORK, N.Y. 10013-2898 • (212) 226-6565 FAX: (212) 966-6831

ARTHUR CHELIOTES

President

June 1, 2008

BY OVERNIGHT DELIVERY

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

RE: Submission of DCAS Pursuant to CSL '65(5)

Dear President Groenwegen:

I am writing as President of CWA Local 1180 ("Local 1180"), the Union that represents City employees in titles found on the attached list. The union submits these objections and questions to the CSL Plan proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law ' 65(5) (the "DCAS Plan").

The Section 65 amendments effective January 29, 2008 were intended to promote the constitutional and statutory requirement that appointments and promotions be made according to merit and fitness to be ascertained, as far as practicable, by examination. The amendments were intended to decrease the number of provisional employees and increase the number of appointments by merit and fitness. The amendments required DCAS to submit to the Commission a Plan that would effectuate the purposes of the Statute.

DCAS submitted its Plan on March 28, 2008. However, the Plan did not substantially increase the number of tests. Instead the DCAS Plan seeks to bypass and avoid testing. Rather than significantly increasing the number of tests, it eliminates competitive examinations through reclassification to non-competitive and exempt titles for over 20,000 City employees.

We show below, there is no factual or legal reason to reclassify these job titles. Reclassification as the substantial approach defeats merit and fitness testing and denies City

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

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employees due process rights and other benefits of competitive status. As explained in this letter, Local 1180 requests that the Plan be revised by the City or rejected in whole or in part by the State.

Legal framework

New York State's Constitution required by Article 5, Section 6 requires that appointments and promotions be made in accordance with merit and fitness. It states:

Section 6. [Civil Service appointment and promotions;...]

"Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as practicable, shall be competitive;..."

CSL Section 61 requires that civil service appointments and promotions be made from a list of eligible employees. Indeed, the Legislature established a specific procedure to effectuate the constitutional mandate. There must be eligibility requirements, an examination, certification of test scores, and a resulting list of qualified applicants eligible for appointment. Appointments must be made solely from the list of qualified applicants utilizing this employment selection procedure (one-in-three rule).

Civil Service appointments may be made without complying with the strict testing and merit and fitness requirements only in limited circumstances. CSL Section 65, permits the use of "provisional appointments". But, they are only temporary assignments that are needed and can be made only when qualified tested individuals are not available.

The Court of Appeals has concluded:

"If the beneficent merit system with competitive examinations is to be preserved, we must adhere strictly to the rule that only one who has passed the prescribed appropriate examination is entitled to a certificate of appointment ... To rule otherwise would be tantamount to appointing unqualified persons, in the sense that they had not passed the required competitive examinations or have not received certificates of appointment as required by law. And not alone might incompetence be thus permitted but favoritism or discrimination might thus be enabled to raise its ugly head." *Board of Education v. Nyquist*, 31 N.Y.2d 468, 341 N.Y.S.2d 441 (1973).

Hon. Nancy G. Groenwegen, President
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Albany, New York 12239

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CSL ' 42(1) ("Section 42") states that a title requires no test, if it is classified as "non-competitive" rather than "competitive". However, such a designation is the exception and not the rule. It may be made only if testing is not practicable to ascertain merit and fitness. This is a very high standard and such use should be rare. See *Berkowitz*, 133 Misc. 2d, at 325-26, 507 N.Y.S.2d, at 119 (annulling non-competitive classification). *Levitt v. Civil Serv. Comm=n of State of New York*, 150 A.D.2d 983, 985, 54.1 N.Y.S.2d 662,664 (3d Dep=t 1989).

The Amendments to CSL Section 65

After the Court of Appeals decision in *City of Long Beach*, 8 N.Y.3rd 470, 835 N.Y.S.2d 538 (2007), the State Legislature, addressed its concern over the use of provisional appointments. CSL Section 65 was amended reaffirm the constitutional mandate of making appointments and promotions according to merit and fitness which is to be ascertained by examination competitively, as far as practicable. DCAS was required to submit a Plan to reduce the number of provisional appointments. The Amendment contemplated an increased number of scheduled examinations, additional eligible lists and consolidation of titles through reclassification.

The Constitutional infirmity of the DCAS Plan is that it emphasizes as its primary remedy to reduce provisional employment, the reclassification of positions from the competitive to non-competitive and exempt classes. Under the DCAS Plan, competitive examinations would not be required where currently they are given citywide. As we understand the DCAS proposal, 294 competitive titles encompassing over 22,000 employees (15 percent of all competitive-class employees) would be reclassified.

While reclassifying competitive tiles en masse, the DCAS plan proposes only to increase minimally the number of examinations. Under the DCAS Plan there would only be 20 more examinations per year over the five year duration of the Plan (Section 2.1.0). Accordingly, DCAS proposes to cure the problem not by constitutionally mandated testing, but by reducing the number of titles for which there will be tests.

The DCAS plan lacks a well thought out human resource policy that invests in the New York City workforce, acknowledges their skills and talents, and offers a clear career path based upon merit and fitness. Over the last 30 years, this union has witnessed policies and actions of City Agencies that often place barriers in the path of career civil servants, many of whom are minorities and women. For example, it is a common practice to hire career civil servants at the minimum rate of pay when they are appointed from a civil service list. It is also the City's practice to suppress the managerial minimum hiring rate below the wage rate for subordinate titles. However, provisional appointments for new employees hired from outside civil service career paths are given higher rates of pay than those offered career employees.

Hon. Nancy G. Groenwegen, President
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Agencies protect individuals without permanent status by shuffling them from one provisional title to another when a civil service list for their position would force their removal. They continue to work at the same job doing the same work though the position was conveniently reclassified with DCAS's approval, thus avoiding the appointment from the list of a qualified person on the list.

The recent settlement of a lawsuit filed by the NAACP on behalf of minorities working in the Department of Parks is indicative of a citywide problem of hiring individuals outside the civil service career path into high-level positions. It was established that the Agency eliminated the career opportunities of career civil servants who were predominately minorities and women.

Two decades ago, this Union filed a lawsuit that eventually resulted in the greatest number of women and minorities in the City's history achieving managerial status through a competitive civil service examination. These minorities and women had taken both a qualifying managerial examination and a competitive examination to be appointed to the title of Administrative Manager (AM). This Union had to go to court to force the City to obey the law. The City had to remove provisional appointments, many of whom were white males and some of whom were processed through the basement of City Hall through Koch's "Talent Bank." The Koch "Talent Bank" purportedly was designed as an affirmative action program but was actually a patronage operation.

The New York State Commission on Government Integrity headed by John D. Feerick, then Dean of the Fordham Law School, confirmed that violations of the Civil Service Law contributed to the corruption scandals of the Koch administration. In its report issued August of 1989 entitled **'Playing Ball' with City Hall: A Case Study of Political Patronage in New York City** the Commission found that mid and high level patronage appointments such as Administrative Manager in the Department of Transportation led to corruption. It allowed these appointees to undermine the bidding process, violate the public trust and engage in other illegal activities that cost the City millions of dollars and resulted in the felony convictions of many individuals and suicide of an elected official. Despite the corruption caused by these appointees the Koch administration resisted its constitutional obligation to appoint candidates from the Administrative Manager civil service list who had followed the rules. These candidates earned the right to be appointed to the positions held by the provisional appointees so they could demonstrate through a practical examination known as a one-year probationary period that they could do the job based on what they knew, not who they knew. The commission report stated:

"The New York City civil service system is in a state of crisis...the Civil Service Law is now widely regarded as something it is desirable to bypass or avoid, where possible."

Hon. Nancy G. Groenwegen, President
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Nearly 20 years after this Feerick Commissions report was issued, DCAS in large part proposes the legalization of the patronage mill run out of the basement of City Hall. Rather than develop a comprehensive personnel management and civil service system that can through the merit system develop qualified candidates to provide service to the public. The DCAS plan further emasculates any measure of enforcement that requires City agencies to follow the law. The conditions documented by the commission have only grown worse, the DCAS plan of creating thousands of non-competitive and exempt positions will simply serve as tinder that will ignite the next patronage scandal. Appointing city workers through competitive examinations that measure merit and fitness continues to be necessary today, as it was in 1894 when the New York State Constitution established the merit and fitness mandate and again during the Koch administration in the 1980's. Anyone committed to the integrity of the public service understands that the constitutional mandate is grounded in an enduring wisdom. The Feerick Commission report concluded with the following:

“Clearly, more is needed than just effective enforcement of current law; more is needed than even a dedicated audit by the State Civil Service Commission could provide. One High-level employee described what is needed as a “Moreland Act Commission focusing solely on civil service/personnel issues.”

Those words ring truer today than they did nearly twenty years ago and we strongly suggest they be considered very seriously.

With respect to the specifics of the DCAS plan, we wish to address the relevant sections with the following comments and observations:

Section 2.1.0 Examination Administration

Anyone who has experience with the civil service appointment process understands that the DCAS plan fails to remedy the decades old problem of a high number of provisional appointments in the Principal Administrative Associate (PAA) title. In the DCAS plan, the PAA title is at the top of the list with over 2,000 provisional appointments. The cause of the problem is clear; it is DCAS's refusal to create citywide lists to provide tested and qualified candidates to agencies that have exhausted their promotional lists. By not using citywide lists for this and all citywide titles the DCAS plan will not eliminate provisional appointments in agencies with few eligible candidates to take and pass a promotional exam. Furthermore, the failure to use citywide lists for the Principal Administrative Associate title promotes concentrations of minorities in specific agencies.

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

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In addition, in footnote # 4 the DCAS plan refers to the City's policy of giving examinations for public safety titles a priority over other examinations. The result of this policy is that there are regular promotional opportunities and clear career paths based upon examinations that measure merit and fitness for these public safety titles. Public safety examinations have a priority even though the Principal Administrative Associate title has over 2,000 provisional appointments. The individuals in the Principal Administrative Associate title are predominantly women and minorities who have been relegated to second class status and denied the same access to regular examinations offered candidates in public safety titles which have higher concentrations of whites and males and far fewer, if any, provisional appointments.

2.3.0 Reclassification Actions out of the Competitive Class

In this section DCAS proposes the reclassification of Associate Call Center Representative (ACCR) and Principal Police Communications Technician (PPCT) titles from competitive to non-competitive status. This portion of the DCAS Plan and the entire plan are arbitrary, capricious and unconstitutional and violates CSL Section 42 and the intent of Section 65(5). It is not impracticable to hire these titles by competitive examination. In fact, as set forth below, a competitive examination has been administered for one of these titles. These titles are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities that cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

The foregoing titles were created by city agencies using the job descriptions of former Principal Administrative Associates who actually were doing this work. In an effort to compensate these workers for the specialized skills and not violate the pattern of wage increases established in contract negotiations reclassifications were instituted. There have been 2 examinations for the PPCT title that has been in existence for many years. The ACCR title was established in 2004 and examinations for the entry-level title have been held. Consolidating the PPCT and ACCR titles with their current pay scales back to the original title of PAA with selective certification would reduce the number of provisional appointments and keep these titles and functions in the competitive class.

Therefore, we believe that to reduce the number of provisionals it would be constitutionally necessary to take the following actions:

- 1 - Associate Call Center Representative should be broadbanded and consolidated with PAA with selective certification for the specialized skill.

- 2 - Principal Police Communications Technician should be broadbanded and consolidated with PAA with selective certification for the specialized skill.

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

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2.3.3 Reclassifying Competitive Class Titles with Historically Few Incumbents into the Non-Competitive Class

An examination in these titles was practicable in the past and we do not see any reason why these positions cannot continue to be in the competitive class. As an alternative we believe it would be appropriate to consolidate and broadband rather than reclassify to the non-competitive and exempt class.

We propose that the following:

- 1 - Legal Secretarial Assistant should be consolidated and broadbanded with the PAA title with selective certification for the specialized skill.
- 2 - Stenographic Specialist should be consolidated and broadbanded with the PAA title with selective certification for the specialized skill.

2.3.5 Resolving Classification Status of Temporary Titles

Our Union represents the School Business Manager title. We propose that since these duties are similar to those of an Administrative Manager this temporary title should be consolidated and broadband into the Administrative Manager title.

Our Union represents the Principal Administrative Associate title. There are over 2,000 provisional appointments in this title it is our understanding that there are many more doing the same work but serving in temporary titles. Many of these temporary titles are proposed for reclassification to the non-competitive or exempt class. They are listed in appendix VIII.

We have not had an opportunity to review the job specifications of these temporary titles and request that they be sent to us. However, given the broad nature of the administrative duties of the Principal Administrative Associate job specification and the history of the use of the title, Principal Administrative Associates also perform many of the duties performed by individuals in these temporary titles. For example,

‘serving as a secretary to or assistant to a manager or a high level executive’

This is a duty in the Principal Administrative Associate job specification. Temporary positions such as: Administrative Assistant (Campaign Finance Board), Confidential Secretary, Secretary (MA), Secretary to Counsel (HA) and many other similar positions appear to have this duty as well. It appears that these temporary titles were used to avoid the appointment of career civil servants as occurred in the Department of Parks lawsuit. Thus reclassifying them would be a transparent attempt to avoidance of the constitutional mandate to retain these positions in the competitive class. Therefore, we propose that these temporary titles be consolidated and broadband into the Principal Administrative Associate title.

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

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This union has petitioned the Board of Collective Bargaining to represent the Administrative Manager (AM) title and we anticipate it will make its decision regarding the specific number of Administrative Managers we will be representing in the next few months. There are over 900 provisional appointments in this title. In addition, there are many temporary titles identified for reclassification to the non-competitive class listed in appendix VIII. We have not had an opportunity to review all the job specifications of these temporary titles and request that they be sent to us. However, the broad nature of the high-level duties of the Administrative Manager job specification and the history of the use of the Administrative Manager title appears to encompass many of the duties performed by individuals in these temporary titles. For example, the Administrative Manager job specification states,

‘In the office of an agency head, deputy commissioner or other high-level executive responsible for administrative, departmental, analytic or management work, oversees difficult and responsible work in the capacity of an executive assistant or principal assistant; may represent the executive at meetings.’

Similarly, temporary positions such as Executive Assistant to the First Deputy City Clerk, Special Assistant to the Executive Director (HA), Director of Administration (LD), Director of Administration (Workers Comp. Benefits) (LD), Director of Building Management (DS), Director of Management Information Services (DEP), Director of Materials Management (HA), and other titles appear to perform Administrative Manager job duties as well. Again, it appears that these temporary titles were used to avoid the appointment of career civil servants as occurred in the Department of Parks lawsuit. Reclassifying them serves only to avoid the constitutional mandate to keep these positions in the competitive class. Therefore, we propose that these temporary titles be consolidated and broadband into the Administrative Manager title.

Finally, we ask that you provide us with answers to the following questions:

1. What is the process the State and City will be following?
2. For example, will the State and/or City conduct separate and/or joint investigations and hearings on the DCAS Plan before its approval or rejection?
3. Will the State and/or City conduct separate and/or joint investigations and hearings on the reclassifications of specific job titles?
4. Please provide us with copies of all documentation and information provided by DCAS to the Commission with its Plan.

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

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June 1, 2008

5. Please provide us with the confirmations made by the Commission that the facts submitted by DCAS are accurate, and advise us how the Commission has or will confirm the accuracy of those fact, as set forth in the CSL amendment.

Conclusion

For all of the above reasons, Local 1180 respectfully urges that the Commission and DCAS modify or reject the current DCAS Plan and provide us with answers to our questions

Respectfully,

Arthur Cheliotis



President

Copy:

Martha K. Hirst, Commissioner
Department of Citywide Administrative Services
Office of the Commissioner
One Centre Street, 17th Floor
New York, NY 10007

Hon. Nancy G. Groenwegen, President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

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June 1, 2008

LIST OF TITLES REPRESENTED UNDER OUR CONTRACT WITH THE CITY OF NEW YORK.

10122*, 10125*	Administrative Assistant (including all approved specialties)
11023*	Administrative Assistant (EDP)
10142*	Administrative Assistant (Income Support)
10130*, 08970*	Administrative Associate
22112	Assistant Planning and Operations Officer (Civil Defense)
10236, 003820	Assistant Coordinating Manager
10271	Associate Call Center Representative * (Decision # 3-2004, 4/29/04)
10248	Administrative Job Opportunity Specialist (Decision #4-2005, 7/28/05)
71477	Chief of Resources Management (Civil Defense)
13611, 961210	Computer Associate (Technical Support)
961220, 961230	
40563	Contract Reviewer (OLS)
980130, 980140	Coordinating Manager (Decision #3-2006, 5/15/06)
95948	Coordinating Manager (Decision #9-2007, 6/7/07)
000310, 83051	Health Care Program Planner Analyst
10171*	Hearing Administrative Services Coordinator (Parking Violations Bureau)
03903	Hospital Payroll Accounts Manager
09539, 30081	Legal Coordinator
1022 A, B, C	Legal Secretarial Assistant (Levels II, III, IV)
11703, 960400	Office Machine Associate
71488*	Operations Assistant (Civil Defense)
22113*	Planning and Operations Officer (Civil Defense)
10124, 96021	Principal Administrative Associate
96022, 96023	
71014	Principal Police Communications Technician
10420*	Principal Shorthand Reporter
10825*	Principal Telephone Operator
71415	Security Officer (Civil Defense)
10217, 960710	Stenographic Specialist
960720, 960730	
11704	Supervisor of Office Machine Operations (Level I and II)
71496	Training Coordinator (Civil Defense)

*for present incumbents only

**LAW OFFICES OF
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* ALSO ADMITTED IN NEW JERSEY

June 9, 2008

VIA FEDERAL EXPRESS OVERNIGHT

Hon. Nancy G. Groenwegen
President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, New York 12239



Re: Submission of DCAS Pursuant to CSL § 65(5)

Dear President Groenwegen:

This firm represents Local 246, S.E.I.U, a labor organization comprised of more than 300 employees of the City of New York (the "City") in the competitive Civil Service titles of Door Check Repairer, Door Stop Maintainer, Supervisor Door Check Repairer, Supervisor Door Stop Maintainer, Sheet Metal Worker, Supervisor Sheet Metal Worker, Tractor Operator, Motor Grader Operator, Auto Body Worker, Letterer/Sign Painter, Machinist, Machinist Helper, Carriage Upholsterer, Marine Maintenance Mechanic. Local 246 submits these objections to the plan (the "Plan") proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law § 65(5) ("Section 65").

The Plan, in regards to the above-referenced Local 246 job titles, must be rejected by the New York State Civil Service Commission for being inconsistent with the law and the facts. It is merely another attempt by DCAS to circumvent its New York State constitutional duty to have a public workforce selected based on fitness and merit. DCAS' plan will result in the proliferation of political patronage, cronyism, in the selection of civil servants, an unqualified workforce, dangerous working conditions and a decrease in public safety.

The Plan is in direct contravention of the goal the Legislature was attempting to achieve when it enacted Section 65. DCAS' response to the problem of a proliferation of appointments without competitive examination is not primarily to increase the number of tests, but to eliminate the competitive examination requirement for more than 20,000

City employees, including all of the members of Local 246 is simply to do away with testing for many City titles that have historically been classified as competitive. This arbitrary reclassification would not only harm the City's efforts to hire and promote by merit and fitness, but would strip thousands of employees of protected due process rights and other benefits of competitive status. The Commission must exercise its prerogative under Section 65 to reject the plan.

According to the report of legislative findings, the Legislature intended by enacting Section 65(5) to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'" As such, there can be no doubt the Plan runs afoul of the Legislature' intent and is designed to bypass and avoid testing.

LEGAL FRAMEWORK

The 1894 amendment to the New York State Constitution was a response to rampant corruption and political patronage in regards to public employment. That amendment, which has stood the test of time, reads:

"Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive"

N.Y. Const., Art. 5, § 6. Upon its adoption, the Court of Appeals declared:

The principle that all appointments in the civil service must be made according to merit and fitness, to be ascertained by competitive examinations, is expressed in such broad and imperative language that in some respects it must be regarded as beyond the control of the legislature, and secure from any mere statutory changes. . . .

That constitutional provision "establishes a broad public policy that appointments in the State Civil Service must be made by competitive examination." Berkowitz v.

Burstein, 133 Misc. 2d 323, 325, 507 N.Y.S.2d 117, 119 (Sup. Ct., Alb. Cty. 1986). “Non-competitive appointments are the exception and not the rule.” Andresen, 277 N.Y., at 277, 14 N.E.2d, at 67 (citations omitted). In the case that prompted the Legislature to enact the law at issue here, the Court of Appeals explained, “The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee.’ This constitutional mandate ‘may not be blinked or avoided.’” City of Long Beach v. Civil Service Employees Ass’n, Inc., 8 N.Y.3d 465, 470, 835 N.Y.S.2d 538, 540, 867 N.E.2d 389, 391 (2007)(quoting Montero v. Lum, 68 N.Y.2d 253, 258, 508 N.Y.S.2d 397, 400, 501 N.E.2d 5, 8 (1986); Board of Educ. of City of New York v. Nyquist, 31 N.Y.2d 468, 472, 341 N.Y.S.2d 441, 445, 293 N.E.2d 819, 824 (1973)).

The Legislature has implemented this constitutional mandate by enacting Civil Service Law § 42(1) (“Section 42”), which provides that a position may not be classified as non-competitive if it is “practicable to ascertain the merit and fitness of applicants by competitive examination.” The statute also requires, “Not more than one appointment shall be made to or under the title of any office or position placed in the non-competitive class pursuant to the provisions of this section, unless a different or an unlimited number is specifically prescribed in the rules.”

Civil Service Section 61 mandates that civil service appointments and promotions be made from an eligible list of employees. In order for such appointments to be made, there must be eligibility requirements, an examination, certification of test scores, and a resulting list of qualified applicants eligible for appointment. Thereafter, employees are selected by use of the one-in-three rule.

The law provides for appointments outside of this process only in limited circumstances. Section 65 permits the use of “provisional appointments.” However, they are only permitted temporary assignments for a limited period of time when there is no current civil service list available from which to hire.

If the benefit merit system with competitive examination is to be preserved, we must adhere strictly to the rule that only one who has passed the prescribed appropriate examination is entitled to a certificate of appointment . . . To rule otherwise would be tantamount to appointing unqualified persons, in the sense that they had not passed the required competitive examination or have not received certificates of appointment as required by law. And not alone might incompetence be thus permitted but favoritism or discrimination might thus be enabled to raise its ugly head.” Board of Education v. Nyquist, 31 N.Y.2d 468, 341 N.Y.S.2d 441 (1973).

While Section 42(1) of the Civil Service Law ("Section 42") provides that no civil service test is required for a title if it is classified as "non-competitive," such a designation is the exception and not the rule. Under the law, such a classification can only be made if testing is not practicable to ascertain merit and fitness. The courts have set a very high standard to be met in order for a title to be non-competitive. See Berkowitz v. Burstein, 133 Misc.2d 323, 325, 507 N.Y.S.2d 117, 119 (Sup. Ct. Albany County 1986); Levitt v. Civil Service Commission of the State of New York, 150 A.D.2d 983, 985 (3d Dept. 1989).

In an effort to reduce nonpermanent appointments, the Legislature earlier this year required DCAS to submit to the Commission a plan to lower the total of provisional employees to five percent of all competitive class positions. The plan may include, according to the law, an increased number of scheduled examinations, additional eligible lists, and consolidation of titles. Civil Service Law § 65(5)(b).

On March 28, 2008, DCAS submitted its plan. One of the Plan's primary remedies for the excessive number of provisional appointments without competitive examination is to reclassify positions from competitive to non-competitive, so that no competitive examination is mandated. The other method employed by DCAS was to consolidate titles and create assignment levels with no testing for advancement. DCAS proposes reclassifying 294 titles, currently held by 22,126 employees, to non-competitive status. These employees constitute approximately 15 percent of all competitive-class employees, excluding the Transit Authority and Triborough Bridge and Tunnel Authority, whose employees DCAS proposes be removed from its jurisdiction entirely.

At the same time, DCAS plans only a marginal increase in the number of examinations. While the agency currently administers 120 exams annually for a workforce of more than 190,000 employees, DCAS' proposal calls for only 16 more exams per year over the five-year duration of the plan. Paragraph 2.1.0. The majority of the reduction in provisionals in the DCAS plan results from actions other than an increase in the number of examinations. Table 1.3.0.

Moreover, DCAS has not performed the requisite analysis of each job title being reclassified or consolidated as it is required to do under Section 65(5). DCAS, for the most part basis its decisions to reclassify the titles on the grounds that because the State has classified a title as non-competitive, it should be able to do the same. For the most part, DCAS has not considered the unique differences between the titles it has compared as each possesses different duties and responsibilities and faces unique circumstances.

In Paragraph 3.3.3.2.06 of the Plan, DCAS proposes the reclassification of the title of Auto Body Worker to the State non-competitive title of Autobody Mechanic with an unlimited number of positions for use by all City agencies. The titles of Construction Laborer (non-local 246), Crane Operator (non-local 246), Supervising Crane Operator (non-local 246), Tractor Operators (Local 246) would be reclassified to the State non-competitive titles of Construction Equipment Operator, Construction Equipment Operator-Light, Construction Equipment Operator-Heavy and Crane and Shovel Operator. The titles

of Letterer and Sign Painter would be reclassified to the State non-competitive titles of Sign Painter and Sign Shop Supervisor. The titles of Machinist and Machinist Helper would be reclassified to the State non-competitive title of Machinist. The titles of Sheet Metal Worker and Supervisor Sheet Metal Worker would be reclassified to the State non-competitive title of Sheet Metal Worker. These arbitrary changes are unconstitutional and violates not only Section 42 but the intent of Section 65(5) as well. It is certainly not impracticable to select these titles by competitive examination. Indeed, competitive examinations have been administered by municipalities across the State for these titles for decades. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

Sheet Metal Worker

Sheet Metal Worker fabricates, erects, and repairs sheet metal structures such as ducts, metal ceilings, tanks, storm louvers, roofs, etc. They develop patterns and templates in fabricating complex shapes and forms and do simple rigging in performing these activities. Sheet Metal Worker promotes to the title Supervisor Sheet Metal Worker. The most recent job specification is attached as Exhibit 1.

A significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. The Sheet Metal Worker title requires either five-years of full time paid experience or three years of such experience plus sufficient helper or apprentice experience acquired in an approved apprentice program or approved vocational high school or M.D.T.A. supported training program. Any exam would include areas such as methods, equipment, materials for erecting and repairing metal structures and working within the parameters of the Building Code. The subject area for testing specific mechanical and technical aspects of the requirements of the position is capable of objective assessment. The job is also exceedingly dangerous. As such, an examination would include knowledge of construction safety procedures and building code requirements. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Supervisor Sheet Metal Worker

Supervisor of Sheet Metal Worker supervises, directs and inspects the work of Sheet Metal Workers. A copy of the job specification is annexed as Exhibit 1.

Because this title requires the supervision of Sheet Metal workers, any exam would include questions on supervisory and administrative procedures including assigning and coordinating work, discipline, motivation training, human relations, ordering materials, job related calculations, safety, and the ability to translate administrative instructions into

detailed operational plans for sheet metal parts, fabrication, repair and installation. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Tractor Operator

Tractor Operator operates and does minor repairs on refuse haulers, earth moving and hauling equipment, tractors, compactors, dump wagon equipment and other tractor drawn and specialized equipment at landfills and other projects of the City. An Operator is required to operate specialized equipment for various functions including the following: payhauler, backhoe, swampcat, road grader, large wrecker, lubrication truck LGP tractor, windrow tuner, heavy duty recovery vehicle, front end loader, diesel powered equipment with all attachments, cherry pickers, sweepers, and equipment used in the transportation of heavy duty equipment. There is no direct line of promotion to this title. A copy of the job specification is annexed as Exhibit 1.

A Tractor Operator must possess a Class B Commercial Drivers license valid in New York State. Thus, a significant level of skill, knowledge and ability are required to operate the varied, sophisticated and dangerous equipment. Any exam would include areas such as methods, equipment, and the means for operating this equipment. The subject area for testing specific mechanical and technical aspects of the requirements of the position is capable of objective assessment. The job is also exceedingly dangerous. As such, an examination would include knowledge of construction and operating safety procedures. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Motor Grader Operator

Motor Grader Operator operates a Motor Grader, and/or a payloador in the grading and leveling of excavation, fill, or streets and dirt roads. A Motor Grader Operator operates a payloador in the loading and unloading of sand, gravel, cold patch, fill, landfill and other material onto and off trucks in the stripping of asphalt. There is no direct of line promotion to or from this title. A copy of the job specification is annexed as Exhibit 1.

The title does not require any type of certification. However, training from an approved trade or vocational school program is one of the qualifications for the job. A significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Therefore, any written competitive examination would cover such areas as methods, equipment and materials for grading roads, maintenance of roads, drainage and related facilities. The job is also exceedingly dangerous. A prospective Motor Grader should also be tested on his knowledge of highway maintenance safety procedures. It is

practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Auto Body Worker

Auto Body Worker performs required body repair or vehicle modification involving the refurbishing, replacement, disassembling or welding of sectional metal parts of vehicles such as trucks, autos, scooters, buses and other motor vehicles. An Auto Body Worker appraises body damage of motor vehicles prior to repair, salvages motor vehicle body parts, trains assigned Senior Automotive Service Workers or other related personnel in the performance of various maintenance and/or repair tasks and prepares reports and orders. There is no direct line of promotion to Auto Body Worker. A full outline of the duties and responsibilities of this title are annexed hereto as Exhibit No. 1.

The Auto Body Worker title requires a Certification of Fitness Type G38 Torch Use of O-2 combustible gas issued by the New York City Fire Department. Auto Body Workers must possess certain skills, knowledge and abilities to perform their duties and responsibilities. A competitive examination would include questions regarding repair, fabrication and design of varied automotive vehicles; safety procedures for working on motor vehicles. Moreover, supervisory and administrative procedures including assigning and coordinating work, discipline, motivation training, human relations, ordering materials, job related calculations, safety, and the ability to translate administrative instructions into detailed operational plans for sheet metal parts, fabrication, repair and installation would be included for testing. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Letterer/Sign Painter

Letter/Sign Painter performs all kinds of freehand, automated and/or computer-designed lettering and sign painting work on various objects and surfaces using all sorts of mediums. Typical tasks include using specialized computer graphics software and computer-driven tools such as thermal and vinyl cutting plotters to design and lay out lettering, draw texts and signs. They paint on all kinds of materials, such as metal, wood masonry, concrete, plastic etc. A full outline of the duties and responsibilities of this title are annexed hereto as Exhibit No. 1. There is no direct line of promotion to this title.

While the Letterer/Sign Painter title does not require any specific credential, a significant degree of skill, ability and knowledge is necessary to perform the duties and responsibilities of the job. Thus, any competitive written examination would include areas such as methods, equipment and materials for lettering and sign painting and the use of

computer generated graphics. There is no legitimate reason to reclassify this title from competitive to non-competitive.

Machinist

A Machinist does bench, general shop and outside machinist work. Examples of typical tasks include operating machine shop equipment such as engine lathes, shapers, milling machines, drill presses and grinders; inspects, overhauls and repairs all types of main and auxiliary stationary power plant, marine propulsion, water and disposal works equipment. The title Machinist Helper promotes to this title. A full outline of the duties and responsibilities of this title are annexed hereto as Exhibit No. 1.

While the Machinist title does not require any specific credential, a significant degree of skill, ability and knowledge is necessary to perform the duties and responsibilities of the job. Thus, any competitive written examination would include areas such as the operation and maintenance of machine shop equipment and hand tools, machine shop practices, machinery components, measuring devices and instruments, metals, heat treatment, plan reading, machine shop mathematics, safety, record keeping, preparing reports, standards of proper employee ethical conduct. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Machinist's Helper

Machinist's Helper assists machinists in the performance of general machine shop work. Machinist's Helpers assist in the operation of machine shop equipment such as engine lathes, shapers, milling machines, drill presses and grinders. And they use hand tools. There is no direct line of promotion to this title. A full outline of the duties and responsibilities of this title are annexed hereto as Exhibit No. 1.

While the Machinist title does not require any specific credential, a significant degree of skill, ability and knowledge is necessary to perform the duties and responsibilities of the job. Thus, any competitive written examination would include areas such as the operation and maintenance of machine shop equipment and hand tools, machine shop practices, machinery components, measuring devices and instruments, metals, heat treatment, plan reading, machine shop mathematics, safety, standards of proper employee ethical conduct. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Any argument that competitive examinations for these titles are "impracticable" is plain nonsense. "Vague references to the ability to make permanent appointments or afford greater latitude in the selection process simply do not form a rational basis for abrogating the constitutional mandate of examination, in some form, to determine merit

and fitness.” Berkowitz, 133 Misc. 2d, at 325-26, 507 N.Y.S.2d, at 119 (annulling non-competitive classification). Rather, DCAS must “overcome the constitutional preference for competitive examinations.” Levitt v. Civil Serv. Comm’n of State of New York, 150 A.D.2d 983, 985, 54.1 N.Y.S.2d 662,664 (3d Dep’t 1989)(citations omitted). DCAS, almost by definition, cannot make that showing when the agency is proposing reclassification en masse of hundreds of titles. In particular, the agency has not demonstrated that the above-reference titles should be reclassified as non-competitive.

In Paragraph 3.1.2.074. , DCAS proposes the titles Door Check Repairer, Door Stop Maintainer, Supervisor Door Check Repairer and Supervisor Door Stop Maintainer would be consolidated into Door Stop Maintainer -Assignment Levels I and II. This arbitrary change is unconstitutional and violates not only Section 42 but the intent of Section 65(5) as well. By doing away with testing to advance from the journeyman position to the supervisory one and instead replace it with a procedure to promote to a new assignment level without testing is unlawful. It is certainly practicable to test for these titles by competitive examination. Indeed, competitive examinations have been administered by municipalities across the State for these titles for decades. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

Door Stop Maintainer

A Door Stop Maintainer installs, maintains and repairs all types of door checks and related hardware. The most recent job specification is attached as Exhibit A. Door Stop Maintainer installs and replaces various types of door checks and door springs; makes adjustments; disassembles and replaces worn parts; recharges door checks; drills and taps required holes. There is no direct line of promotion to this title nor does it require any type of certification or educational background. The most recent job specification is annexed as Exhibit 2.

Although the title Door Stop Maintainer does not require any specific credentials, a significant degree of skill, ability, knowledge and experience in the installation and maintenance in door checks is necessary to perform this job. Any written examination would cover such areas as the mechanical and technical aspects of the requirements of the position and the New York City Building Code (“Building Code”). It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

2.3.3 of the Plan: Reclassifying Competitive Class Titles with Historically Few Incumbents into the Non-Competitive Class

Historically, an examination for these titles was practicable and, we do not see any compelling reason to justify removing them from the competitive class.

Carriage Upholsterer

Carriage Upholsterer repairs and fabricates upholstery for cars, trucks and special equipment. Examples of typical tasks include removing, repairing, fabricating or installing seats, seat belts, cushions, curtains, back rests, panels and trim of passenger cars, trucks and special equipment. There is no direct line of promotion to this title. A full outline of the duties and responsibilities of this title are annexed hereto as Exhibit No. 3.

While the Carriage Upholsterer title does not require any specific credential, a significant degree of skill, ability and knowledge is necessary to perform the duties and responsibilities of the job. Thus, any competitive written examination would include areas such as the operation and maintenance of equipment and hand tools, measuring devices and instruments, plan reading, mathematics, safety, standards of proper employee ethical conduct. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Marine Maintenance Mechanic

Marine Maintenance Mechanic performs or supervises the mechanical repair, overhaul and maintenance of boats, launches and related marine equipment. There are two assignment levels within this position. There is no direct line of promotion to this title. A full outline of the duties and responsibilities of this title are annexed hereto as Exhibit No. 3.

While the Marine Maintenance Mechanic title does not require any specific credential, a significant degree of skill, ability and knowledge is necessary to perform the duties and responsibilities of the job. Thus, any competitive written examination would include areas such as the operation and maintenance of diesel and gasoline marine engines, marine electrical equipment, fuel and bilge systems, water cooling systems, marine engine components, measuring devices and instruments, plan reading, safety, record keeping, preparing reports, standards of proper employee ethical conduct. Moreover, supervisory and administrative procedures including assigning and coordinating work, discipline, motivation training, human relations, ordering materials, job related calculations, safety, and the ability to translate administrative instructions into detailed operational plans would be included for testing. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). It is practical to ascertain the merit and fitness of applicants for this position by a competitive

examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

CONCLUSION

For all of the above reasons, Local 246 respectfully urges that the Commission reject the plan submitted by DCAS.

Respectfully,

BY: 

Greenberg Burzichelli Greenberg PC

Attachments

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THE SKILLED CRAFTSMAN AND
OPERATIVE SERVICE

CODE NO. 92340

SHEET METAL WORKER

General Statement of Duties and Responsibilities

Under supervision, fabricates, erects, and repairs sheet metal structures such as ducts, metal ceilings, tanks, storm louvers, roofs, etc., performs related work.

Examples of Typical Tasks

Lays out, cuts, shapes, forms, rivets, spot welds, solders and sweats tin, copper, brass and all forms of sheet metal.

Sets and erects sheet metal structures such as ducts, louvers, canvas connections, ceilings, dampers, etc.

Develops patterns and templates in fabricating complex shapes and forms.

Repairs metal ceilings, roofs, leaders, gutters, etc.

Does simple rigging in making these repairs.

Supervises assigned personnel.

Keeps work records.

Qualification Requirements

1. Five years of full-time, paid experience acquired within the last 15 years as a Sheet Metal Worker; or
2. Three years of such experience acquired within the last 10 years plus sufficient Helper or apprentice experience, or educational training of a relevant nature acquired in an approved trade or vocational high school or M.D.T.A. supported training program to make up the equivalent of five years of acceptable experience. Six months of acceptable experience will be credited for each year of helper or apprenticeship experience, or for each school year of approved educational training.

Direct Lines of Promotion

From: None

To: Foreman Sheet Metal Worker
(92343)

THE CITY OF NEW YORK

NOTICE OF EXAMINATION
FOR
PROMOTION TO SUPERVISOR SHEET METAL WORKER
EXAM. NO. 7710

923 43

SALARY: The appointment rate is \$22.36 per hour.

JOB DESCRIPTION: Under general supervision supervises, directs, and inspects the work of sheet metal workers. Performs related work.

QUALIFICATION REQUIREMENTS

ELIGIBILITY: Open to each employee of all affected City agencies who on the date of the written test: (1) is permanently employed in the title of Sheet Metal Worker and (2) is not otherwise eligible.

Applicants may be summoned for the test prior to a review of their eligibility.

LICENSE REQUIREMENTS: For appointment in certain City agencies, candidates will be required to possess a Motor Vehicle Driver's License valid in the State of New York at the time of appointment.

TEST INFORMATION

TEST DESCRIPTION: Seniority, weight 15; written, weight 85; 70% required. The written test will be in two parts, both given in a single session on the same day.

Part I (weight 45%) of the written test will be of the multiple-choice type and may include questions on supervisory and administrative procedures including assigning and coordinating work, discipline, motivation, training and human relations; reading comprehension; ordering materials and supplies; job related calculations; safety; the ability to translate administrative instructions into detailed operational plans for sheet metal parts fabrication, repair and installation; and other related areas. A grade of 70% is required for Part I. Candidates who do not receive a grade of 70% or better in this part will not have their paper rated for Part II.

Part II (weight 40%) of the written test will be of the essay type and may include questions on the ability to read plans, ordering of materials and estimating time, costs and materials; lay out work and technical knowledge of the sheet metal trade; basic knowledge of related trades; and other related areas. A grade of 70% is required for Part II.

TEST DATE: The written test is expected to be held on June 9, 1988.

MEDICAL TEST: Candidates will be required to pass a medical test prior to appointment for those agencies where a Motor Vehicle Driver's License is required.

APPLICATION INFORMATION

APPLICATION PERIOD: From February 3, 1988 through February 23, 1988. Application forms may be submitted in person or by mail. Either way, properly completed Application Forms MUST BE RECEIVED BY THE LAST DATE OF THE APPLICATION PERIOD.

Applications will be accepted only in accordance with General Examination regulations E.2.3.

APPLICATION FEE: \$15.00, payable when the application is submitted. Checks or money orders should be made payable to the New York City Department of personnel. Cash will not be accepted for applications submitted by mail. The filing fee will be waived for a New York resident receiving public assistance who submits a clear photo-copy of a current Medicaid card along with the application.

TRACTOR OPERATOR

General Statement of Duties and Responsibilities

Under general supervision, operates and does minor maintenance on refuse haulers, earth moving and hauling equipment, tractors, compactors, dump wagon equipment and other tractor drawn and specialized equipment at landfills and other projects of the City of New York; performs related work.

Examples of Typical Tasks

Operates a tractor hauling empty or loaded dump wagons; operates gear to dump loaded wagons as assigned.

Operates a bladed tractor to move or level piles of earth. Applies earth cover to active bank and keeps the bank platform clear of material being deposited. Maintains asbestos sites.

Operates a road grader to insure landfill roads are in acceptable condition to allow a smooth flow of traffic. Builds, maintains and cleans roads at Fresh Kills.

Operates a bulldozer/compactor to compact debris in compliance with the engineer's regulations as to height, grade and design of active bank.

Hauls cover to active bank or stock piles.

Using a front end loader, loads refuse and other material into payhaulers and trucks. Maintains the pit area, including in front of and behind the pit wall, infields and haul roads.

Drives loaded payhaulers to the active bank and coordinates dumping movements with compactor operators to maximize the efficient placement of refuse.

Operates specialized equipment for various functions, including the following: payhauler, backhoe, swampcat, road grader, vibratory roller, scarab, large wrecker, tractor-drawn water wagon, lubrication truck, LGP tractor, windrow turner, heavy duty recovery vehicle, self propelled and tow behind scrapers, front end loader, diesel powered equipment with all attachments, off-road vehicles, cherry pickers, excavators, sweepers, windlass and equipment used in the transportation of heavy equipment, and related or similar equipment.

Inspects, tests, evaluates and maintains all assigned equipment; checks fuel, water, lubricants, etc.; makes minor and emergency repairs and adjustments to all assigned equipment; cleans assigned equipment, windows and cabs, utilizing power washer.

Keeps records and makes reports as required.

**C-X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]**

CODE NO. 91215

TRACTOR OPERATOR (continued)

Qualification Requirements

1. Five years of full-time satisfactory experience acquired within the last 15 years in the operation of heavy duty track-type tractors; or
2. Not less than three years of full-time satisfactory experience as described in "1" above, plus either two years in the maintenance of heavy duty track-type tractors, or relevant training acquired in an approved trade or vocational high school to make up the equivalent of five years of acceptable experience. Six months of acceptable experience will be credited for each year of approved trade or vocational high school.

License Requirement

Possession of a Class B Commercial Driver License valid in the State of New York. There may be certain age requirements to obtain this license. Employees must maintain the Class B Commercial Driver License during their employment.

Direct Lines of Promotion

From: None

To: To be determined

MOTOR GRADER OPERATOR

General Statement of Duties and Responsibilities

Under direction, operates a motor grader, and/or a payloador in the grading and leveling of excavation, fill, or streets and dirt roads; performs related work.

Examples of Typical Tasks

Operates a motor grade in the leveling and grading of excavation, fill, or streets and dirt roads.

Operates a payloador in the loading and unloading of sand, gravel, cold patch, fill, landfill and other material onto and off trucks and in the stripping of asphalt.

Lubricates, adjusts, maintains and makes minor repairs to equipment operated.

May operate other heavy duty equipment for snow removal or other purposes.

Keeps job and other records.

Qualification Requirements

A Motor Vehicle Operator's License valid in the State of New York and

1. Three years of full-time, paid experience acquired within the last 10 years as a motor grader operator; or
2. Two years of such experience acquired within the last 10 years plus sufficient training of a relevant nature acquired in an approved trade or vocational school training program to make up a total of three years of acceptable experience.

Direct Lines of Promotion

From: None

To: None

AUTO BODY WORKER

General Statement of Duties and Responsibilities

Under supervision, performs required body repair or vehicle modification involving the refurbishing, replacement, disassembling or welding of sectional metal parts of vehicles such as trucks, autos, scooters, buses and other motor vehicles; performs related work.

Examples of Typical Tasks

Appraises body damage of motor vehicles prior to repair.

Salvages motor vehicle body parts.

Disassembles, repairs, or replaces bent or warped motor vehicle parts as required.

Cleans, grinds and sands parts, mixes proper ratios for fiberglass repair compounds, dries and bakes repaired areas, employs cleaning and grinding techniques on repaired areas to remove any solidified compounds and applies paint to repaired areas using special lamps.

Stretches, shrinks, straightens sectional sheet metal and chassis parts in order that they can be welded or replaced on the chassis or frame.

Removes, repairs and replaces sheet metal and chassis parts as required and does all necessary related work.

Prepares and refinishes replaced or straightened parts by sanding, hammering, smoothing and applying protective coating over metal surfaces.

Removes and replaces broken glass, door locks, etc. and all necessary related parts damaged as a result of accidents or necessitated by vehicle modification.

May transmit orders to journeymen as directed.

May supervise senior automotive servicemen, automotive servicemen and other personnel as directed.

Trains assigned senior automotive servicemen, automotive servicemen or other related personnel in the performance of various maintenance and/or repair tasks.

May prepare reports and orders, maintain records and inventories of supplies and materials.

May operate motor vehicles or equipment in the performance of assigned duties.

AUTO BODY WORKER (Cont'd.)

Qualification Requirements

A Motor Vehicle Driver's License valid in the State of New York and (a Certificate of Fitness issued by the New York City Fire Department to operate an oxyacetylene torch are required) In addition, a candidate must have:

1. Five years of full-time paid experience acquired within the last 15 years as an auto body repairman; or
2. Three years of such experience acquired within the last 10 years plus sufficient helper or apprentice experience, or educational training of a relevant nature acquired in an approved trade or vocational high school or M.D.T.A. supported training program to make up the equivalent of five years of acceptable experience. Six months of acceptable experience will be credited for each year of helper or apprenticeship experience, or for each school of approved educational training.

Direct Lines of Promotion

From: None

To: None

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THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91825

DRAFT REVISION

LETTERER AND SIGN PAINTER

General Statement of Duties and Responsibilities

Under general supervision, performs all kinds of freehand, automated and/or computer-designed lettering and sign painting work on various objects and surfaces using all sorts of mediums; performs related work.

Examples of Typical Tasks

Designs, lays out, proportions, blocks-in and finishes all styles of lettering work on roadways, road signs, plaques, billboards, buildings and walls, doors, storefronts, etc., with mediums such as oil or water based paint, gold leaf, silk screen, vinyl sheeting, metals, plastics, etc. May utilize pressure sensitive letters and related equipment. Performs freehand lettering and painting of signs and backgrounds.

Paints signs on all kinds of materials, such as metal, wood, masonry, tar, concrete, plastic, cardboard, glass, etc. Works with reflective and non-reflective vinyl sheeting, and applies sheeting on various substrate materials, such as aluminum, other metals, plastic, wood, glass, etc.

Uses specialized computer graphics software and computer-driven tools, such as thermal and vinyl cutting plotters, to design and lay out lettering, and draw text and signs.

**C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]**

CODE NO. 91825

DRAFT REVISION

LETTERER AND SIGN PAINTER (continued)

Examples of Typical Tasks (continued)

Prepares master signs from which silk screens will be made. Lays out and sets lettering by silk screen process manually or using mechanical means. Produces silk screens, using hand cut and photographic processes (including overlays) for the mass production of signs.

Applies lettering and logos to motor vehicles and equipment.

Performs roadway painting.

May work, either indoors or outdoors, from scaffolds, ladders, booms or platform-, bucket- and tower trucks.

Maintains tools, equipment and work areas.

Keeps paper and computerized work records and time sheets.

May drive to work sites.

Qualification Requirements

1. Five years of satisfactory full-time, paid experience, acquired within the last ten years, as a sign painter or letterer doing layout and preparation of lettering, signs and posters, using a brush freehand, paste-on or stenciled letters, or computer graphics software, and other related sign/lettering work; or

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91825

DRAFT REVISION

LETTERER AND SIGN PAINTER (continued)

Qualification Requirements (continued)

2. A satisfactory combination of experience and/or education which is equivalent to "1" above. Six months of acceptable experience will be credited for each year of related education and/or computer training in an accredited trade or vocational school, including apprenticeship or helper experience in lettering or sign painting. However, all candidates must have at least two years and six months of the experience described in "1" above.

License Requirement

For appointment to certain positions, a Motor Vehicle Driver License valid in the State of New York is required. This license must be maintained for the duration of employment.

Direct Lines of Promotion

From: None

To: None

OPERATIVE SERVICEMACHINISTGeneral Statement of Duties and Responsibilities

Under supervision, does bench, general shop and outside machinist's work; performs related work.

Examples of Typical Tasks

Sets up and operates machine shop equipment, such as engine lathes, shapers, milling machines, drill presses, grinders, etc.

Is familiar with and uses tools and instruments required for all phases of machinist's work.

When assigned, does outside machinist's work in the inspection, overhaul and repair of all types of main and auxiliary stationary power plant, marine propulsion, water and disposal works equipment.

May transmit orders to other journeymen as directed.

May supervise machinist helpers, senior automotive servicemen, automotive servicemen and other personnel as directed.

Trains assigned machinist helpers, senior automotive servicemen and automotive servicemen or other related personnel in the performance of various maintenance and/or repair tasks.

May prepare reports and orders, maintains records and inventories of supplies and materials.

May operate motor vehicles or equipment in the performance of assigned duties.

Qualification Requirements

A Motor Vehicle Driver's License valid in the State of New York is required for the Department of Sanitation or the Department of Water Resources appointment. All candidates must have:

1. Five years of full-time, paid experience acquired within the last fifteen years, as a machinist; or
2. Not less than two and one-half years of such experience acquired within the last ten years, plus sufficient full-time paid experience as a helper or an apprentice, or training of a relevant nature acquired in an approved trade or vocational high school or M.D.T.A. supported training program to make up the equivalent of five years of acceptable experience. Six months of acceptable experience will be credited for each year of machinist helper or apprentice experience or approved trade or vocational high school or M.D.T.A. supported training.

MACHINIST (Cont.)

Direct Lines of Promotion

From: Machinist's Helper (92611)

To: Foreman Machinist (92670)
Foreman of Mechanics (Motor Vehicles)
(92570)

THE SKILLED CRAFTSMAN AND
OPERATIVE SERVICE

CODE NO. 92611

MACHINIST'S HELPER

General Statement of Duties and Responsibilities

*→ Under direct supervision, assists machinists in the performance of general machine shop work performs related work.

Examples of Typical Tasks

Assists in the operation of machine shop equipment, such as engine lathes, shapers, milling machines, drill presses, grinders, etc.

Uses hand tools in the performance of machine shop work.

Is familiar with and uses precision instruments essential to machine shop work.

Qualification Requirements

1. Three years of full-time paid experience acquired within the last 10 years as a Machinist's Helper; or
2. Not less than 1 1/2 years of such experience plus sufficient training of a relevant nature acquired in an approved trade or vocational high school or M.D.T.A. supported training program to make up the equivalent of three years of acceptable experience. Six months of acceptable experience will be credited for each year of approved trade or vocational school or M.D.T.A. supported training.

Direct Lines of Promotion

From: None

To: Machinist (92610)

THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE

Attach ment 2
CODE NO. 90709
3 hours per day

DOOR STOP MAINTAINER

General Statement of Duties and Responsibilities

Under supervision, installs, maintains and repairs all types of door checks and related hardware; performs related work.

Examples of Typical Tasks

Installs and replaces various types of door checks and door springs; makes adjustments; disassembles and replaces worn parts; recharges door checks; drills and taps required holes.

Qualification Requirements

Three years of full-time paid experience in the installation, maintenance and repair of door checks and related hardware.

Direct Lines of Promotion

From: None

To: None

R.10.27.72

C-X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 90706

CARRIAGE UPHOLSTERER

General Statement of Duties and Responsibilities

Under supervision, repairs and fabricates upholstery for cars, trucks and special equipment; performs related work.

Examples of Typical Tasks

Removes, repairs or fabricates and installs seats, seat belts, cushions, curtains, back rests, panels and trim of passenger cars, trucks and special equipment.

Fabricates and repairs equipment and accessories made of canvas such as containers, tool bags and straps.

Measures, cuts and sews various upholstery materials by hand and by machine.

Selects proper grades of ticking, leather, cloth and other appropriate materials.

Qualification Requirements

1. Five years of full-time satisfactory experience as a carriage upholsterer; or
2. Two years of experience as described in "1" above plus three years of full-time satisfactory experience in general upholstery work; or
3. Three years of experience as described in "1" above plus sufficient full-time satisfactory experience as an apprentice in carriage upholstery or training of a relevant nature acquired in an approved trade or vocational high school to make up the equivalent of five years of acceptable experience. Six months of acceptable experience will be credited for each year as an apprentice or each year of approved trade or vocational high school.

Direct Lines of Promotion

From: None

To: To be determined

R 9.30.98

C-XI

CODE NO. 92587

**SPECIAL CRAFTS AND OPERATIONAL
OCCUPATIONAL GROUP (251)**

MARINE MAINTENANCE MECHANIC

Duties and Responsibilities

This position encompasses responsible work in performing or supervising the mechanical repair, overhaul and maintenance of boats, launches and related marine equipment. There are two assignment levels within this class of positions. All personnel perform related work.

Assignment Level I

Under supervision, inspects boats, launches and other vessels to determine seaworthiness and general operating condition.

Repairs, overhauls and installs diesel and gasoline engines, fuel and bilge systems, marine electrical systems, water cooling systems, heat exchangers and related marine equipment.

Disassembles and rebuilds marine generators and transmissions; aligns engines to shafts; installs shafts, propellers, mufflers, cutless bearings, steering and Morse control cables.

Maintains auxiliary air compressors and accessories; adjusts throttles and governors; repairs bilge, fire and gasoline driven pumps.

May operate boats to determine service needs and maintenance requirements; conducts operational test runs during and after completion of major repairs and modifications and makes adjustments to the repaired equipment during and after the test runs.

Adjusts, maintains and makes minor or emergency repairs to vessel hardware, parts and equipment.

Maintains the condition of docks and piers; operates, services and repairs fork lifts and trucks, travel lifts and mobile cranes; rigs and hoists boats; maintains interior and exterior appearance of boats and other vessels.

Keeps records of all maintenance and repair work, of fuel dispensed and of the "in-service" hours of each piece of marine equipment to insure proper servicing of equipment and major engine overhaul; directs proper care, storage and use of fuel on board ship.

Assignment Level II (See Special Note under Qualification Requirements)

Under general supervision, assigns, directs, schedules and reviews the work activities of marine mechanics and evaluates their work performance; performs general repair and maintenance work on an as-needed basis; may operate boats to determine service needs and maintenance requirements.

C-XI

CODE NO. 92587

**SPECIAL CRAFTS AND OPERATIONAL
OCCUPATIONAL GROUP (251)**

MARINE MAINTENANCE MECHANIC (Cont'd)

Assignment Level II (Cont'd)

Explains work requirements, methods and procedures, as needed, and defines the standards of quality to be met by all mechanics.

Instructs subordinates on difficult work operations; reviews work while in progress and upon completion for compliance with instructions and adherence to established practices and standards.

Changes work plans, work assignments and methods, as directed, to reduce or control costs and to accomplish the work of the unit as effectively as possible.

Insures that an adequate supply of proper parts is maintained in stockrooms; may initiate purchase of parts and equipment.

Contacts vendors to ensure that parts, materials and equipment are made to specifications and will be delivered on time; is responsible for maintaining, repairing and safeguarding assigned equipment.

Enforces safety precautions; ensures observance of regulations and rules on housekeeping, conduct and safety.

Keeps repair and maintenance records and prepares reports.

Qualification Requirements

1. Five years of full-time satisfactory experience in the repair and maintenance of gasoline and diesel engines, at least three years of which must have been in repairing and maintaining marine gasoline and diesel engines; or
2. Education and/or experience equivalent to "1" above. Education from an approved trade or vocational school or apprentice experience in the repair and maintenance of gasoline and diesel engines will be credited on the basis of 1 year of relevant education or apprentice experience equal to 6 months of acceptable experience. However, all candidates must have at least three years experience repairing and maintaining marine gasoline and diesel engines.

Special Note

...management level 11, candidate must have, in addition to the minimum qualification requirements, at least one year of experience in Assignment Level I or in a supervisory capacity.

Direct Lines of Promotion

From: None

To: To be determined

8.5.92

Page 2 of 2

**LAW OFFICES OF
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* ALSO ADMITTED IN NEW JERSEY

June 9, 2008

VIA FEDERAL EXPRESS OVERNIGHT

Hon. Nancy G. Groenwegen
President
N.Y.S. Civil Service Commission
N.Y.S. Department of Civil Service
Alfred G. Smith Office Building
W.A. Harriman State Office Building Campus
Albany, New York 12239

JUN 2008
Commis
K...

Re: Submission of DCAS Pursuant to CSL § 65(5)

Dear President Groenwegen:

This firm represents the City "A" Division of Local 3, International Brotherhood of Electrical Workers ("Local 3"), a labor organization comprised of more than 1,200 employees of the City of New York (the "City") in the competitive Civil Service titles of Electrician, Supervisor of Electrician, Communications Electrician *et al.* and Electrical Inspectors. Local 3 submits these objections to the plan (the "Plan") proposed by the New York City Department of Citywide Administrative Services ("DCAS") pursuant to New York Civil Service Law § 65(5) ("Section 65").

The Plan, in regards to the above-referenced Local 3 job titles, must be rejected by the New York State Civil Service Commission for being inconsistent with the law and the facts. It is merely another attempt by DCAS to circumvent its New York State constitutional duty to have a public workforce selected based on fitness and merit. DCAS's plan will result in the proliferation of political patronage, cronyism, in the selection of civil servants, an unqualified workforce, dangerous working conditions and a decrease in public safety.

The Plan is in direct contravention of the goal the Legislature was attempting to achieve when it enacted Section 65. DCAS's response to the problem of a proliferation of appointments without competitive examination is not primarily to increase the number of tests, but to eliminate the competitive examination requirement for more than 20,000 City employees, including all of the members of Local 3 is simply to do away with testing for many City titles that have historically been classified as competitive. This

arbitrary reclassification would not only harm the City's efforts to hire and promote by merit and fitness, but would strip thousands of employees of protected due process rights and other benefits of competitive status. The Commission must exercise its prerogative under Section 65 to reject the plan.

According to the report of legislative findings, the Legislature intended by enacting Section 65(5) to further "the constitutional mandate of making appointments and promotions 'according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'" As such, there can be no doubt the Plan runs afoul of the Legislature's intent and is designed to bypass and avoid testing.

LEGAL FRAMEWORK

The 1894 amendment to the New York State Constitution was a response to rampant corruption and political patronage in regards to public employment. That amendment, which has stood the test of time, reads:

"Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive"

N.Y. Const., Art. 5, § 6. Upon its adoption, the Court of Appeals declared:

The principle that all appointments in the civil service must be made according to merit and fitness, to be ascertained by competitive examinations, is expressed in such broad and imperative language that in some respects it must be regarded as beyond the control of the legislature, and secure from any mere statutory changes. . . .

That constitutional provision "establishes a broad public policy that appointments in the State Civil Service must be made by competitive examination." Berkowitz v. Burstein, 133 Misc.2d 323, 325, 507 N.Y.S.2d 117, 119 (Sup. Ct., Alb. Cty. 1986). "Non-competitive appointments are the exception and not the rule." Andresen, 277 N.Y., at 277, 14 N.E.2d, at 67 (citations omitted). In the case that prompted the Legislature to enact the

law at issue here, the Court of Appeals explained, “‘The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee.’ This constitutional mandate ‘may not be blinked or avoided.’” City of Long Beach v. Civil Service Employees Ass’n, Inc., 8 N.Y.3d 465, 470, 835 N.Y.S.2d 538, 540, 867 N.E.2d 389, 391 (2007)(quoting Montero v. Lum, 68 N.Y.2d 253, 258, 508 N.Y.S.2d 397, 400, 501 N.E.2d 5, 8 (1986); Board of Educ. of City of New York v. Nyquist, 31 N.Y.2d 468, 472, 341 N.Y.S.2d 441, 445, 293 N.E.2d 819, 824 (1973)).

The Legislature has implemented this constitutional mandate by enacting Civil Service Law § 42(1) (“Section 42”), which provides that a position may not be classified as non-competitive if it is “practicable to ascertain the merit and fitness of applicants by competitive examination.” The statute also requires, “Not more than one appointment shall be made to or under the title of any office or position placed in the non-competitive class pursuant to the provisions of this section, unless a different or an unlimited number is specifically prescribed in the rules.”

Civil Service Section 61 mandates that civil service appointments and promotions be made from an eligible list of employees. In order for such appointments to be made, there must be eligibility requirements, an examination, certification of test scores, and a resulting list of qualified applicants eligible for appointment. Thereafter, employees are selected by use of the one-in-three rule.

The law provides for appointments outside of this process only in limited circumstances. Section 65 permits the use of “provisional appointments.” However, they are only permitted temporary assignments for a limited period of time when there is no current civil service list available from which to hire.

If the benefit merit system with competitive examination is to be preserved, we must adhere strictly to the rule that only one who has passed the prescribed appropriate examination is entitled to a certificate of appointment . . . To rule otherwise would be tantamount to appointing unqualified persons, in the sense that they had not passed the required competitive examination or have not received certificates of appointment as required by law. And not alone might incompetence be thus permitted but favoritism or discrimination might thus be enabled to raise its ugly head.” Board of Education v. Nyquist, 31 N.Y.2d 468, 341 N.Y.S.2d 441 (1973).

While Section 42(1) of the Civil Service Law (“Section 42”) provides that no civil service test is required for a title if it is classified as “non-competitive,” such a designation is the exception and not the rule. Under the law, such a classification can only be made

if testing is not practicable to ascertain merit and fitness. The courts have set a very high standard to be met in order for a title to be non-competitive. See Berkowitz v. Burstein, 133 Misc.2d 323, 325, 507 N.Y.S.2d 117, 119 (Sup. Ct. Albany County 1986); Levitt v. Civil Service Commission of the State of New York, 150 A.D.2d 983, 985 (3d Dept. 1989).

In an effort to reduce non-permanent appointments, the Legislature earlier this year required DCAS to submit to the Commission a plan to lower the total of provisional employees to five percent of all competitive class positions. The plan may include, according to the law, an increased number of scheduled examinations, additional eligible lists, and consolidation of titles. Civil Service Law § 65(5)(b).

On March 28, 2008, DCAS submitted its plan. One of the Plan's primary remedies for the excessive number of provisional appointments without competitive examination is to reclassify positions from competitive to non-competitive, so that no competitive examination is mandated. The other method employed by DCAS was to consolidate titles and create assignment levels with no testing for advancement. DCAS proposes reclassifying 294 titles, currently held by 22,126 employees, to non-competitive status. These employees constitute approximately 15 percent of all competitive-class employees, excluding the Transit Authority and Triborough Bridge and Tunnel Authority, whose employees DCAS proposes be removed from its jurisdiction entirely.

At the same time, DCAS plans only a marginal increase in the number of examinations. While the agency currently administers 120 exams annually for a workforce of more than 190,000 employees, DCAS' proposal calls for only 16 more exams per year over the five-year duration of the plan. Paragraph 2.1.0. The majority of the reduction in provisionals in the DCAS plan results from actions other than an increase in the number of examinations. Table 1.3.0.

Moreover, DCAS has not performed the requisite analysis of each job title being reclassified or consolidated as it is required to do under Section 65(5). DCAS, for the most part, bases its decisions to reclassify the titles on the grounds that because the State has classified a title as non-competitive, it should be permitted to do the same. For the most part, DCAS has not considered the unique differences between the titles it has compared as each possesses different duties and responsibilities and faces unique circumstances.

In Paragraph 3.3.3.2.06, DCAS proposes the title of Electrician and Supervisor of Electrician would be reclassified to the State non-competitive title of Electrician. This arbitrary change is unconstitutional and violates not only Section 42 but the intent of Section 65(5) as well. It is certainly practicable to hire these titles by competitive examination. Indeed, competitive examinations have been administered by municipalities across the State for these titles for decades. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

Electrician

Electricians install, repair and maintain high or low pressure tension electrical systems for light, heat, power and communications in or on buildings, structures and highways, all in compliance with the New York City Electrical Code (the "Code"). Typical duties include, but are not limited to, installing, repairing, replacing or maintaining electrical wiring systems and components, equipment, apparatus in or on building and structures in accordance with the Code. When assigned as a special electrician, Electricians will obtain all necessary permits and file reports pursuant to the Code and conduct all necessary tests on electrical systems, equipment and appliances as required by the Code. The most recent job specification is attached as Exhibit 1.

While the Electrician title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. The job is also exceedingly dangerous. The Electrician title requires either five-years of full time paid experience or three years of such experience plus sufficient helper or apprentice experience acquired in an approved apprentice program or approved vocational high school. Any exam would include areas such as A.C. and D.C. circuits, machinery, and applied electronics, the Code; electrical diagrams and specifications; electrical calculations; methods and procedures for the installation, alteration, maintenance, and repair of electrical wiring and equipment; installation of conduit; tools fittings, material, measuring instruments and meters used in the Electrician's trade; principles of supervision; record keeping, preparation of reports; safety. The subject area for testing specific mechanical and technical aspects of the requirements of the position is capable of objective assessment. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Supervisor of Electrician

Supervisor of Electrician supervises Electricians and other assigned personnel in the installation, repair, replacement and maintenance of apparatus, equipment and electrical wiring circuits for buildings, bridges and elevated structures and/or traffic control systems, according to the provisions of the Code and electrical practice in the City of New York. The most recent job specification is attached as Exhibit 1.

While the Supervisor of Electrician title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Supervisor of Electrician is responsible for all the work performed by the Electrician whose duties and responsibilities are detailed above. They also make decisions regarding work procedures, prepare work schedules, make work assignments, field inspections; prepare job orders and tool and material requisition. Thus, any written competitive examination would include such areas as the principles of supervision; safety; codes; record keeping; mathematical calculations; technical literature comprehension; plan

reading; establishing priorities; standards of proper employee ethical conduct; current electrical practices, materials, tools, and codes; electrical components; writing instructions and writing reports. The subject area for testing specific mechanical and technical aspects of the requirements of the position is capable of objective assessment. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

In Paragraph 3.1.2.039, DCAS proposes the titles of Communications Electrician's Helper, Communication Electrician, Supervisor Communication Electrician and Senior Supervisor Communication Electrician will be consolidated into Communication Electrician -Assignment Levels I, II, III, IV and that the Inspector (Electrical) and Associate Inspector (Electrical) will be consolidated into Inspector (Electrical - Assignment Levels I, II and III). This arbitrary change is unconstitutional and violates not only Section 42 but the intent of Section 65(5) as well. By doing away with testing as a means to advance to each level is unlawful. It is certainly practicable to test for these titles by competitive examination. Indeed, competitive examinations have been administered by municipalities across the State for these titles for decades. These positions are not confidential, do not require the exercise of authority or discretion at a high level, and do not require expertise or personal qualities which cannot be measured by a competitive examination. No specific credentials exist, as an alternative to testing, to demonstrate skills needed for these positions.

Communication Electrician

Communication Electrician installs, maintains and repairs the copper and fiber cable and line network, overhead and underground, in connection with fire alarm and communication systems. Communication Electricians perform such tasks as locating and repairing troubles in the electrical cable and fiber optic cable and line network, maintain and replace electro-mechanical fire alarm boxes, citizens' emergency response boxes and their allied circuits; and perform such many other critical functions all directly related to providing the citizens of New York a fire communication system. The most recent job specification is attached as Exhibit 2.

While the Communication Electrician's title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Thus, any written competitive examination would include such areas as testing cables and aerial lines using standard electrical and fiber testing apparatus; safe working practices; methods and procedures for the installation, alteration and maintenance of cable and aerial lines; splicing, wiping, soldering and terminating cables; preparing reports and maintaining records. While the Communication Electrician's title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Thus, any written competitive examination would include such areas.

Supervisor Communication Electrician

Supervisor Communication Electrician supervises Communication Electricians and other personnel assigned to the installation, repair and maintenance of fire alarm equipment, cable, overhead and underground lines and appurtenances. The most recent job specification is attached as Exhibit 2.

While the Supervisor Communication Electrician title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Supervisor of Communication Electrician is responsible for all the work performed by the Communication Electrician whose duties and responsibilities are detailed above. They also make decisions regarding work procedures, prepare work schedules, make work assignments, field inspections; prepare job orders and tool and material requisition. Thus, any written competitive examination would include such areas as the principles of supervision; safety; codes; record keeping; mathematical calculations; technical literature comprehension; plan reading; establishing priorities; standards of proper employee ethical conduct; current electrical practices, materials, tools, and codes; electrical components; writing instructions and writing reports. The subject area for testing specific mechanical and technical aspects of the requirements of the position is capable of objective assessment. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Senior Supervisor Communication Electrician

Senior Supervisor Communication Electrician supervises the maintenance and repair of the outside plant facilities of the Division of Fire Communications. The most recent job specification is attached as Exhibit 2.

While the Senior Supervisor Communication Electrician title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Senior Supervisor of Communication Electrician is responsible for all the work performed by the Communication Electrician, Supervisor and Helper whose duties and responsibilities are herein. They also make decisions regarding work procedures, prepare work schedules, make work assignments, field inspections; prepare job orders and tool and material requisition. Thus, any written competitive examination would include such areas as the principles of supervision; safety; codes; record keeping; mathematical calculations; technical literature comprehension; plan reading; establishing priorities; standards of proper employee ethical conduct; current electrical practices, materials, tools, and codes; electrical components; writing instructions and writing reports. The subject area for testing specific mechanical and technical aspects of the requirements of the position is capable of objective assessment. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Communication Electrician's Helper

Communication Electrician Helper assists a Communication Electrician in the installation, maintenance and repair of the cable and line network, overhead and underground, in connection with fire alarm and fire telegraph systems; assists in the erection of poles and placing poles on aerial wires, cable boxes, and equipment. The most recent job specification is attached as Exhibit 2.

While the Communication Electrician's Helper title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Thus, any written competitive examination would include such areas as testing cables and aerial lines using standard electrical and fiber testing apparatus; safe working practices; methods and procedures for the installation, alteration and maintenance of cable and aerial lines; splicing, wiping, soldering and terminating cables; preparing reports and maintaining records. While the Communication Electrician Helper's title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Thus, any written competitive examination would include such areas.

Inspector (Electrical)

Electrical Inspector performs technical work in the inspection of electrical installations, repairs or alterations to ensure conformance to code, standards, plans or specifications. The most recent job specification is attached as Exhibit 2.

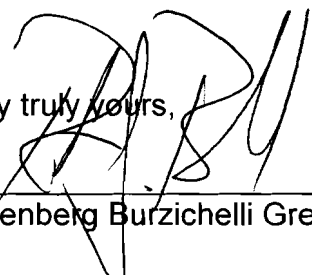
While the Electrical Inspector title does not require any specific credentials, a significant degree of skill, ability, and knowledge is necessary to fulfill the requirements of this position. Thus, any written competitive examination would include such areas as safety; codes; record keeping; mathematical calculations; technical literature comprehension; plan reading; establishing priorities; standards of proper employee ethical conduct; current electrical practices, materials, tools, and codes; electrical components; writing instructions and writing reports. The subject area for testing specific mechanical and technical aspects of the requirements of the position is capable of objective assessment. It is practical to ascertain the merit and fitness of applicants for this position by a competitive examination (Section 42). There is no legitimate reason to reclassify this title from competitive to non-competitive.

Any argument that competitive examinations for these titles are "impracticable" is plain nonsense. "Vague references to the ability to make permanent appointments or afford greater latitude in the selection process simply do not form a rational basis for abrogating the constitutional mandate of examination, in some form, to determine merit and fitness." Berkowitz, 133 Misc. 2d, at 325-26, 507 N.Y.S.2d, at 119 (annulling non-competitive classification). Rather, DCAS must "overcome the constitutional preference

for competitive examinations." Levitt v. Civil Serv. Comm'n of State of New York, 150 A.D.2d 983, 985, 54.1 N.Y.S.2d 662,664 (3d Dep't 1989)(citations omitted). DCAS, almost by definition, cannot make that showing when the agency is proposing reclassification en masse of hundreds of titles. In particular, the agency has not demonstrated that the above-referenced titles should be reclassified as non-competitive.

CONCLUSION

Given the rash of tragic crane accidents in New York City and the complex nature of the Code, it would be full hearty and down right dangerous not to conduct written tests to assess the knowledge, fitness, merit and abilities of candidates for appointment to these critical positions. For all of the aforementioned reasons, Local 3 respectfully urges that the Commission reject the plan submitted by DCAS.

Very truly yours,
By: 
Greenberg Burzichelli Greenberg

attachments



THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

NOTICE OF EXAMINATION

REQUIRED FORMS

APPLICATION FORM
EDUCATION AND EXPERIENCE
TEST PAPER
FOREIGN EDUCATION
FACT SHEET
(IF APPLICABLE)

Attachment
1

ELECTRICIAN Exam. No. 6034 (For Agencies Under the Jurisdiction of the Commissioner, DCAS Only)

WHEN TO APPLY: From: October 4, 2006 **APPLICATION FEE:** \$60.00
To: October 24, 2006 Payable only by money order to D.C.A.S. (EXAMS)

THE TEST DATE: The multiple-choice test is expected to be held on **Saturday, February 3, 2007.**

WHAT THE JOB INVOLVES: Electricians, under direction, perform work on the installation, repair and maintenance of high or low tension electrical systems for light, heat, power and communications in or on buildings, structures and highways; may serve as a special electrician, making applications and obtaining permits and approvals required by rule, regulation and/or statute; prepare reports and maintain records; install, repair, replace and maintain electric wiring systems and components, equipment and apparatus in or on buildings and structures in accordance with the New York City Electrical Code, pertinent plans, specifications and job orders; install, repair, replace, and maintain electric wiring and equipment, traffic signals and controllers; install conduits, raceways and electrical conductors; conduct tests on existing installations to determine faults and make necessary repairs; when assigned as a special electrician, obtain permits for electrical work to be preformed; conduct and/or witness tests on electrical wiring systems, equipment and/or appliances; prepare applications, reports, notices and other documents; prepare required sketches, drawings and layouts; keep job and other records; in the temporary absence of the supervisor, may perform the duties of that position; supervise assigned personnel; may drive motor vehicles; and perform related work.

Some of the physical activities performed by Electricians and environmental conditions experienced are: reading meters and instruments in dimly lit areas; climbing and descending ladders; working in areas of hot temperatures and poor ventilation; using both hands to work overhead; using hand held tools to prepare wires and conduit for installation; carrying tools and equipment up and down stairs.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$44.00 per hour for a 35 hour week. This rate is subject to change.

HOW TO APPLY: If you believe that you meet the requirements in the "How to Qualify" section, refer to the "Required Forms" section below for the forms that you must fill out. Return all completed forms and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007 by mail only. DCAS will not accept applications in person from candidates.

HOW TO QUALIFY:

Education and Experience Requirements: By the **last day of the Application Period** you must have:

- (1) Five years of full-time satisfactory experience as an electrician acquired within the last fifteen years; or
- (2) At least three years of full-time satisfactory experience as an electrician acquired within the last fifteen years and sufficient satisfactory experience as an electrician's helper or apprentice electrician or training in the electrical field acquired in an approved trade or technical school or vocational high school to make up the equivalent of the remaining experience. Six months of acceptable experience will be credited for each year of such helper experience, apprentice training or training in the electrical field.

You may be given the test before we review your qualifications. You are responsible for determining whether or not you meet the qualification requirements for this examination prior to submitting your application. If you are marked "Not Qualified," your application fee will not be refunded and you will not receive a score.

Residency Requirement: You must be a City resident within ninety days of the date you are appointed to this

READ CAREFULLY AND SAVE FOR FUTURE REFERENCE

position if the appointing agency requires City residency and:

- (1) You begin City service as a result of this examination; or
- (2) You are currently a City employee and you began City service on or after September 1, 1986.

Since some agencies do not require City residency, consult the **appointing agency's personnel office** at the time of the appointment interview to find out if City residency is required. If you are required to be a City resident, you must maintain City residency as a condition of employment.

English Requirement: You must be able to understand and be understood in English.

Proof of Identity: Under the Immigration Reform and Control Act of 1986, you must be able to prove your identity and your right to obtain employment in the United States prior to employment with the City of New York.

REQUIRED FORMS:

1. **Application for Examination:** Make sure that you follow all instructions included with your application form, including payment of fee. Save a copy of the instructions for future reference.
2. **Education and Experience Test Paper:** Write your social security number in the box at the top right side of the cover page, and the examination title and number in the box provided. Fill out Sections A.1, A.2, A.3, and B. This form must be filled out completely and in detail for you to receive your proper rating. Keep a copy of your completed Education and Experience Test Paper for your records.
3. **Foreign Education Fact Sheet (Required only if you need credit for your foreign education to meet the education and experience requirements):** If you were educated outside the United States, you must have your foreign education evaluated to determine its equivalence to education obtained in the United States. The services that are approved to make this evaluation are listed on the Foreign Education Fact Sheet included with your application packet. When you contact the evaluation service, ask for a "course-by-course" evaluation (which includes a "document-by-document" evaluation) of your foreign education. You must have one of these services submit its evaluation of your foreign education directly to the Department of Citywide Administrative Services no later than eight weeks from the last date for applying for this examination.

THE TEST: You will be given a multiple-choice test. Your score on this test will be used to determine your place on an eligible list. You must achieve a score of at least 70% to pass the test. The multiple-choice test may include questions on: A.C. and D.C. circuits, machinery and applied electronics; the New York City Electrical Code; electrical diagrams and specifications; electrical calculations; methods and procedures for the installation, alteration, maintenance, and repair of electrical wiring and equipment; installation of conduit; tools, fittings, materials, measuring instruments and meters used in the Electrician's trade; principles of supervision; record keeping; preparation of reports; safety; and other related areas.

ADMISSION CARD: You should receive an Admission Card in the mail about 10 days before the date of the test. If you do not receive an Admission Card at least 4 days before the test date, you must go to the Examining Service Section, 1 Centre Street, 14th floor, Manhattan, to obtain a duplicate card.

THE TEST RESULTS: If you meet the education and experience requirements and pass the multiple-choice test, your name will be placed in final score order on an eligible list and you will be given a list number. You will be notified by mail of your test results. If you meet all requirements and conditions, you will be considered for appointment when your name is reached on the eligible list.

ADDITIONAL INFORMATION:

Selective Certification for Driver License: If you have a motor vehicle Driver License that is valid in the State of New York, you may be considered for appointment to positions requiring this license through a process called Selective Certification. If you qualify for Selective Certification, you may be given preferred consideration for positions requiring this license. Follow the instructions given in the test booklet on the day of the test to indicate your interest in such Selective Certification. This requirement may be met at any time during the duration of the list. If you meet the Selective Certification requirement at some future date, please submit documentation by mail to: DCAS Bureau of Examinations UTEG, 1 Centre Street, 14th Floor, New York, NY 10007. Please include the examination title and number and your social security number in your correspondence. If you are appointed through Selective Certification, you must maintain your motor vehicle Driver License for the duration of your employment.

Special Electrician License: After appointment, some incumbents may be assigned as a Special Electrician. When assigned as a Special Electrician, incumbents must possess and maintain the license(s) and/or certificate(s) required to perform these duties.

Promotion Test: A promotion examination for this title is being held for eligible City employees. The names appearing on the promotion list will be considered first in filling vacancies.

This examination is for all agencies under the jurisdiction of DCAS and not for the Health and Hospitals Corporation (HHC). If you would like to apply for Electrician in HHC you must submit a separate application and fee for Exam. No. 6087 from October 4, 2006 through October 24, 2006.

THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

REQUIRED FORMS

APPLICATION FORM

MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

NOTICE
OF
EXAMINATION

PROMOTION TO SUPERVISOR ELECTRICIAN
Exam. No. 4506
(For City Agencies Only)

WHEN TO APPLY: From: September 1, 2004
To: September 21, 2004

APPLICATION FEE: \$60.00
Payable only by money order to D.C.A.S. (EXAMS)

THE TEST DATE: The multiple-choice test is expected to be held on Saturday, December 11, 2004.

WHAT THE JOB INVOLVES: Under general supervision, Supervisor Electricians supervise electricians and other assigned personnel in the installation, repair, replacement and maintenance of apparatus, equipment and electrical wiring circuits for buildings, bridges and elevated structures and/or traffic control systems according to the provisions of the Administrative Code (effective January 1, 2004) and electrical practice in the City of New York, and perform related work.

Supervisor Electricians prepare and are responsible for the work of electricians, electrician's helpers, and other assigned personnel in altering, repairing and maintaining appliances, equipment and wiring circuits in electrical installations for light, heat and power in or on buildings and/or traffic control systems; make decisions relative to work procedures; prepare work schedules and make work assignments; make field inspections in connection with electrical installations and components of systems relative to work progress or need for alterations, maintenance and repairs; prepare job orders and tool and material requisitions; supervise the complete operation of the department shop; consult with staff personnel, contractors, inspectors, and manufacturers' representatives in connection with department work; keep records and make reports.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$37.75 per hour. This rate is subject to change.

HOW TO APPLY: If you believe you are eligible to take this examination, refer to the "Required Form" section below for the form that you must fill out. Return the completed form and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007 by mail only. Applications will not be accepted in person.

ELIGIBILITY TO TAKE EXAMINATION: This examination is open to each employee of an agency under the jurisdiction of the Commissioner, Department of Citywide Administrative Services who **on the date of the multiple-choice test:**

- (1) is permanently (not provisionally) employed in or appears on a Preferred List (see Note, below) for the title of Electrician; and
- (2) is not otherwise ineligible.

(Note: A "Preferred List" is a civil service list which is only for certain former permanent incumbents of the eligible title who have rehiring rights.)

If you do not know your permanent title or whether you are on a Preferred List, check with **your agency's personnel office**.

You may be given the test before we verify your eligibility. You are responsible for determining whether or not you meet the eligibility requirements for this examination prior to submitting your application. If you are marked "Not Eligible," your application fee will not be refunded and your test paper will not be rated.

ELIGIBILITY TO BE PROMOTED: In order to be eligible for promotion, you must have completed your probationary period in the eligible title as indicated in the above "Eligibility To Take Examination" section, and you must be permanently employed in the eligible title or your name must appear on a Preferred List for the eligible title at the time of promotion.

REQUIRED FORM:

Application for Examination: Make sure that you follow all instructions included with your application form, including payment of fee. Save a copy of the instructions for future reference.

READ CAREFULLY AND SAVE FOR FUTURE REFERENCE

REQUIREMENTS TO BE PROMOTED:

Driver License Requirement: By the time you are promoted to this position, you must have a motor vehicle driver license valid in the State of New York. If you have moving violations, license suspension(s) or an accident record, you may be disqualified. This license must be maintained for the duration of your employment.

FOR DEPARTMENT OF TRANSPORTATION ONLY: You will be required to obtain a New York State **Class B** Commercial Driver License with no restrictions, within ninety days of promotion. This New York State **Class B** Commercial Driver License with no restrictions must be maintained for the duration of your employment.

FOR DEPARTMENT OF SANITATION ONLY: At the time of promotion, you must have a Special Electrician License. This Special Electrician License must be maintained for the duration of your employment.

THE TEST: You will be given a multiple-choice test. A score of at least 70% is required to pass this test. Your score on this test will determine 85% of your final score. Your seniority will determine the remaining 15%. You must pass the multiple-choice test to have your seniority credited. Your seniority score will be 70 plus ½ point for each three months of completed, permanent, continuous service with an agency under the jurisdiction of the Commissioner, Department of Citywide Administrative Services in competitive class titles. Your service will be credited through the date of the test, up to a maximum of 15 years. Time served prior to a break in service of more than one year will not be credited.

The multiple-choice test may include questions on principles of supervision; safety; codes; record keeping; mathematical calculations; technical literature comprehension; plan reading; establishing priorities; standards of proper employee ethical conduct, including the provisions of Mayor's Executive Order No. 16 of 1978, as amended; current electrical practices, materials, tools, and codes; electrical components; writing instructions; writing reports; and other related areas.

ADMISSION CARD: You should receive an Admission Card in the mail about 10 days before the date of the test. If you do not receive an Admission Card at least 4 days before the test date, you must go to the Examining Service Section, 1 Centre Street, 14th floor, Manhattan, to obtain a duplicate card.

THE TEST RESULTS: If you pass the multiple-choice test and are marked eligible, your name will be placed in final score order on an eligible list and you will be given a list number. You will be notified by mail of your test results. If you meet all requirements and conditions, you will be considered for promotion when your name is reached on the eligible list.

ADDITIONAL INFORMATION:

FOR DEPARTMENT OF EDUCATION ONLY: Selective Certification for Master Electrician or Special Electrician License: If, at the time of promotion, you have a Master Electrician or Special Electrician License that is valid in the City of New York, you may be considered for promotion to positions requiring the license through a process called Selective Certification. If you qualify for Selective Certification, you may be given preferred consideration for positions requiring the license. Follow the instructions given in the multiple-choice test booklet on the day of the test to indicate your interest in such Selective Certification. If you are promoted through Selective Certification, you must maintain your Master Electrician or Special Electrician License for the duration of your employment.

Note to Special Electrician License holders: At the time of appointment, you should have your Special Electrician License modified by the Department of Buildings to reflect the agency location at which you will be employed.

SPECIAL ARRANGEMENTS:

Late Filing: Consult **your agency's personnel office** to determine the procedure for filing a late application if you meet one or more of the following conditions:

- (1) You are absent from work for at least one-half of the application period and cannot apply for reasons such as vacation, sick leave or military duty; or
- (2) You are appointed to an eligible title after the above application period but on or before the date of the multiple-choice test.

Special Test Accommodations: If you plan to request special testing accommodations due to disability or an alternate test date due to your religious belief, follow the instructions included with the "Application for Examination."

Make-up Test: You may apply for a make-up test if you cannot take the test on the regular test date for any of the following reasons:

- (1) compulsory attendance before a public body;
- (2) on-the-job injury or illness caused by municipal employment;
- (3) absence for one week following the death of a spouse, domestic partner, parent, sibling, child or child of a domestic partner;
- (4) absence due to ordered military duty; or
- (5) a clear error for which the Department of Citywide Administrative Services or the examining agency is responsible.

To request a make-up test, contact the Examining Service Section, 1 Centre Street, 14th floor, New York, NY 10007, in person or by certified mail as soon as possible and provide documentation of the special circumstances.

The General Examination Regulations of the Department of Citywide Administrative Services apply to this examination and are part of this Notice of Examination. They are posted and copies are available in the Applications Center of the Division of Citywide Personnel Services, 18 Washington Street, NY, NY.

The City of New York is an Equal Opportunity Employer.
Title Code No. 91769; Skilled Craftsman and Operative Service.

For information about other exams, and your exam, or list status, call (212) 669-1357.
Internet: nyc.gov/dcas

Attachment 2

C-X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91762

COMMUNICATION ELECTRICIAN

General Statement of Duties and Responsibilities

Under supervision, installs, maintains and repairs the cable and line network, overhead and underground, in connection with fire alarm systems; performs related work.

Examples of Typical Tasks

Locates and clears electrical troubles in the cable and line network.

Replaces and/or extends cable or aerial line plant including excavating and replacing concrete as necessary.

Replaces damaged fire alarm posts and poles including excavating and replacing concrete as necessary.

Maintains and replaces teleprinters, electro-mechanical fire alarm boxes, citizen's emergency response boxes and their allied circuits.

Splices, wipes and terminates lead and/or plastic sheathed cables.

Replaces damaged conduit bends, snakes and installs cables in conduit in streets, on poles, structures and buildings including excavating and replacing concrete as necessary.

Operates compressor and pneumatic equipment as required in the work.

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91762

COMMUNICATION ELECTRICIAN (continued)

Examples of Typical Tasks (continued)

Keeps records and makes reports.

May direct the work of assigned subordinate personnel.

All the above mentioned tasks are performed in manholes, firehouses, public schools, on poles, bridges, tunnels, expressways, highways, etc., and wherever the electrical cable or aerial plant and its allied equipment exists.

May operate a motor vehicle in carrying out duties and responsibilities.

May assume the duties and responsibilities of the supervisor in the temporary absence of that individual.

Qualification Requirements

1. Five years of practical paid experience acquired within the last fifteen years as a cable splicer, line repairer, communication electrician, or electrician.
2. No less than three and one-half years of such experience as a cable splicer, line repairer, communication electrician or electrician plus sufficient additional paid experience as a helper in any of the above titles or related educational training in an approved trade or vocational school to make a total of five years of acceptable experience. Six months of acceptable experience will be credited for each twelve months of paid experience as a cable splicer's helper, line repairer's helper, communication electrician's helper or electrician's helper, or of acceptable educational training.

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91762

COMMUNICATION ELECTRICIAN (continued)

License Requirement

A Motor Vehicle Driver's License valid in the State of New York.

Direct Lines of Promotion

From: Communication Electrician's
Helper (91761)
Electrician's Helper (91722)

To: Supervisor
Communication
Electrician (91763)

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91763

SUPERVISOR COMMUNICATION ELECTRICIAN

General Statement of Duties and Responsibilities

Under general supervision, supervises Communication Electricians and other personnel assigned to the installation, repair and maintenance of fire alarm equipment, cable, overhead and underground lines and appurtenances; performs related work.

Examples of Typical Tasks

Supervises one or more work crews engaged in the extension and maintenance of fire alarm circuits and equipment both overhead and underground.

Supervises the replacement, splicing, soldering, connecting and terminating of damaged cables, wires, overhead lines and underground lines.

Supervises the installation and replacement of fire alarm boxes, posts, poles and their attachments.

Directs and is responsible for the use of vehicles, equipment and essential tools.

Prepares work schedules and makes work assignments.

Keeps records and makes reports.

May operate a motor vehicle in carrying out duties and responsibilities.

May assume the duties and responsibilities of the Senior Supervisor in the temporary absence of that individual.

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91763

SUPERVISOR COMMUNICATION ELECTRICIAN (continued)

Qualification Requirements

1. Six years of practical paid experience acquired within the last fifteen years as a cable splicer, line repairer, communication electrician or electrician.
2. Not less than four and one-half years of such experience as a cable splicer, line repairer, communication electrician or electrician plus sufficient additional paid experience as a helper in any of the above titles or related educational training in an approved trade or vocational school to make a total of six years of acceptable experience. Six months of acceptable experience will be credited for each twelve months of paid experience as a cable splicer's helper, line repairer's helper, communication electrician's helper or electrician's helper; or of acceptable education training.

License Requirement:

A Motor Vehicle Driver's License valid in the State of New York.

Direct Lines of Promotion

From: Communication Electrician
(91762)

To: Senior Supervisor
Communication
Electrician (91764)

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91764

SENIOR SUPERVISOR COMMUNICATION ELECTRICIAN

General Statement of Duties and Responsibilities

Under direction, supervises the maintenance and repair of the outside plant facilities of the Division of Fire Communications; performs related work.

Examples of Typical Tasks

Supervises personnel in the titles of Supervisor Communication Electrician, Senior Fire Alarm Box Inspector, Painter, Machinist and other assigned personnel.

Assists the Director by coordinating the maintenance and repair operations of the Division of Fire Communications.

Plans, assigns and reviews the work of subordinates; prepares reports; is responsible for the conduct of inspection of maintenance and repair work to secure compliance with contracts and other specifications.

Inspects field operations for conformance to work schedules.

Directs and conducts tests of equipment and materials; confers with manufacturers or their representatives on new equipment and materials.

Prepares capital and expense budget estimates; prepares cost estimates for project installations based on time and material expense.

C-X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91764

SENIOR SUPERVISOR COMMUNICATION ELECTRICIAN (continued)

Examples of Typical Tasks (continued)

Approves or prepares requisitions and specifications for supplies, material and specialized equipment.

Consults with superiors, representatives of City departments and other appropriate personnel to plan and expedite maintenance and repair operations.

May operate a motor vehicle in carrying out duties and responsibilities.

Qualification Requirements

1. Six years of practical paid experience acquired within the last 15 years as a cable splicer, line repairer, communication electrician or electrician plus two years of full-time paid experience acquired within the last 15 years as a supervisor line repairer, supervisor communication electrician or supervisor cable splicer plus one year of full-time paid experience acquired within the last 15 years supervising a group of supervisor line repairers, supervisor communication electricians or supervisor cable splicers engaged in the maintenance and repair of the outside plant facilities of a communication or signaling utility; or
2. Education and/or experience which is equivalent to "1" above.

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91764

SENIOR SUPERVISOR COMMUNICATION ELECTRICIAN (continued)

License Requirement

A Motor Vehicle Driver's License valid in the State of New York.

Direct Lines of Promotion

From: Supervisor Communication
Electrician (91763)

To: None

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91761

COMMUNICATION ELECTRICIAN'S HELPER

General Statement of Duties and Responsibilities

Under direct supervision, assists a Communication Electrician in the installation, maintenance and repair of the cable and line network, overhead and underground, in connection with fire alarm and fire telegraph systems; assists in the erection of poles and placing on poles of aerial wires, cables, boxes, and equipment; performs related work.

Examples of Typical Tasks

Cuts gains on poles and assists in erecting and taking down poles.

Assists in the excavation and the replacing of concrete as necessary.

Operates compressor and pneumatic equipment as required in the work.

Prepares on the ground and sends aloft tools, equipment and materials as required by the Communication Electrician working aloft.

Prepares lead sleeves for wiping.

Attends solder furnace and passes solder to Communication Electrician, as required.

Assists with test of conductors for splicing and/or terminating.

Stores and looks after tools, equipment and materials of the trade, as required.

C - X
THE SKILLED CRAFTSMAN
AND OPERATIVE SERVICE [038]

CODE NO. 91761

COMMUNICATION ELECTRICIAN'S HELPER (continued)

Examples of Typical Tasks (continued)

Assists in giving first aid as conditions may require.

May operate a motor vehicle in carrying out duties and responsibilities.

Qualification Requirements

1. Three years in the last twelve years of satisfactory, full-time, paid experience as a cable splicer helper or line repairer helper; or
2. Not less than one and one-half years in the last six years of such experience plus sufficient additional related educational training in an approved trade or vocational school to make a total of three years of acceptable experience. Six months of acceptable experience will be credited for each twelve month of acceptable related educational training.

License Requirement

A Motor Vehicle Driver's License valid in the State of New York.

Direct Lines of Promotion

From: None

To: Communication Electrician
(91762)

THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATIONS CENTER
18 WASHINGTON STREET
NEW YORK, NY 10004

REQUIRED FORMS

APPLICATION FORM
EDUCATION AND EXPERIENCE
TEST PAPER
FOREIGN EDUCATION
FACT SHEET
(IF APPLICABLE)

MICHAEL R. BLOOMBERG
Mayor

MARTHA K. HIRST
Commissioner

**NOTICE
OF
EXAMINATION**

INSPECTOR (ELECTRICAL)

Exam. No. 5002

WHEN TO APPLY: From: April 6, 2005
To: April 26, 2005

APPLICATION FEE: \$40.00
Payable only by money order to D.C.A.S. (EXAMS)

WHAT THE JOB INVOLVES: Inspectors (Electrical), under general supervision, perform technical work in the inspection of electrical installations, repairs or alterations to ensure conformance to code, standards, plans or specifications. All Inspectors (Electrical) perform related work.

Some of the physical activities performed by Inspectors (Electrical) and environmental conditions experienced are: driving vehicles to and from inspection sites; walking to and from inspection sites and during inspections; climbing and descending ladders and stairs to get to areas which must be inspected; standing for extended periods of time; maintain balance while walking over narrow walkways or areas that are elevated; climbing around and over various objects; working in areas that may be damp, dusty, dark, smoky or acrid.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

THE SALARY: The current minimum salary is \$35,599 per annum. However, for candidates who work 40 hours per week for the Department of Buildings, the current minimum salary is \$41,063 per annum. This rate is subject to change.

HOW TO APPLY: If you believe that you meet the requirements in the "How to Qualify" section, refer to the "Required Forms" section below for the form(s) that you must fill out. Return all completed form(s) and the application fee to DCAS Applications Section, 1 Centre Street, 14th floor, New York, NY 10007 by mail only. Applications will not be accepted in person.

HOW TO QUALIFY:

Education and Experience Requirements: By the **last day of the Application Period** you must have:

1. Five years of full-time satisfactory experience acquired within the last 15 years as an electrician or inspector of electrical installations, light, heat, and/or power distribution, fire alarm detection or communication systems; or
2. Three years of full-time satisfactory experience as described in "1" above, plus either 60 semester credits from an accredited college with a minimum of 12 credits in electrical related courses or two years of full-time training in an acceptable electrical program in an accredited technical school; or
3. A license as a professional engineer or architect valid in the State of New York; or
4. A satisfactory combination of education and/or experience that is equivalent to "1" or "2" above. Education may be substituted for experience on the basis that six months of full-time training in an electrical program in an accredited technical school or 15 semester credits in an accredited college is equivalent to six months of the experience described in "1" above. To be credited, college education must include at least 12 semester credits in electrical related courses. However, all candidates must have a minimum of three years of experience as described in "1" above.

You are responsible for determining whether or not you meet the qualification requirements for this examination prior to submitting your application. If you are marked "Not Qualified," your application fee will not be refunded and your test paper(s) will not be rated.

Driver License Requirement: By the time you are appointed to this position, you must have a motor vehicle driver license valid in the State of New York. If you have moving violations, license suspension(s) or an accident record, you may be disqualified. This license must be maintained for the duration of your employment.

Medical Requirement: Medical guidelines have been established for the position of Inspector (Electrical). Candidates will be examined to determine whether they can perform the essential functions of the position of Inspector (Electrical). Where appropriate, a reasonable accommodation will be provided for a person with a disability to enable him or her to take the examination, and /or to perform the essential functions of the job.

READ CAREFULLY AND SAVE FOR FUTURE REFERENCE

Drug Screening Requirement: You must pass a drug screening in order to be appointed.

Residency: City residency is not required for this position, unless you accept an appointment after selective certification for Special Patrolman (see below).

English Requirement: You must be able to understand and be understood in English.

Proof of Identity: Under the Immigration Reform and Control Act of 1986, you must be able to prove your identity and your right to obtain employment in the United States prior to employment with the City of New York.

REQUIRED FORM(S):

1. **Application for Examination:** Make sure that you follow all instructions included with your application form, including payment of fee. Save a copy of the instructions for future reference.
2. **Education and Experience Test Paper:** Write your social security number, the examination title and number in the box at the top right side of the cover page. Fill out Sections A.1, A.2, A.3, and B. This form must be filled out completely and in detail for you to receive your proper rating. Keep a copy of your completed Education and Experience Test Paper for your records.
3. **Foreign Education Fact Sheet (Required only if you need credit for your foreign education to meet the education and experience requirements):** If you were educated outside the United States, you must have your foreign education evaluated to determine its equivalence to education obtained in the United States. The services that are approved to make this evaluation are listed on the Foreign Education Fact Sheet included with your application packet. When you contact the evaluation service, ask for a "course-by-course" evaluation of your foreign education. You must have one of these services submit its evaluation of your foreign education directly to the Department of Citywide Administrative Services no later than eight weeks from the last date for applying for this examination.

THE TEST: Your score will be determined by an education and experience test. You will receive a score of 70 points for meeting the education and experience requirements listed above. After these requirements are met, you will receive credit up to a maximum of 100 points on the following basis:

For full-time satisfactory experience within the last fifteen years as an electrician or inspector of electrical installations, light, heat and/or power distribution, fire alarm detection or communication systems, you will receive:

- (A) 15 points for at least one year but less than two years of experience; and
- (B) 30 points for two or more years of experience.

You will receive a maximum of one year of experience credit for each year you worked. If you have any of the above experience on a part-time basis, it will be credited according to the equivalent percent of full-time experience. Experience used to meet the minimum requirements cannot be used to gain additional credit.

Education and experience must be obtained by **the last day of the application period**.

THE TEST RESULTS: If you pass the education and experience test, your name will be placed in score order on an eligible list and you will be given a list number. You will be notified by mail of your test results. If you meet all requirements and conditions, you will be considered for appointment when your name is reached on the eligible list.

ADDITIONAL INFORMATION:

Selective Certification for Special Patrolman Requirement: If you meet the following qualifications, you may request preferred consideration for appointment to positions requiring Special Patrolman status (a status given by the New York City Police Department pursuant to Title 38, Chapter 13 of the Rules of the City of New York) through a process called Selective Certification:

- must be twenty one years of age or older,
- a citizen of the United States,
- a resident of New York City,
- have no record of convictions for any felony or for any serious offence against public safety (as defined in the New York State Penal Law),
- if discharged from military service, the discharge must not have been dishonorable, and
- be of good moral character.

All candidates who are appointed through Selective Certification will undergo a background check conducted by the New York City Police Department to verify the above qualifications, including character. Any individual appointed through Selective Certification who fails to successfully pass this background check will be terminated from the position. Additionally, if you are appointed through Selective Certification, you must maintain your Special Patrolman status (including your New York City residency) for the duration of employment in that position.

Follow the instructions in **Section D** on page 4 of the Education and Experience Test Paper to indicate your interest in such Selective Certification. You may request to participate in this Selective Certification at any time during the life of the list. If you request to participate at **some future date**, please submit documentation by mail to: DCAS Bureau of Examinations – GEEG, 1 Centre Street, 14th Floor, New York, NY 10007. Please include the examination title and number and your social security number on your correspondence.

6/5/2008

Dear Nancy G. Groenwegen, Com.

Broadbanding & Consolidation of NYC

^{Civil Service titles}
as a Civil Service Carpenter and member of
the Carpenters union for 26 yrs. I view the
broadbanding & consolidation proposals of NYC
DEAS with alarm.

Perhaps some titles need broadbanding & could
(if there are only a few jobs for Puppeteers
they can become parks recreation workers)
And titles that require a professional degree
and/or license architects, lawyers, engineers,
probably do not need an additional Civil
Service test.

But union journeymen & apprentices in the
trade have more training & experience than
non union ones & are probably in the majority
on Civil Service lists established from Civil
Service tests.

At a time when construction accidents toll on
union and non union jobs are in the news
the last thing needed for public safety is the hiring
of unqualified, untested tradesmen. Without a list
established by Civil Service testing, appointments
^{may be} made by Cronyism, nepotism & favoritism. Promotion
to trade supervising positions should be by test
established lists. I knew that Civil Service tests

have forced me to study my trade harder in order
to excel. In exchange I have been appointed,
served probation and been promoted from title
- title. If there are no Pishi Senior title
all rights will in fact be provisional
limiting to Civil Service rights of trade workers.

Perhaps this is incapable of administering all
the tasks they are presently responsible for.

In fact the most recent tests for Carpenter &
Superior of Carpenters (which were written without
any trade input) were so badly designed as
to have an overall pass rate so low that
the results had to be "curved" thus led to
long delays in establishing the lists. But the
answer is not to broaden or consolidate in
broadening trade titles where mistakes can
jeopardize public safety, as we have recently seen.

Sincerely,

Patrick Buckley

Member, Council

United Brotherhood of Carpenters & Joiners

COMMISSIONER'S OFFICE

JUN 23 2008

RECEIVED

William K. Flynn
197 Dalton Avenue
Staten Island, New York 10306

June 30, 2008



Ms. Nancy G. Groenwegen
NYS Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

Re: skilled trades reclassification to Non-Competitive Class.

Dear Ms. Groenwegen,

You have recently heard from my Union representative Mr. William Lacey, of District Council of Carpenters and Joiners, Civil Service Director. He and other Union trades representatives are officially opposing the attempts by DCAS to change in essence how individuals qualify to work for the City of New York. That method is competition.

I am writing as a Civil Service carpenter, working in the NYC system for 12 years. I passed an entrance test, was placed on a qualified list (list established after 2yr. wait), was called before interviewing boards, and was picked up with permanent status. I found this to be a pretty normal circumstance. Any job that I have ever held was gotten through experience in the specific field.

Aside from the reasons given by my Union representative, it is my opinion that DCAS has been given directives by social engineers in government, whose reasons for doing so, is to make it easier for individuals (less qualified) to acquire jobs. It makes it easier for City Administrations to paint pictures that are more socially acceptable given this era of feel good, PC attitudes. Sounds a little simplistic. It is simple, unless you weigh other factors.

Unskilled workers have no advantages. I do not want to work with unskilled (carpenters). To start, it is dangerous. I work with machines, light and heavy, that can injure and kill people not familiar with their nomenclature and theory of operation. Another disadvantage, the fact that if unskilled individuals are hired, someone has to train them. That means additional budgets for that need. More taxes!

Simplistic. Let us look at the big picture. The better qualified worker is gained through competitive testing. Experience history is

necessary, testing that experience is necessary. Just look at all the construction accidents happening in the city just recently. I would bet that a lot of those incidents could have been avoided with individuals working with more experience and knowledge.

Seems real simple to me. The DCAS plan makes poor sense, it will, in the end prove to be the wrong way to go.

Thank you for your time.

Sincerely,

A handwritten signature in black ink that reads "Bill Flynn". The signature is written in a cursive style with a long, horizontal flourish extending to the right.



June 24, 2008

D.C. # 9 CIVIL SERVICE EMPLOYEES LOCAL # 1969

Dear Nancy G. Groenwegen,

This letter is in reference to the Department of Citywide Administrative Services (DCAS) plan to reclassify civil service titles. As far as I'm concerned this plan would be an assault on civil service. DCAS is taking this court decision and converting it into a plan to destroy the civil service system, posing the greatest threat to New York City workers since the fiscal crisis of the 1970's. Their plan if they succeed will remove our job protections for potentially thousands of city workers. Our unions have poured blood and sweat into creating these protections which are now in jeopardy. Our unions have given up billions of dollars towards these protections. A lot of our titles could see the end of competitive exams and the return of discrimination in hiring and firing. So I'm asking you please be very wise in your decision over this plan. As far as I'm concerned DCAS lost the court hearing and is retaliating against our unions. Thank you for your attention and may god bless America.

Sincerely,

Mico J. Zackschewski
Mico J. Zackschewski
135-20 Hoover ave #5N
Kew Garden, N.Y. 11435

July 7, 2008

Mr. Kirk O'Neal
70 West 95th Street, Apt. 15E
New York, NY 10025

Nancy G. Groenwegen
President, Civil Service Commission
NYS Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

Dear Cmr. Groenwegen:

I am writing to voice my concern about the consolidation element of DCAS's proposal to reduce the number of provisional employees employed by the City of New York. Specifically, I am concerned about the manner in which promotions are effected when a competitive class title is consolidated in New York City. This concern stems from my personal experience.

After passing a competitive promotional exam, I was appointed to the competitive class title of City Assessor (title code: 40202) within the New York City Department of Finance in 1990. Due to consolidation, which occurred prior to my appointment, there are 4 levels of assignment for this title.

The description of each assignment level is general and does not clearly state the qualifications needed to advance from one level to the next. (Please see http://extranet.dcas.nycnet/tsol/ListTitleOccGroupResults.aspx?occ_group_code=259).

In 1995, I was able to receive a promotion from level 1 to level 2. I wish to briefly describe the promotion process used by the Department of Finance.

In order to be promoted to a higher level, a candidate must respond to a job vacancy notice by submitting a resume and cover letter. Those who submit resumes may or may not be called for an interview. If called for an interview, the candidate will be interviewed by a panel composed of higher level assessing personnel. During the interview each candidate is asked questions about assessing and appraisal practices and techniques which may or may not be in used in the normal course of agency business. Overall the process lacks consistency or accountability.

Furthermore, to the best of my knowledge, the promotion process does not distinguish between per diem, provisional, or civil service tenure. In other words, an employee with ten years of total service with two years as a provisional and eight years as a permanent

employee would be considered for promotion no less than an employee that has ten years permanent employment in title. Therefore it is not uncommon to find employees with less civil service tenure at the same or higher assignment level as someone with more civil service tenure.

The Personnel Rules and Regulations of the City of New York state that "promotion shall be based on merit and fitness as determined by examination. Seniority, previous training an experience of candidates, and performance based on performance evaluation *may* be considered and given due weight as factors in determining the relative merit and fitness of candidates for promotion." (Rule 5.3.8) In my opinion Civil Service Law would be better served if the word "may" was replaced by "must" or "should." The flexibility which the word "may" provides only serves to weaken the intent of Civil Service Law

While DCAS has audit and investigatory powers, I am unaware of any initiative on its part to examine and oversee how the various agencies which have been granted consolidated titles make promotions. To allow DCAS further use of consolidation without first reviewing its administrative performance with respect to promotions would be foolhardy. If DCAS cannot timely schedule open-competitive examinations when needed, perhaps it is understaffed or improperly organized and thereby unable to perform its duty to enforce Civil Service Law.

I trust that you will require DCAS to address the issue of promotions under consolidation prior to allowing the expansion of consolidation in the City. To do otherwise would allow for further circumvention of the very protections which Civil Service Law was enacted to insure.

Thank you for hearing my concern.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kirk O'Neal".

Kirk O'Neal

THE LAW OFFICES OF
FAUSTO E. ZAPATA, JR., P.C.

305 BROADWAY
SUITE 1101
NEW YORK, NY 10007

OF 1000 Cps
X3 w/o attachments to
1. Power 2. Signed
TEL: (212) 766-9870
FAX: (212) 766-9869
E-MAIL: FZ@FZAPATALAW.COM

July 17, 2008

Nancy G. Groenwegen
President - Commissioner
NYS Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

JUL 2008

**Re: Local 333, United Marine Division,
International Longshoremen's
Association, AFL-CIO,
Response & Comments to the
DCAS Proposed 5-Year Plan**

Dear President Groenwegen,

I write this letter on behalf of Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO, in connection to the above referenced matter.

The City of New York Department of Citywide Administrative Services (hereinafter "DCAS") has proposed converting the Ferry Terminal Supervisor (hereinafter "FTS") title, which is represented by Local 333, from a competitive civil service title to a non-competitive civil service title. Its rationale for proposing this, in part, is because it has been required by Civil Service Law §65(5) to substantially comply with the civil service law requirements of limited durational appointments for provisional appointments without disrupting New York City services, and since the FTS title has fewer than twenty (20) persons serving in this capacity, it is impractical to hold civil service examinations for the FTS title.

To further elaborate, DCAS has justified the conversion of a significant number of titles with 20 or less appointees from competitive to non-competitive positions on the grounds that it is not practicable to ascertain merit and fitness, as required under the New York State Constitution, by competitive examination; the FTS title is just one of many. It further concedes, with respect to this entire category of titles, that although many qualities may be tested by competitive examination, important qualities are not. It justifies this proposition by contending that these classes of positions involve highly discretionary managerial or policy making decisions, as well as confidential responsibilities. These factors, according to DCAS, weigh in favor of converting such titles to either non-competitive or altogether exempt positions.

As further justification, it purports that some of the titles in the twenty or less class should be converted from competitive to noncompetitive because the State has done so. It rationalizes this position on the grounds that the State has created a number of

positions outside the competitive class that ensure that key high level management and policy structures of agencies are not forced to violate the civil service law with respect to provisional appointments¹. Additionally, positions in this class, it argues, have a fundamental component in the exercise of judgment or discretion or the exercise of specialized skills. On that note, it proposes to adopt State classifications of those positions that have been classified outside of the competitive class. Notably, DCAS does not identify any characteristics in the FTS title that would warrant the conversion of this particular title from competitive to noncompetitive.

In arguing that it is impractical to hold civil service examinations, DCAS contends that The City of New York does not have the resources at this time to expend the money on civil service examinations for titles which it unilaterally finds to be wrongly categorized as competitive. Moreover, it states that it “is difficult to imagine that the State Constitution and the Civil Service Law intended that the City develop hundreds of examinations for titles that have never been occupied by more than a very small number of individuals.” (See page 13 of the DCAS 5-Year Plan.) In its 5-Year Plan, DCAS does not identify why it believes that the FTS title is wrongly categorized as competitive. (A complete copy of DCAS’s 5-Year Plan is attached herein as Exhibit “A”.)

Historically, the FTS title has been a competitive title for many years. In Notice of Examination No. 9624, the second most recent exam, eligibility to take the exam was stated to be as follows:

Open to each employee of the Department of Transportation who on the date of the written test: (1) is permanently employed in the titles of Deckhand or Laborer; (2) has served as a permanent employee in such title or titles for a period of not less than six months preceding that date; and (3) is not otherwise ineligible.

The license requirements for this exam were as follows:

At the time of appointment, candidates must possess a valid radio-telephone third class operator’s permit, issued by the Federal Communications Commission, for operation of shore stations. This license must be presented to the appointing officer at the time of appointment interview.

The job was described as follows:

¹ The proposition that agencies that willfully violate civil laws are forced to do is curious in that agencies are required to uphold the law in every respect despite any inconveniences that result. Legislature can change the laws if it finds that the laws are too burdensome.

DUTIES AND RESPONSIBILITIES: Under general supervision, is in charge of a ferry terminal and the terminal personnel; performs related work.

EXAMPLES OF TYPICAL TASKS: Arranges schedules for complete 24-hour, 7-day week coverage. Is responsible for maintenance of ferry boat schedules. Keeps logs of arrival and departure boats. Regulates all passengers and vehicle traffic and supervises safe loading and unloading of boats. Makes arrangements for fueling and emergency repairs. Inspects fire stations in terminal and dock. Supervises maintenance of cleanliness and safety. Checks all solicitors around or in terminal for the possession of written orders of permission. Takes charge of accidents occurring on boats and terminals. Makes out accident and damage reports. Occasionally operates bridges and takes tickets. Is responsible for proper operation of radio-telephone to notify proper officials in the event of an emergency. Makes reports of all incidents and makes spot checks of the vehicle tickets to determine their accuracy.

The test information provided for this exam was as follows:

TESTS: Seniority, weight 15; written, weight 85, 70% required. The written test will be of the multiple-choice type and may include questions on: all aspects of ferry terminal operations, including proper maintenance, traffic control, and safety; the proper use, maintenance and operation of a ferry boat, including nautical and mechanical trades nomenclature, and proper safety procedures and precautions; resolution of emergency situations; public relations and supervisory techniques; and the rules and regulations of the Department of Transportation, including the provisions of Mayor's Executive Order No. 16.

(A complete copy of Notice of Examination No. 9624 is attached herein as Exhibit "B".)

The most recent civil service competitive examination took place on September 28, 1996. The related Notice of Examination No. 4566 described the FTS position as follows:

Ferry Terminal Supervisors, under general supervision, are in charge of a ferry terminal and terminal personnel; arrange and maintain ferry boat schedules; regulates all passenger and vehicle traffic, and perform related work.

Some of the physical activities performed by Ferry Terminal Supervisors and environmental conditions experienced are: Walks to and from Ferry Terminal while conducting inspections of Ferry Terminal locations. Walks on apron, bridges and ships dock when coordinating inspections. Climbs and descends from ladders, stairs, bus and subway ramps. Conducts inspections outdoors in all kinds of weather.

(This is a brief description of what you might do in this position and does not include all the duties of this position.)

(A complete copy of Notice of Examination No. 4566 is attached herein as Exhibit "C".)

The Department of Transportation's current Terminal Operations Manual describes the duties of an FTS as follows:

The Ferry Terminal Supervisor (FTS) reports directly to the Executive Director of Safety and Security and provides leadership for Dock Office Personnel including the Ferry Terminal Clerk and Deckhands assigned to ferry terminal positions.

The FTS shall coordinate with Port Office personnel and ferry Captains to achieve effective scheduling arrangements. The position is responsible to coordinate slip assignments for arriving ferries and to maintain safe operating conditions within the passenger terminal at all times. The FTS shall ensure that machinery and systems are properly operated including passenger boarding systems, communication systems, terminal lighting, HVAC, etc.

The FTS assists Administration personnel as necessary to coordinate replacement crewmembers.

The FTS shall ensure that management system requirements and procedures are implemented by Dock Office personnel including Clerks and Deckhands.

Duties & Responsibilities

- 1) Provide effective leadership, commitment and involvement to implement terminal and ferry operations procedures (TOM 1);
- 2) Serve as Dock Office Team Leader to coordinate safe operating conditions within terminals for passengers and ferries at all times (TOM 2.1);

- 3) Ensure Dock Office team Members are properly informed of management system requirements and that specified requirements have been implemented (TOM 2.3);
- 4) Ensure specified documents and records are maintained in the Dock Office (TOM 2.3);
- 5) Ensure compliance with uniform standards by Port Office Team members (TOM 2.4);
- 6) Coordinate implementation of Dock Office Team duty assignments (TOM 5.1)
- 7) Coordinate precautions to safely assign ferries to appropriate slips (TOM 5.2);
- 8) Ensure that ferry terminal announcements are properly performed (TOM);
- 9) Coordinate safe passenger boarding and disembarking operations as detailed by procedures (TOM 5.4 & 5.5);
- 10) Ensure that passenger counting is properly coordinated (TOM 5.6);
- 11) Implement ferry terminal safety requirements with Dock Office Team members (TOM 5.7);
- 12) Perform ferry terminal inspections at the commencement of each shift (TOM 5.8);
- 13) Assign linehandlers as necessary to assist with mooring operations (TOM 5.9);
- 14) Ensure weather observations are coordinated in accordance with requirements (TOM 5.10);
- 15) Advise personnel of severe weather conditions affecting safety of passengers and vessel operations (TOM 7.2);
- 16) Ensure Ferry Terminal Logbook and Station Log are properly maintained (TOM 5.11);
- 17) Coordinate first aid assistance for passengers and personnel as necessary (TOM 7.1);
- 18) Participate in operations meetings to determine operational requirements and daily schedules (OPS 5.1);
- 19) Ensure that records are maintained as specified by related procedures (SSG 4.5);
- 20) Participate in event reporting and analysis activities as necessary (SSG 5.1 & 5.2);
- 21) Assist with risk assessment as requested by Safety & Security personnel (SSG 6.1);
- 22) Ensure compliance with communications procedures (OPS 4.1, 4.3 & 4.4); and
- 23) Perform additional duties as directed by the Executive Director of Safety & Security.

(A copy of the Department of Transportation (hereinafter "DOT") Operations Guide, section 2.9, describing these duties is attached herein as Exhibit "D".)

The arguments put forth by DCAS in favor of bringing the NYC workforce in compliance with the Civil Service Law are in sync with its past actions in that DCAS has the sole responsibility to create and hold civil service examinations, and to also ensure that the resulting lists were utilized by City agencies. It has failed to live up to these obligation; Exam No 4566 was held on September 28, 1996, and it was the last written competitive civil service examination for this title. Now it is arguing that in order to bring the City into compliance with the Civil Service Law, it must eliminate competitive examinations for the FTS title. In effect, it created the problem by failing to live up to its mandate and it now it wants to eliminate competitive examinations to solve the problems that it created by its approach to competitive examinations with respect to this title.

Moreover, there is absolutely no authority whatsoever supporting its argument that it is impracticable to hold competitive examinations for titles with twenty or fewer employees. On the contrary, there is ample authority supporting the contention that competitive examination is the rule and that anything else is the exception to this rule.

Under the New York State Constitution, Article V, §6, "Appointments and promotions in the civil service of the state and all of the state and all of the civil divisions, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive."

Cases interpreting this section of the New York State Constitution have held that:

The declaration of the Constitution is that appointments and promotions shall be made according to merit and fitness. The obvious purpose of this provision was to declare the principle upon which promotions and appointments in the public service should be made, to recognize in that instrument the principle of such appointments and promotions in place of their being made upon partisan or political grounds (Record Constitutional Convention, Vol. 5, p. 2444; Vol. 6, p. 2552, *et seq.*) It then declares that merit and fitness shall be ascertained by examinations, and also the extent to which they shall be thus determined. The extent to which examinations are to control is declared to be only so far as practicable.

In the Matter of Sweet, 157 NY 368, 375 (1898), see also, In the Matter of Rubin, 1 Misc.2d, 300 (1952); see also, In Matter of Morris Friedman, 171 Misc. 332, 334 (1939) (the court, in assessing the requirement of merit and fitness, stated that the "fundamental principal of underlying the will of the People as expressed here is that there

shall be competitive examinations for all civil service appointments. Exemption is the exception, not the rule. Wherever it is practicable to do so, the Legislature and the commissioners, appointed by it, shall provide for competitive examination.”); see also, In the Matter of Montero, 68 NY2d 253, 258 (1986) (The purpose of this Article V, §6, requiring competitive testing to determine merit and fitness, as far as practicable, was to “replace the spoils with a system of merit selection and to protect the public as well as the individual employee.”); see also, In the Matter of Wood, 85 NY2d 238, 249 (1994) (“While the character of the position may constitutionally allow for dispensing with the examination requirement, either in whole or in part, non competitive appointments are the exception, not the rule.”)

In Sweet, the court found that probationary periods in addition to competitive examinations were constitutional in that it worked to ascertain an individuals merit and fitness for a particular position. In other words, competitive examinations were not the exclusive method to determine merit and fitness, but it was a necessary component, where it was practicable. The court reasoned that the competitive examination tested a candidate’s merits to perform the job, but not whether the person was suited or competent for the position. The probationary period acted to determine the latter.

In other words, it “is no answer to remove... competitive examination in an ‘all or nothing approach’. The preferred solution is to find a ‘middle ground’ in those cases where both competitive testing and consideration of untestable attributes are necessary for a complete evaluation of merit and fitness.” In the Matter of Condell, 151 A.D.2d 88, 92-93 (1989).

Additionally, the “testing techniques ultimately used... must, under existing law, employ an objective standard or measure which is capable of being challenged and reviewed by other examiners of equal ability and experience.” In the Matter of Altman, 44 Misc. 2d 751, 753 (1965); see also, In the Matter of Condell, 151 A.D.2d 88 (1989); see also, In the Matter of Wood, 85 NY2d 238 (1994).

Under the New York State Constitution, competitive examinations must be given to ascertain merit and fitness where it is practicable. The Sweet court elaborated as to what “practicable” means in this context. The court identified “two classes of cases where the question of practicability arises; one, where the place is such that no examination can be had because the question of merit and fitness cannot be reached in that way, the other, where an examination may be had, but different and additional tests will tend to secure an improved service by more accurately determining these questions.” Sweet, 157 NY at 382. In addressing the first class, the court stated that “where the relations between the officer and the appointee are confidential this provision of the Constitution does not apply, but fails by reason of impracticability of determining merit and fitness for such a position by a civil service examination.” Sweet, 157 NY at 381.

In Condell, the court also used a formula to assess the impracticability of conducting competitive examinations. The court stated that there are two grounds upon which impracticability can be found. First, where the nature of the position is

confidential. Second, where the nature of the duties is “such that a competitive examination is an insufficient method ‘to fully and fairly determine the merit and fitness of the contemplated employee.’” Condell, 151 A.D.2d at 93; see also, In the Matter of Shafer, 171 AD2d 311 (1991).

The Condell court stated that if the character of the position is such that it falls into the first category, this alone is sufficient to exempt the position from competitive examination. If, however, the position was classified in the second category, then it is necessary to first determine the nature and character of the duties involved are in any way capable of being competitively tested. If this is the case, then that part that can be tested by competitive examination must be tested in this manner. In this context “the court appears to favor a competitive examination for the skills which are capable of objective testing combined with a method of considering those qualities which are not.” Condell, 151 A.D.2d at 94; see also, In the Matter of McGowen, 71 NY2d 729, 734-35 (1988) (“the constitutional preference for competitive examinations... provides sufficient reason to shun an all or nothing approach. That preference commends a middle ground which incorporates both competitive testing and consideration of untestable attributes, which both are necessary for a complete evaluation of merit and fitness. Such flexibility provides an incentive for defendants to include a doubtful position in the constitutionally favored competitive class.”)

In the Matter of Thomas F. McGuiness, the court stated that the “argument, however, that the preparation of the examination is Herculean and complicated cannot be used to circumvent statutory and constitutional requirements. Clearly, an examination must be given as soon as it is practicable to do so. The court is cognizant of the fact that competitive examinations for civil service titles require detailed job analysis for the preparation of the written exam as well as the development in the instant proceeding of physical and medical pre-employment standards. Test announcements must be printed and distributed. Applicants must be screened and notified; test sites must be chosen and examinations printed and published.” In the Matter of Thomas F. McGuiness, 107 Misc. 2d 426, 428-29 (1980)

When DCAS’s proposition is weighed against the long line of cases requiring competitive testing to determine merit and fitness, as far as practicable, it is absolutely clear that it has not produced any evidence that would justify attacking the aforementioned constitutional mandate. The FTS title has traditionally been a competitive title because the nature and character of the position can be tested in all respects, or in the alternative to some degree.

On that note, the typical duties of the FTS title are not confidential in nature which is clearly evident in Exhibits “A”, “B”, and “C” which describe the basic functions of this title. The FTS title is not a key high-level management position, nor does this title have any input as to DOT’s policies. Therefore, the argument that the exercise of judgment or discretion or the exercise of special skills bolsters DCAS’ position that this title should be converted from competitive to non-competitive class is inconsistent in that the duties of this title are analogous to other titles that are in the competitive class. In

other words, the level of discretion and specialized skills necessary for the FTS position is not of such a nature to warrant the conversion proposed by DCAS.

Furthermore, DCAS has provided no support showing that the constitutional mandate of competitive testing can be summarily evaded by the government's reliance on the argument that it does not have the money. Id. If this were the case, the Constitution could be disregarded simply by financially starving those agencies responsible for complying with the merit and fitness mandate of the constitution.

History demonstrates that the nature and character of the FTS title can be tested. In the past, the written part of exams have tested candidates with respect to: all aspects of ferry terminal operations, including proper maintenance, traffic control, and safety; the proper use, maintenance and operation of a ferry boat, including nautical and mechanical trades nomenclature, and proper safety procedures and precautions; resolution of emergency situations; public relations and supervisory techniques; and the rules and regulations of the Department of Transportation, including the provisions of Mayor's Executive Order No. 16. (See Exhibit "B").

Clearly the "existence of competitive testing belies any assertion that... the position cannot be assessed, at least to some degree, by competitive examination." Wood, 85 NY2d at 249.

Here, there was competitive testing at one time for the FTS title, and based on the two most recent Examination Notices, it is clear that at a minimum some portion of this position can be tested.

Additionally, removing the FTS title from the competitive class would give the DOT the ability to pick and choose whom to promote without the strict controls provided by a competitive examination. This would infringe upon the merit and fitness requirement in that the best candidates will not have the same opportunities as the persons with political or personal connections within the DOT, who could presumably use those relationships to advance his/her career. In other words, by eliminating competitive promotional examinations for the FTS title, DCAS will be creating a situation where personal and political influence will determine civil service appointments.

This would in effect create the very situation that the Framers of the Constitution wanted to avoid. As the court in Sweet pointed out, the "obvious purpose of this provision was to declare the principle upon which promotions and appointments in the public service should be made, to recognize in that instrument the principle of such appointments and promotions in place of their being made upon partisan or political grounds (Record Constitutional Convention, Vol. 5, p. 2444; Vol. 6, p. 2552, *et seq.*)" Sweet, 157 NY at 375.

Moreover, converting the competitive status of the FTS title to a non-competitive title will eliminate a clear line of promotion for Deckhands, another title that Local 333

represents. Deckhands have an expectation that a promotional exam will provide the opportunity to obtain the FTS position. This expectation is a tangible benefit in that only a certain pool of candidates can take the exam to achieve the promotion to the FTS title. The pool of candidates is smaller and therefore increases the opportunity to obtain the promotion. The proposed conversion would destroy this expectation and eliminate a protection that has been enjoyed for a long time by individual employees. Wood, 85 NY2d at 249 (the merit selection system is designed, in part, to protect individual employees.)

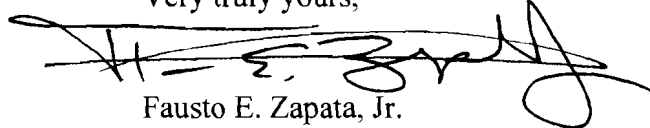
Currently, the pool of FTS candidates must serve in one of various titles, including Deckhand, for a stated period of time as a qualification prior to sitting for an FTS competitive examination. This ensures that the persons that are ultimately appointed will have demonstrated his/her ability to serve in a closely related title. In the case of Deckhands, they acquire the skills necessary to perform the FTS duties on the job. More specifically, Deckhands are trained in matters that are directly tied to the duties of an FTS. (Attached herein as Exhibit "E" is a copy of the Deckhand title specifications).

Additionally, converting the FTS title to non-competitive title will likely impact individuals wanting to achieve a promotion to this title from engaging in protected union activities, like filing grievances, or challenging any DOT policies or actions, for fear of impacting their long-term ability to obtain promotions within the organization because promotional decisions will likely be made on the basis of personal or political connections.

In conclusion, we urge the New York State Civil Service Commission to strike down DCAS's proposal to convert the FTS title from the competitive to noncompetitive class because it is clearly unconstitutional.

If you have any questions, please call me at 212-766-9870.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Fausto E. Zapata, Jr.', with a stylized, flowing script.

Fausto E. Zapata, Jr.

C: *Local 333 President William Harrigan*
 Local 333 Secretary-Treasurer Michael Brandon
 Local 333 Union Representative Richie Russo
 Executive Deputy Commissioner Patricia A. Hite
 Deputy Commissioner for Operations Hector Millan
 Deputy Commissioner for Administration Deirdre Taylor
 Director of Civil Service Commission Operations Stella Chen Harding
 DCAS Commissioner Martha K. Hirst

Exhibit **A**

Appendix III: Consolidation of Titles

Consolidations of titles

3.1.2.001 **Blacksmith titles:**

The titles of Blacksmith's Helper, Blacksmith and Supervisor Blacksmith will be consolidated into Blacksmith - Assignment Levels I, II, and III. This reclassification will convert two step-up provisional Blacksmiths into permanent Blacksmiths-Assignment Level II and will reduce the number of required exams by two.

3.1.2.002 **Boilermaker titles:**

The titles of Boilermaker's Helper, Boilermaker and Supervisor Boilermaker will be consolidated into Boilermaker - Assignment Levels I, II, and III. This reclassification will convert one step-up provisional Supervisor Boilermaker into a permanent Boilermaker-Assignment Level III and will reduce the number of required exams by two.

3.1.2.003 **Accountant titles:**

The titles of Accountant and Associate Accountant will be consolidated into Accountant - Assignment Levels I and II. This reclassification will convert 89 step-up provisional Associate Accountants into permanent Accountants - Assignment Level II and will reduce the number of required exams by one.

3.1.2.004 **Real Estate Appraiser titles:**

The titles of Appraiser (Real Estate), Senior Appraiser (Real Estate), Supervising Appraiser (Real Estate) and Principal Appraiser (Real Estate) will be consolidated into Appraiser (Real Estate) - Assignment Levels I, II, III and IV. This reclassification will convert five step-up provisionals in these titles into permanent Appraisers (Real Estate) at Assignment Level II, III or IV and will reduce the number of required exams by four.

3.1.2.005 **Chemist titles:**

The titles of Assistant Chemist and Associate Chemist will be consolidated into Chemist - Assignment Levels I, II, and III. This reclassification will convert 48 step-up provisional Assistant Chemists into permanent Chemists - Assignment Level II or III and will reduce the number of required exams by one.

3.1.2.006 **Bookkeeper titles:**

The titles of Bookkeeper and Associate Bookkeeper will be consolidated into Bookkeeper - Assignment Levels I and II. This reclassification will convert 43 step-up provisional Associate Bookkeepers into permanent Bookkeepers - Assignment Level II. Bookkeeper titles will reduce the number of required exams by one.

3.1.2.007 City Planner titles:

The titles of City Planner and Associate City Planner will be consolidated into City Planner - Assignment Levels I, II, III and IV. This reclassification will convert 49 step-up provisional Associate City Planners into permanent City Planners - Assignment Level III or IV and will reduce the number of required exams by one.

3.1.2.008 Clock Repairer titles:

The titles of Clock Repairer and Supervisor Clock Repairer will be consolidated into Clock Repairer - Assignment Levels I and II. This reclassification will reduce the number of required examinations by one.

3.1.2.009 Demolition Inspector titles:

The titles of Demolition Inspector, Senior Demolition Inspector and Supervising Demolition Inspector will be consolidated into Demolition Inspector - Assignment Levels I, II, and III. This reclassification will reduce the number of required exams by two.

3.1.2.010 Department Librarian titles:

The titles of Department Librarian, Department Senior Librarian, Department Supervising Librarian and Department Principal Librarian will be consolidated into Department Librarian - Assignment Levels I, II, III and IV. This reclassification will reduce the number of required exams by three.

3.1.2.011 Economist titles:

The titles of Assistant Economist, Economist, Senior Economist and Supervising Economist will be consolidated into Economist - Assignment Levels I, II, III and IV. This reclassification will convert three step-up provisional Senior Economists into permanent Economists Assignment Level III and will reduce the number of required exams by three.

3.1.2.012 Estimator (Electrical) titles:

The titles of Estimator (Electrical) and Senior Estimator (Electrical) will be consolidated into Estimator (Electrical) - Assignment Levels I and II. This reclassification will convert two step-up provisional Senior Estimators (Electrical) into permanent Estimators (Electrical) - Assignment Level II and will reduce the number of required exams by one.

3.1.2.013 Estimator (General Construction) titles:

The titles of Estimator (General Construction) and Senior Estimator (General Construction) will be consolidated into Estimator (General Construction) - Assignment Levels I and II. This reclassification will convert 15 step-up provisional Senior Estimators (General Construction)

into permanent Estimators (General Construction)-Assignment Level II and will reduce the number of required exams by one.

3.1.2.014 Estimator (Mechanical) titles:

The titles of Estimator (Mechanical) and Senior Estimator (Mechanical) will be consolidated into Estimator (Mechanical) –Assignment Levels I and II. This reclassification will convert two step-up provisional Senior Estimators (Mechanical) into permanent Estimators (Mechanical) – Assignment Level II and will reduce the number of required exams by one.

3.1.2.015 Furniture Maintainer titles:

The titles of Furniture Maintainer's Helper, Furniture Maintainer, Furniture Maintainer (Finisher), Furniture Maintainer (Woodwork) and Supervisor Furniture Maintainer will be consolidated into Furniture Maintainer - Assignment Levels I, II, and III. This reclassification will reduce the number of required exams by three.

3.1.2.016 Gardener titles:

The titles of Gardener and Assistant Gardener will be consolidated into Gardener - Assignment Levels I and II. This reclassification will reduce the number of required exams by one.

3.1.2.017 Geologist titles:

The titles of Geologist, Geologist Trainee, Assistant Geologist and Senior Geologist will be consolidated into Geologist - Assignment Levels I, II, III and IV. This reclassification will reduce the number of required exams by three.

3.1.2.018 Highway Repairer titles:

The titles of Highway Repairer and Supervisor Highway Repairer will be consolidated into Highway Repairer - Assignment Levels I and II. This reclassification will convert 17 step-up provisional Supervisor Highway Repairers into permanent Highway Repairers Assignment Level II and will reduce the number of required exams by one.

3.1.2.019 Hull and Machinery Inspector titles:

The titles of Hull and Machinery Inspector, Senior Hull and Machinery Inspector and Supervising Hull and Machinery Inspector will be consolidated into Hull and Machinery Inspector - Assignment Levels I, II, and III. This reclassification will reduce the number of required exams by two.

3.1.2.020

Locksmith titles:

The titles of Locksmith and Supervisor Locksmith will be consolidated into Locksmith - Assignment Levels I, and II. This reclassification will reduce the number of required exams by one.

3.1.2.021

Medical Record Librarian titles:

The titles of Medical Record Librarian and Senior Medical Record Librarian will be consolidated into Medical Record Librarian - Assignment Levels I, and II. This reclassification will convert one step-up provisional Senior Medical Record Librarian into a permanent Medical Record Librarian - Assignment Level II and will reduce the number of required exams by one.

3.1.2.022

Mortuary titles:

The title of Mortuary Technician will be reclassified to the Labor Class and the titles of Senior Mortuary Technician, Principal Mortuary Technician, Assistant Coordinator of Mortuary Services and Coordinator of Mortuaries will be consolidated into Forensic Mortuary Technician - Assignment Levels I, II, and III. This reclassification will convert step-up provisional Principal Mortuary Technicians into permanent Forensic Mortuary Technicians - Assignment Level II and will reduce the number of exams required by four.

3.1.2.023

Motor Vehicle Supervisory titles:

The titles of Motor Vehicle Supervisor, Senior Motor Vehicle Supervisor and Supervisor of Motor Transport will be consolidated into Motor Vehicle Supervisor - Assignment Levels I, II and III. This reclassification will convert eight step-up provisional Senior Motor Vehicle Supervisors into permanent Motor Vehicle Supervisors - Assignment Level II and four step-up provisional Supervisors of Motor Transport into permanent Motor Vehicle Supervisors - Assignment Level III and will reduce the number of required exams by two.

3.1.2.024

Nutritionist titles:

The titles of Nutritionist, Nutrition Consultant, Supervising Nutritionist and Principal Nutritionist will be consolidated into Nutritionist - Assignment Levels I, II, III and IV. This reclassification will convert one step-up provisional Nutrition Consultant into permanent Nutritionist - Assignment Level II and will reduce the number of required exams by three.

3.1.2.025

Painting Inspector titles:

The titles of Painting Inspector and Senior Painting Inspector will be consolidated into Painting Inspector - Assignment Levels I and II. This reclassification will reduce the number of required exams by one.

- 3.1.2.026 Physicist titles:**
The titles of Physicist Trainee, Assistant Physicist, Physicist, Senior Physicist and Principal Physicist will be consolidated into Physicist-Assignment Levels I, II, III and IV. This reclassification will convert one step-up provisional Senior Physicist into permanent Physicist - Assignment Level III and will reduce the number of required exams by 3.
- 3.1.2.027 Physicist (Electronics) titles:**
The titles of Assistant Physicist (Electronics), Physicist (Electronics) and Senior Physicist (Electronics) will be consolidated into Physicist (Electronics) - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by two.
- 3.1.2.028 Physicist (Isotopes) titles:**
The titles of Assistant Physicist (Isotopes), Physicist (Isotopes) and Senior Physicist (Isotopes) will be consolidated into Physicist (Isotopes) - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by two.
- 3.1.2.029 Physicist (Radiation) titles:**
The titles of Assistant Physicist (Radiation), Physicist (Radiation) and Senior Physicist (Radiation) will be consolidated into Physicist (Radiation) - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by two.
- 3.1.2.030 Printing Press Operator titles:**
The titles of Assistant Printing Press Operator and Printing Press Operator will be consolidated into Printing Press Operator – Assignment Levels I and II. This reclassification will convert 2 step-up provisional Printing Press Operators into permanent Printing Press Operator – Assignment Level II and will reduce the number of required exams by one.
- 3.1.2.031 Program Officer (DFTA) titles:**
The titles of Program Officer (DFTA) and Associate Program Officer (DFTA) will be consolidated into Program Officer (DFTA) – Assignment Levels I and II. This reclassification will convert 8 step-up provisional Associate Program Officers (DFTA) into permanent Program Officer (DFTA) – Assignment Level II and will reduce the number of required exams by one.
- 3.1.2.032 Investment Analyst titles:**
The titles of Senior Investment Analyst and Supervising Investment Analyst will be consolidated into a new title of Investment Analyst - Assignment Levels I and II. This reclassification will reduce the number of required exams by one.

3.1.2.033 Sewage Treatment Worker titles:
The titles of Sewage Treatment Worker and Senior Sewage Treatment Worker will be consolidated into Sewage Treatment Worker - Assignment Levels I and II. This reclassification will convert 56 step-up provisional Senior Sewage Treatment Workers into permanent Sewage Treatment Workers - Assignment Level II and will reduce the number of required exams by one.

3.1.2.034 Statistician titles:
The titles of Assistant Statistician, Statistician, Senior Statistician and Principal Statistician will be consolidated into Statistician - Assignment Levels I, II, III and IV. This reclassification will reduce the number of required exams by three.

3.1.2.035 Superintendent of Construction and Repair titles:
The titles of Superintendent of Construction and Repair and General Superintendent of Construction and Repair will be consolidated into Superintendent of Construction and Repair - Assignment Levels I and II. This reclassification will convert one step-up provisional General Superintendent of Construction and Repair into permanent Superintendent of Construction and Repair - Assignment Level II and will reduce the number of required exams by one.

3.1.2.036 Waterfront Construction Inspector titles:
The titles of Waterfront Construction Inspector and Senior Waterfront Construction Inspector will be consolidated into Waterfront Construction Inspector - Assignment Levels I and II. This reclassification will reduce the number of required exams by one.

3.1.2.037 Sludge Boat titles:
The titles of Mariner, Second Mate, Marine Oiler, Chief Mate, First Assistant Marine Engineer (Diesel), Chief Marine Engineer (Diesel) and Captain (Sludge Boat) will be consolidated into two titles with Assignment Levels based on license requirements. This reclassification will reduce the number of required exams by five.

3.1.2.038 Dockbuilder titles:
The titles of Dockbuilder, Supervisor Dockbuilder and General Supervisor Dockbuilder will be consolidated into Dockbuilder - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by two.

3.1.2.039 Communication Electrician titles:
The titles of Communication Electrician's Helper, Communication Electrician, Supervisor Communication Electrician and Senior Supervisor Communication Electrician will be consolidated into Communication

Electrician- Assignment Levels I, II, III and IV. This reclassification will convert six step-up provisional Communication Electricians into permanent Communication Electrician - Assignment Level II, five step-up provisional Supervisor Communication Electricians into permanent Communication Electrician - Assignment Level III and one step-up provisional Senior Supervisor Communication Electrician into Communication Electrician - Assignment Level IV and will reduce the number of required exams by three.

3.1.2.040 Electrician titles:

The titles of Electrician and Supervisor Electrician will be consolidated into Electrician - Assignment Levels I and II. This reclassification will convert 10 step-up provisional Supervisor Electricians into permanent Electrician - Assignment Level II and will reduce the number of required exams by one.

3.1.2.041 Inspector (Electrical) titles:

The titles of Inspector (Electrical) and Associate Inspector (Electrical) will be consolidated into Inspector (Electrical) - Assignment Levels I, II and III. This reclassification will convert 16 step-up provisional Associate Inspectors (Electrical) into permanent Inspectors (Electrical) - Assignment Level II and III and will reduce the number of required exams by one.

3.1.2.042 Inspector of Fire Alarm Boxes titles:

The titles of Inspector of Fire Alarm Boxes and Senior Inspector of Fire Alarm Boxes will be consolidated into Inspector of Fire Alarm Boxes - Assignment Levels I and II. This reclassification will reduce the number of required exams by one.

3.1.2.043 Stationary Engineer (Electric) titles:

The titles of Stationary Engineer (Electric) and Senior Stationary Engineer (Electric) will be consolidated into Stationary Engineer (Electric) Assignment Levels I and II. This reclassification will convert 24 step-up provisional Senior Stationary Engineers (Electric) into permanent Stationary Engineers (Electric) - Assignment Level II and will reduce the number of required exams by one.

3.1.2.044 Painter titles:

The titles of Painter and Supervisor Painter will be consolidated into Painter - Assignment Levels I and II. This reclassification will convert 16 step-up provisional Painters into permanent Painter - Assignment Level I and will convert five step-up provisional Supervisor Painters into Painter - Assignment Level II and will reduce the number of required exams by one.

3.1.2.045 Bricklayer titles:

The titles of Bricklayer and Supervisor Bricklayer will be consolidated into Bricklayer- Assignment Levels I and II. This reclassification will convert three step-up provisional Supervisor Bricklayers into permanent Bricklayers - Assignment Level II and will reduce the number of required exams by one.

3.1.2.046 Blasting Inspector titles:

The titles of Blasting Inspector, Senior Blasting Inspector and Supervising Blasting Inspector will be consolidated into Blasting Inspector - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by two.

3.1.2.047 Bridge Operator titles:

The titles of Bridge Operator, Bridge Operator-In-Charge and Supervisor of Bridge Operations will be consolidated into Bridge Operator - Assignment Levels I, II and III. This reclassification will convert 11 step-up provisional Bridge Operators-In-Charge into permanent Bridge Operators - Assignment Level II and will reduce the number of required exams by two.

3.1.2.048 Elevator Mechanic titles:

The titles of Elevator Mechanic's Helper, Elevator Mechanic's Helper-OMIT, Elevator Mechanic and Supervisor Elevator Mechanic will be consolidated into Elevator Mechanic - Assignment Levels I, II and III. This reclassification will convert 22 step-up provisional Elevator Mechanics into permanent Elevator Mechanic - Assignment Level II and 18 step-up Supervisor Elevator Mechanics into permanent Elevator Mechanics - Assignment Level III and will reduce the number of required exams by three.

3.1.2.049 Housekeeper titles:

The titles of Housekeeper, Senior Housekeeper and Supervising Housekeeper will be consolidated into Housekeeper - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by two.

3.1.2.050 Pipe Laying Inspector titles:

The titles of Pipe Laying Inspector and Senior Pipe Laying Inspector will be consolidated into Pipe Laying Inspector- Assignment Levels I and II. This reclassification will reduce the number of required exams by one.

3.1.2.051 Plasterer titles:

The titles of Plasterer and Supervisor Plasterer will be consolidated into Plasterer- Assignment Levels I and II. This reclassification will convert

one step-up provisional Supervisor Plasterer into Plasterer - Assignment Level II and will reduce the number of required exams by one.

3.1.2.052 Roofer titles:

The titles of Roofer and Supervisor Roofer will be consolidated into Roofer - Assignment Levels I and II. This reclassification will convert two step-up provisional Supervisor Roofers into permanent Roofer - Assignment Level II and will reduce the number of required exams by one.

3.1.2.053 Special Officer titles:

The titles of Senior Special Officer, Supervising Special Officer and Principal Special Officer will be consolidated into Associate Special Officer - Assignment Levels I, II and III. This reclassification will convert 14 step-up Supervising Special Officers into permanent Associate Special Officers - Assignment Level II and nine Principal Special Officers into permanent Associate Special Officers - Assignment Level III and will reduce the number of required exams by two.

3.1.2.054 Water Use Inspector titles:

The titles of Water Use Inspector Trainee, Water Use Inspector, Associate Water Use Inspector and Chief Water Use Inspector will be consolidated into Water Use Inspector - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by three.

3.1.2.055 Bridge Repairer and Riveter titles:

The titles of Bridge Repairer and Riveter and Supervisor will be consolidated into Bridge Repairer and Riveter - Assignment Levels I and II. This reclassification will convert three step-up provisional Supervisor Bridge Repairer and Riveters into permanent Bridge Repairer and Riveters - Assignment Level II and will reduce the number of required exams by one.

3.1.2.056 Crane Operator (AMPES) titles:

The titles of Crane Operator (AMPES) and Supervisor (AMPES) will be consolidated into Crane Operator - Assignment Levels I and II. This reclassification will reduce the number of required exams by one.

3.1.2.057 Inspector (Boilers) titles:

The titles of Inspector (Boilers) and Associate Inspector (Boilers) will be consolidated into Inspector (Boilers) - Assignment Levels I, II and III. This reclassification will convert one step-up provisional Associate Inspector (Boilers) into permanent Inspector (Boilers) - Assignment Level II and will reduce the number of required exams by one.

- 3.1.2.058 Inspector (Construction) titles:**
The titles of Inspector (Construction) and Associate Inspector (Construction) will be consolidated into Inspector (Construction) - Assignment Levels I, II and III. This reclassification will convert 49 step-up provisional Associate Inspector (Construction) into permanent Inspector (Construction) - Assignment Level II and will reduce the number of required exams by one.
- 3.1.2.059 Inspector (Elevator) titles:**
The titles of Inspector (Elevator) and Associate Inspector (Elevator) will be consolidated into Inspector (Elevator) - Assignment Levels I, II and III. This reclassification will convert 11 step-up provisional Associate Inspectors (Elevator) into permanent Inspector (Elevator) - Assignment Level II and will reduce the number of required exams by one.
- 3.1.2.060 Inspector (Hoists and Rigging) titles:**
The titles of Inspector (Hoists and Rigging) and Associate Inspector (Hoists and Rigging) will be consolidated into Inspector (Hoists and Rigging) - Assignment Levels I, II and III. This reclassification will convert one step-up provisional Associate Inspector (Hoists and Rigging) into a permanent Inspector (Hoists and Rigging) - Assignment Level II or III and will reduce the number of required exams by one.
- 3.1.2.061 Inspector (Plastering) titles:**
The titles of Inspector (Plastering) and Associate Inspector (Plastering) will be consolidated into Inspector (Plastering) - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by one.
- 3.1.2.062 Inspector (Plumbing) titles:**
The titles of Inspector (Plumbing) and Associate Inspector (Plumbing) will be consolidated into Inspector (Plumbing) - Assignment Levels I, II and III. This reclassification will convert nine step-up provisional Associate Inspectors (Plumbing) into permanent Inspector (Plumbing) - Assignment Level II or III and will reduce the number of required exams by one.
- 3.1.2.063 Inspector (Steel Construction) titles:**
The titles of Inspector (Steel Construction) and Associate Inspector (Steel Construction) will be consolidated into Inspector (Steel Construction) - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by one.
- 3.1.2.064 Multiple Dwelling Specialist (Buildings) titles:**
The titles of Multiple Dwelling Specialist (Buildings) and Principal Multiple Dwelling Specialist (Buildings) will be consolidated into

Multiple Dwelling Specialist (Buildings) - Assignment Levels I and II. This reclassification will convert one step-up provisional Principal Multiple Dwelling Specialist (Buildings) into permanent Multiple Dwelling Specialist - Assignment Level II and will reduce the number of required exams by one.

3.1.2.065 Rehabilitation Specialist (HPD) titles:

The titles of Rehabilitation Specialist (HPD) and Associate Rehabilitation Specialist (HPD) will be consolidated into Rehabilitation Specialist - Assignment Levels I and II. This reclassification will convert one step-up provisional Associate Rehabilitation Specialist (HPD) into a permanent Rehabilitation Specialist - Assignment Level II and will reduce the number of required exams by one.

3.1.2.066 Dockmaster titles:

The titles of Dockmaster, Supervising Dockmaster and Chief Dockmaster will be consolidated into Dockmaster - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by two.

3.1.2.067 Ferry titles:

The titles of Mate (Ferry), Marine Engineer, Chief Marine Engineer, Assistant Captain and Captain (Ferry) will be consolidated into two new titles with Assignment Levels based on license requirements and will reduce the number of required exams by three.

3.1.2.068 Chief Marine Engineer titles:

The titles of Marine Engineer (Dept. of Correction) and Chief Marine Engineer (Dept. of Correction) will be consolidated into Marine Engineer - Assignment Levels I and II. This reclassification will reduce the number of required exams by one.

3.1.2.069 Comprehensive Health Coordinator titles:

The titles of Comprehensive Health Coordinator, Assistant Comprehensive Health Coordinator and Senior Comprehensive Health Coordinator will be consolidated into Comprehensive Health Coordinator - Assignment Levels I, II and III. This reclassification will reduce the number of required exams by 2.

3.1.2.070 Plumber titles:

The titles of Plumber's Helper, Plumber and Supervisor Plumber will be consolidated into Plumber - Assignment Levels I, II and III. This reclassification will convert 30 step-up provisional Plumbers to permanent Plumber - Assignment Level II and three step-up provisional Supervisor Plumbers into Plumber - Assignment Level III and will reduce the number of required exams by two.

3.1.2.071 Thermostat Repairer titles:

The titles of Thermostat Repairer, Tapper and Supervisor Thermostat Repairer will be consolidated into Thermostat Repairer- Assignment Levels I and II. This reclassification will convert one step-up provisional Supervisor Thermostat Repairer into a permanent Thermostat Repairer - Assignment Level II and will reduce the number of required exams by two.

3.1.2.072 Highways and Sewers Inspector titles:

The titles of Highways and Sewers Inspector and Associate Inspector (Highway and Sewers) will be consolidated into Highways and Sewers Inspector - Assignment Levels I and II. This reclassification will convert 8 step-up provisional Associate Inspector (Highways and Sewers) into permanent Highways and Sewers Inspectors - Assignment Level II and will reduce the number of required exams by one.

3.1.2.073 Bridge Painter titles:

The titles of Bridge Painter and Supervisor Bridge Painter will be consolidated into Bridge Painter - Assignment Levels I and II. This reclassification will convert three step-up provisional Supervisor Bridge Painters into permanent Bridge Painters - Assignment Level II and will reduce the number of required exams by one.

3.1.2.074 Door Check Repairer titles:

The titles of Door Check Repairer, Door Stop Maintainer, Supervisor Door Check Repairer and Supervisor Door Stop Maintainer will be consolidated into Door Stop Maintainer - Assignment Levels I and II. This reclassification will convert one step-up provisional Supervisor Door Stop Maintainer into a permanent Door Stop Maintainer - Assignment Level II and will reduce the number of required exams by three.

3.1.2.075 Fingerprint Technician titles:

The titles of Fingerprint Technician Trainee, Associate Fingerprint Technician and Principal Fingerprint Technician will be consolidated into new title of Fingerprint Technician - Assignment Levels I, II and III and will reduce the number of required exams by two.

3.1.2.076 Glazier titles:

The titles of Glazier and Supervisor Glazier will be consolidated into Glazier - Assignment Levels I and II. This reclassification will convert three step-up provisional Glaziers into permanent Glaziers - Assignment Level I and 2 step-up provisional Glazier - Assignment Level II and will reduce the number of required exams by one.

3.1.2.077 Pharmacist titles:

The titles of Pharmacist Trainee, Pharmacist, Senior Pharmacist, Supervising Pharmacist, Principal Pharmacist and Chief Pharmacist will be consolidated into Pharmacist - Assignment Levels I, II, III and IV. This reclassification will reduce the number of required exams by five.

3.1.2.078 Sheet Metal Worker titles:

The titles of Sheet Metal Worker and Supervisor Sheet Metal Worker will be consolidated into Sheet Metal Worker - Assignment Levels I and II. This reclassification will convert four step-up provisional Supervisor Sheet Metal Workers into permanent Sheet Metal Workers - Assignment Level II and will reduce the number of required exams by one.

3.1.2.079 Tractor Operator titles:

The titles of Tractor Operator and Motor Grader Operator will be consolidated into a new title. This classification will reduce the number of required exams by one.

3.1.2.080 Ship Caulker titles:

The titles of Ship Caulker, Ship Carpenter and Supervisor Ship Carpenter will be consolidated into Ship Carpenter - Assignment Levels I and II. This reclassification will convert one step-up Supervisor Ship Carpenter into a permanent Ship Carpenter - Assignment Level II and will reduce the number of required exams by two.

3.1.2.081 Assistant Program Specialist (Correction) titles:

The titles of Assistant Program Specialist (Correction), Program Specialist (Correction) and Senior Program Specialist (Correction) will be consolidated into Program Specialist - Assignment Levels I, II and III. This reclassification will convert 11 step-up provisional Program Specialists (Correction) into permanent Program Specialists (Correction) - Assignment Level II and 25 step-up provisional Senior Program Specialists (Correction) into permanent Program Specialists (Correction) - Assignment Level III and will reduce the number of required exams by two.

3.1.2.082 Home Economist titles:

The titles of Home Economist Trainee, Home Economist, Supervising Home Economist and Principal Home Economist will be consolidated into Home Economist - Assignment Levels I, II, III and IV. This reclassification will reduce the number of required exams by three.

3.1.2.083 Human Rights Specialist titles:

The titles of Human Rights Specialist and Associate Human Rights Specialist will be consolidated into Human Rights Specialist - Assignment Levels I, II and III. This reclassification will convert two step-up

provisional Associate Human Rights Specialists into permanent Human Rights Specialist - Assignment Level II or III and will reduce the number of required exams by one.

3.1.2.084

Steam Fitter titles:

The titles of Steam Fitter's Helper, Steam Fitter and Supervisor Steam Fitter will be consolidated into Steam Fitter- Assignment Levels I, II and III. This reclassification will convert eight step-up provisional Steam Fitters into permanent Steam Fitters - Assignment Level II and nine step-up provisional Supervisor Steam Fitters into permanent Steam Fitters - Assignment Level III and will reduce the number of required exams by two.

3.1.2.085

Carpenter titles:

The titles of Carpenter and Supervisor Carpenter will be consolidated into Carpenter - Assignment Levels I and II. This reclassification will convert eight step-up Supervisor Carpenters into permanent Carpenters - Assignment Level II and will reduce the number of required exams by one.

Appendix IV: Broadbanding of Titles

Broadbanding of titles

- 3.32.2.01 Architect titles:**
The titles of Architect and Architect (Materials Research Specifications) will be combined and reduce the number of required exams by one.
- 3.32.2.02 Civil Engineer related titles:**
The titles of Civil Engineer (Building Construction), Civil Engineer (Highway Traffic), Civil Engineer (Sanitary), Civil Engineer (Structural), Civil Engineer (Water Supply) and *Senior Civil Engineer (* no new hires permitted) all encompass civil engineering work and require a professional engineering license and experience in civil engineering. We will reclassify incumbent from these titles to the title of Civil Engineer, which has three assignment levels encompassing specialized civil engineering work. This reclassification will reduce the number of required exams by five.
- 3.32.2.03 Electrical Engineer related titles:**
The titles of Electrical Engineer (Electronics), Electrical Engineer (Railroad Signals) and Electrical Engineer (Radio and Television) all encompass electrical engineering work and require a professional engineering license and experience in electrical engineering. We will reclassify incumbent from these titles to the title of Electrical Engineer, which has three assignment levels encompassing specialized electrical engineering work. This reclassification will reduce the number of required exams by three.
- 3.32.2.04 Mechanical Engineer related titles:**
The titles of Mechanical Engineer (Cars), Mechanical Engineer (Salvage) and Mechanical Engineer (Air Conditioning) all encompass mechanical engineering work and require a professional engineering license and experience in mechanical engineering. We will reclassify incumbent from these titles to the title of Mechanical Engineer, which has three assignment levels encompassing specialized mechanical engineering work. This reclassification will reduce the number of required exams by three.
- 3.32.2.05 Pest Control supervision titles:**
The competitive title of Regional Director (Bureau of Pest Control) will be broadbanded into the non-competitive title of Supervisor (Pest Control) as a new assignment level III.
This reclassification will reduce the number of provisionals by three and the number of required exams by one.
- 3.32.2.06 Supervisors of Installations and Maintenance titles:**
The competitive titles of Supervisor of Mechanical Installations and Maintenance and Supervisors of Electrical Installations and Maintenance

require similar knowledge skills and abilities and will be broadbanded into a new title of Supervisor of Installations and Maintenance. This will reduce the number of required exams by one.

3.32.2.07

Service Inspector titles:

The titles of Service Inspector (BOE), Service Inspector (DOT), Senior Service inspector (BOE) and Senior Service Inspector (DOT) will be broadbanded and consolidated into one title of Service Inspector with two Assignment Levels. Incumbents will be reclassified into the corresponding levels of the new title. This will reduce the number of required exams by three.

Appendix V: Reclassifying Competitive Titles to Non-Competitive Status

Reclassifying competitive titles to non-competitive status where State has Non-Competitive Titles Performing Comparable Work

3.3.3.2.01 Customer Service titles:

The titles of Call Center Representative, Associate Call Center Representative and Customer Information Representative would be reclassified to the state Non-Competitive titles of Customer Service Representative and Customer Service Program Specialist with an unlimited number of positions authorized for use by all City Agencies. These two titles exist in the Non-Competitive Class for State agencies. Non-Competitive reclassification would eliminate the need for three competitive examinations.

3.3.3.2.02 Community titles:

The titles of Assistant Community Liaison Worker, Community Liaison Worker, Senior Community Liaison Worker and Principal Community Liaison Worker would be reclassified to the existing City Non-Competitive titles of Community Assistant, Community Associate and Community Coordinator, which are authorized for use by all City Agencies. This reclassification would result in the elimination of four competitive examinations.

3.3.3.2.03 Counseling/Human Services titles:

The titles of Child Protective Specialist and Child Protective Specialist Supervisor would be reclassified to the state Non-Competitive title of Child Abuse Specialist with an unlimited number of positions for use only by the Administration for Children's Services. The title of Counselor (Addiction Treatment) would be reclassified to the state Non-Competitive titles of Addictions Community Worker or Addiction Counselor Assistant. The titles of Juvenile Counselor and Associate Juvenile Counselor would be reclassified to the state Non-Competitive titles of Youth Facility Assistant and Youth Facility Director. The titles of Mental Health Worker, Senior Mental Health Worker and Supervising Metal Health Worker would be reclassified to the state Non-Competitive title of Assisted Outpatient Treatment Compliance Specialist. The titles Human Rights Specialist and Associate Human Rights Specialist would be reclassified to the state Non-Competitive titles of Human Rights Specialist and Human Rights Regional Director. These Non-Competitive titles exist for State Agencies because the human services abilities they require cannot be rated competitively. Non-Competitive reclassification would eliminate the need for ten competitive examinations.

3.3.3.2.04 Marine titles:

The titles of Captain (Ferry) and Captain (Sludge Boat) would be reclassified to a new city Non-Competitive title comparable to the state non-competitive title of Tug Captain. The titles of Marine Engineer,

Marine Engineer (DC) and Marine Engineer (Diesel) would be reclassified to the state Non-Competitive title of Marine Engineer. The title of Marine Engineer (Uniformed-Fire Dept.) would be reclassified to the state Non-Competitive title of Marine Fireman. These Non-Competitive titles exist for State Agencies because the employees are all tested and qualified through marine licensure examinations. Non-Competitive reclassification would eliminate the need for six competitive examinations.

3.3.3.2.05

Medical titles:

The title of Dental Assistant would be reclassified to the state Non-Competitive title of Dental Assistant. The title of Dental Hygienist would be reclassified to the state Non-Competitive title of Dental Technician. The titles of Dietitian Technician and Dietitian would be reclassified to the state Non-Competitive title of Dietitian. The title of Health Services Manager would be reclassified to the state Non-Competitive title of Health Program Director. These Non-Competitive titles exist for State Agencies because they require professional certifications and unique health service backgrounds. Non-Competitive reclassification would eliminate the need for five competitive examinations.

3.3.3.2.06

Skilled Trades and Blue Collar titles:

The titles of Auto Body Worker would be reclassified to the state Non-Competitive title of Automotive Body Mechanic with an unlimited number of positions for use by all City Agencies. The titles of Bridge Painter and Supervisor Bridge Painter would be reclassified to the state Non-Competitive title of Bridge Painter. The titles of Bridge Repairer and Riveter and Supervisor Bridge Repairer and Riveter would be reclassified to the state Non-Competitive titles of Bridge Repair Assistant and Bridge Repair Mechanic. The titles of Carpenter and Supervisor Carpenter would be reclassified to the state Non-Competitive title of Carpenter. The titles of Construction Laborer, Crane Operator, Supervising Crane Operator, Tractor Operator and Supervisor of Tractor Operators would be reclassified to the state Non-Competitive titles of Construction Equipment Operator, Construction Equipment Operator-Light, Construction Equipment Operator-Heavy and Crane and Shovel Operator. The titles of Electrician and Supervisor Electrician would be reclassified to the state Non-Competitive titles of Electrician and Supervising Electrician. The titles of Highway Repairer and Supervisor Highway Repairer would be reclassified to the state Non-Competitive titles of Highway Equipment Operator and Highway Maintenance Worker. The title of Letterer and Sign Painter would be reclassified to the state Non-Competitive titles of Sign Painter and Sign Shop Supervisor. The titles of Locksmith and Supervisor Locksmith would be reclassified to the state Non-Competitive title of Locksmith. The titles of Machinist and Machinist Helper would be reclassified to the state Non-Competitive title of Machinist. The titles of Maintenance Worker and Supervisor would be reclassified to the state

Non-Competitive title of General Mechanic. The titles of Exterminator and Supervisor (Exterminators) would be reclassified to the state Non-Competitive title of Exterminator. The titles of Painter and Supervisor Painter would be reclassified to the state Non-Competitive titles of Painter, Maintenance Assistant Painter and Supervising Painter. The titles of Plasterer and Supervisor Plasterer would be reclassified to the state Non-Competitive titles of Plasterer, Maintenance Assistant Mason and Mason and Plasterer. The titles of Plumber and Supervisor Plumber would be reclassified to the state Non-Competitive titles of Plumber and Steamfitter, Maintenance Assistant Plumber and Supervising Plumber and Steamfitter. The title of Printing Press Operator would be reclassified to the state Non-Competitive titles of Printer, Printing Shop Supervisor and Printing Shop Superintendent. The title of Rigger would be reclassified to a new city non-competitive title comparable to the state Non-Competitive title of Bridge Rigger. The titles of Sheet Metal Worker and Supervisor Sheet Metal Worker would be reclassified to the state Non-Competitive title of Sheet Metal Worker. The titles of Stock Worker and Supervisor of Stock Workers would be reclassified to the state Non-Competitive title of Warehouse Equipment Operator. The titles of Welder and Supervisor Welder would be reclassified to the state Non-Competitive title of Welder. The title of Maintenance Worker would be reclassified to the state Non-Competitive title of Maintenance Supervisor. The titles of Bookbinder and Supervisor Bookbinder would be reclassified to the state Non-Competitive title of Bookbinder. These Non-Competitive titles exist for State Agencies and it is impracticable to test competitively for them. Non-Competitive reclassification would eliminate the need for forty-one competitive examinations.

3.3.3.2.07 Environmental and Preservation titles:

The titles of Asbestos Handler, Asbestos Handler Supervisor and Asbestos Hazard Investigator would be reclassified to the state Non-Competitive titles of Asbestos Control Coordinator and Asbestos Control Supervisor. The titles of Environmental Engineer and Assistant Environmental Engineer would be reclassified to a new City non-competitive title of Environmental Engineering Specialist comparable to the state Non-Competitive title of Soil and Water Engineering Specialist. The titles of Landmarks Preservationist and Associate Landmarks Preservationist would be reclassified to the state Non-Competitive title of Building Restoration Specialist. The titles of Sewage Treatment Worker, Senior Sewage Treatment Worker and Water Plant Operator would be reclassified to the state Non-Competitive titles of Wastewater Treatment Plant Operator, Water Treatment Plant Operator and Filter Plant Operator. The titles of Watershed Maintainer and Supervisor (Watershed Maintenance) would be reclassified to the state Non-Competitive titles of Maintenance Supervisor and Conservation Operations Supervisor. These Non-Competitive titles exist for State Agencies and are impracticable to

test for competitively. Non-Competitive reclassification would eliminate the need for thirteen competitive examinations.

3.3.3.2.08

Parks titles:

The title of Administrative Park and Recreation Manager would be reclassified to the state Non-Competitive title of Recreation Complex Manager. The title of Associate Park Service Worker would be reclassified to the state Non-Competitive title of Head Grounds Supervisor. These Non-Competitive titles exist for State Agencies. Non-Competitive reclassification would eliminate the need for two competitive examinations.

3.3.3.2.09

Business and Commerce titles:

The temporary, proposed Non-Competitive titles of Budget Analyst (OMB), Budget Analyst (Independent Budget Office), Budget Analyst (Comptroller), Assistant Budget Analyst (Independent Budget Office) and Assistant Budget Analyst (Comptroller) would be classified as Non-Competitive for each of these agencies. The State currently has the comparable titles of Budget Fellow and Chief Budget Examiner classified as Non-Competitive. The titles of Business Promotion Coordinator and Associate Business Promotion Coordinator would be reclassified to the state Non-Competitive title of Business Development Specialist. The titles of Fraud Investigator and Associate Fraud Investigator would be reclassified to the Non-Competitive title of Revenue Crimes Specialist. These Non-Competitive titles exist for State Agencies because it is impracticable to test competitively for them. Non-Competitive reclassification would eliminate the need for nine competitive examinations.

3.3.3.2.10

Artistic titles:

The title of Graphic Artist would be reclassified to the state Non-Competitive title of Artist Designer. This Non-Competitive title exists for State Agencies. Non-Competitive reclassification would eliminate the need for one competitive examination.

3.3.3.2.11

Housing Development titles:

The titles of Housing Development Specialist and Associate Housing Development Specialist would be reclassified to the state Non-Competitive titles of Director of Community Development and Director of Community Reinvestment Monitoring. These Non-Competitive titles exist for State Agencies. Non-Competitive reclassification would eliminate the need for two competitive examinations.

3.3.3.2.12

Communication and Emergency Dispatcher titles:

The titles of Police Communications Technician, Supervising Police Communications Technician, Principal Police Communications

Technician, Fire Alarm Dispatcher and Associate Fire Alarm Dispatcher would be reclassified as Non-Competitive. The Non-Competitive title of State Police Communication Technician currently exists for the State. Classifying the City titles as Non-Competitive would eliminate the need for five competitive examinations.

3.3.3.2.13 Traffic and Motor Vehicle titles:

The titles of Motor Vehicle Operator, Motor Vehicle Supervisor and Senior Motor Vehicle Supervisor would be reclassified to the state Non-Competitive title of Chauffeur/Motor Vehicle Operator. The titles of Traffic Device Maintainer and Supervisor of Traffic Device Maintainers would be reclassified to the state Non-Competitive titles of Assistant Traffic Signal Mechanic, Traffic Signal Helper, Traffic Signal Mechanic and Supervising Traffic Signal Mechanic. These Non-Competitive titles exist for State Agencies. Non-Competitive reclassification would eliminate the need for five competitive examinations.

3.3.3.2.14 Institutional/Instructional titles:

The titles of Institutional Trades Instructor (Carpentry), Institutional Trades Instructor (Tailoring), Principal Institutional Instructor, Senior Institutional Trades Instructor and Senior Institutional Trades Instructor (Tailoring) would be reclassified as Non-Competitive. The State classifies its institutional and instructional titles (jobs that perform work within the jails and schools) as Non-Competitive. Classifying the City titles as Non-Competitive would eliminate the need for five competitive examinations.

3.3.3.2.15 Trainee, Intern, Apprentice and Helper titles:

The State classifies many of its trainee level titles as Non-Competitive. Classifying the City trainee titles, including Chemist Trainee, Computer Programmer Analyst Trainee, Education Analyst Trainee, Housing Development Specialist Trainee, Instrumentation Specialist Trainee, Labor Relations Analyst Trainee, Management Auditor Trainee, Public Health Education Trainee and Staff Analyst Trainee, would reduce the number of pure provisionals by approximately 150. These trainees could take the open competitive examinations for the full level titles as promotion examinations to become competitive class employees in the full level titles. Since competitive examinations are already required for the full level titles, classifying trainee, apprentice and helper titles as non-competitive city titles would eliminate the need for more than 10 competitive examinations.

Appendix VI: Titles with 20 or Fewer Employees Serving

Titles with 1 to 20 Incumbents

* Excludes TA and TBTA

Title	# Total		# Total Agency		# Incumbents
	Incumbents	Provisionals	Incumbents	Provisionals	
10003 Administrative Graphic Artist	7	7			
			009 NYC Employees Retirement System		1
			012 Borough President - Brooklyn		1
			015 Office of the Comptroller		1
			836 Department of Finance		1
			841 Department of Transportation		1
			850 Department of Design and Construction		2
10005 Administrative Assessor	8	7			
			021 Tax Commission		1
			836 Department of Finance		7
10007 Administrative Borough Superintendent	16	16			
			810 Department of Buildings		16
10009 Administrative Business Promotion Coordinator	14	14			
			801 Department of Small Business Service		11
			827 Department of Sanitation		1
			996 NYC Housing Authority		2
10014 Administrative Consultant (Early Childhood Education)	3	2			
			067 Administration for Children Services		3
10016 Administrative Director of Residential Child Care	5	5			
			067 Administration for Children Services		5

Title	# Total		Agency	# Incumbents
	Incumbents	Provisionals		
10023 Administrative Landscape Architect	9	9	846 Department of Parks & Recreation	2
			850 Department of Design and Construction	2
			996 NYC Housing Authority	5
10024 Administrative Fire Protection Inspector	6	3		
			057 Fire Department	6
10034 Administrative Landmarks Preservationist	7	6	136 Landmarks Preservation Commission	6
			846 Department of Parks & Recreation	1
10037 Administrative Space Analyst	18	18		
			069 Department of Social Services	1
			740 Department of Education (Non-Pedago	8
			816 Department of Health and Mental Hygie	1
			836 Department of Finance	1
			841 Department of Transportation	1
			996 NYC Housing Authority	6
10038 Administrative Storekeeper	15	14		
			069 Department of Social Services	2
			072 Department of Correction	1
			740 Department of Education (Non-Pedago	2
			826 Department of Environmental Protectio	1
			836 Department of Finance	1
			868 Department of Citywide Administrative	2

<i>Title</i>		<i># Total Incumbents</i>	<i># Total Provisionals</i>	<i>Agency</i>	<i># Incumbents</i>
10039	<i>Administrative Superintendent of Highway Operations</i>	6	5	996 NYC Housing Authority	6
10041	<i>Administrative Public Records Officer</i>	5	5	841 Department of Transportation	6
10042	<i>Administrative Traffic Enforcement Agent</i>	17	7	810 Department of Buildings 860 Department of Record and Information 996 NYC Housing Authority	1 3 1
10047	<i>Administrative Real Property Manager</i>	10	7	056 Police Department	17
10054	<i>Administrative Blasting Inspector</i>	1	1	067 Administration for Children Services 806 Housing Preservation and Development 868 Department of Citywide Administrative	1 8 1
10055	<i>Administrative Director of Laboratory (Water Quality)</i>	15	11	057 Fire Department	1
10060	<i>Administrative Sheriff</i>	2	0	826 Department of Environmental Protection	15
10061	<i>Administrative Transportation Coordinator</i>	11	4	836 Department of Finance	2
10064	<i>Administrative Tests and Measurement Specialist</i>	2	2	841 Department of Transportation	11

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<i>Title</i>	<i># Total Incumbents</i>	<i># Total Provisionals</i>	<i>Agency</i>	<i># Incumbents</i>
10071 Administrative Horticulturist	6	6	868 Department of Citywide Administrative	2
10076 Supervisor of Elevator Maintenance (Housing Authority)	13	11	846 Department of Parks & Recreation	6
10077 Administrative Inspector (Electrical)	16	15	996 NYC Housing Authority	13
			057 Fire Department	1
			810 Department of Buildings	5
			841 Department of Transportation	8
10079 Administrative Taxi and Limousine Inspector	7	6	868 Department of Citywide Administrative	2
10080 Administrative Quality Assurance Specialist	14	12	156 Taxi & Limousine Commission	7
			740 Department of Education (Non-Pedago	12
			868 Department of Citywide Administrative	1
10084 Administrative Program Officer (Dept. for the Aging)	16	13	996 NYC Housing Authority	1
10096 Administrative Printing Services Manager	5	4	125 Department for the Aging	16
			056 Police Department	3
			057 Fire Department	1
10217 Stenographic Specialist	3	2	996 NYC Housing Authority	1

Title	# Total		Agency	# Incumbents	
	Incumbents	Provisionals		# Incumbents	
10229 Legal Secretarial Assistant	12	8	056 Police Department 868 Department of Citywide Administrative	2	1
12176 Senior Salvage Appraiser	2	1	025 Law Department 312 Conflicts of Interest Board 836 Department of Finance 996 NYC Housing Authority	9	1
12633 Education Officer	6	5	868 Department of Citywide Administrative	2	
12634 Associate Education Officer	15	15	740 Department of Education (Non-Pedago	6	
12704 Tests and Measurement Specialist	20	15	740 Department of Education (Non-Pedago	15	
13353 Hearing Examiner (Housing Authority)	3	2	214 Office of Labor Relations 868 Department of Citywide Administrative	1	19
13368 Labor Relations Analyst	7	6	996 NYC Housing Authority	3	
13369 Associate Labor Relations Analyst	9	9	069 Department of Social Services 214 Office of Labor Relations 996 NYC Housing Authority	1	3

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Title	# Total Incumbents	# Total Provisionals	Agency	# Incumbents
13642 Certified IT Administrator (WAN)			069 Department of Social Services	6
			836 Department of Finance	1
			841 Department of Transportation	1
			858 Department of Information Technology	1
	18	18		
			017 Office of Emergency Management	1
			025 Law Department	1
			056 Police Department	1
			057 Fire Department	3
			127 Financial Information Services Agency	1
13644 Certified IT Administrator (Database)			740 Department of Education (Non-Pedago	2
			816 Department of Health and Mental Hygie	1
			841 Department of Transportation	3
			858 Department of Information Technology	4
			902 District Attorney Bronx	1
	6	6		
			056 Police Department	1
			261 Department of Youth and Community D	1
			816 Department of Health and Mental Hygie	2
			826 Department of Environmental Protectio	1
20130 Automotive Specialist			858 Department of Information Technology	1
	1	1		
			868 Department of Citywide Administrative	1

Title	# Total		# Total Agency		# Incumbents
	Incumbents	Provisionals	Incumbents	Provisionals	
20131 Senior Automotive Specialist	1	1	827 Department of Sanitation		1
20202 Civil Engineering Intern	11	10	740 Department of Education (Non-Pedago 826 Department of Environmental Protectio 841 Department of Transportation 850 Department of Design and Construction		1 4 1 5
20247 Telecommunications Associate (Voice)	14	7	041 Teachers Retirement System 056 Police Department 740 Department of Education (Non-Pedago 816 Department of Health and Mental Hygie 846 Department of Parks & Recreation 996 NYC Housing Authority		1 2 1 4 2 4
20271 Operations Communications Specialist	20	8	056 Police Department 156 Taxi & Limousine Commission 841 Department of Transportation		5 5 10
20272 Associate Operations Communications Specialist	8	8	056 Police Department 841 Department of Transportation 996 NYC Housing Authority		1 6 1
20302 Electrical Engineering Intern	6	4			

Title	# Total		Agency	# Incumbents	
	Incumbents	Provisionals		Incumbents	Provisionals
20403 Mechanical Engineering Intern	10	9	826 Department of Environmental Protection 841 Department of Transportation	5 1	
20503 Chemical Engineering Intern	9	9	826 Department of Environmental Protection 841 Department of Transportation	8 2	
20515 Chemical Engineer	18	8	826 Department of Environmental Protection 841 Department of Transportation 057 Fire Department 826 Department of Environmental Protection	8 1 2 16	
20616 Environmental Engineering Intern	13	13	826 Department of Environmental Protection	13	
20919 Engineer - Assessor (Utility)	2	0	836 Department of Finance	2	
21006 Tax Map Cartographer	15	15	836 Department of Finance	15	
21131 Deputy Director of Standards and Appeals	1	1	868 Department of Citywide Administrative	1	
21205 Architectural Intern	6	5	806 Housing Preservation and Development 846 Department of Parks & Recreation	2 4	

Title	# Total		Agency	# Incumbents
	Incumbents	Provisionals		
21306 Landscape Architectural Intern	19	19	846 Department of Parks & Recreation	19
21511 Assistant Scientist (Radiation Control)	8	7	816 Department of Health and Mental Hygiene	8
21516 Scientist (Radiation Control)	5	4	806 Housing Preservation and Development	1
21526 Senior Scientist (Radiation Control)	2	2	816 Department of Health and Mental Hygiene	4
21562 Bio-Medical Equipment Technician	1	1	816 Department of Health and Mental Hygiene	2
21563 Senior Bio-Medical Equipment Technician	1	1	057 Fire Department	1
22092 Assistant Urban Designer	12	11	057 Fire Department	1
22124 Associate Urban Designer	12	9	017 Office of Emergency Management	3
22126 Senior Community Organization Specialist (Urban Renewal)	1	1	030 Department of City Planning	9
22305 Assistant Highway Transportation Specialist	5	5	030 Department of City Planning	12
			806 Housing Preservation and Development	1
			841 Department of Transportation	5

<i>Title</i>	<i># Total Incumbents</i>	<i># Total Agency Provisionals</i>	<i># Incumbents</i>
22410 <i>Plan Examiner (Buildings)</i>	19	15	
			810 Department of Buildings 19
22425 <i>Project Manager Intern</i>	8	0	
			826 Department of Environmental Protection 8
30315 <i>Supervising Deputy Sheriff</i>	11	0	
			836 Department of Finance 11
30505 <i>Mortgage Tax Examiner</i>	3	3	
			836 Department of Finance 3
30805 <i>Title Examiner</i>	3	3	
			069 Department of Social Services 1
			836 Department of Finance 1
			841 Department of Transportation 1
30810 <i>Senior Title Examiner</i>	1	1	
			025 Law Department 1
30820 <i>Principal Title Examiner</i>	6	6	
			025 Law Department 5
			850 Department of Design and Construction 1
30825 <i>County Detective</i>	10	9	
			901 District Attorney Manhattan 10
30827 <i>Senior Detective Investigator</i>	6	4	
			905 District Attorney Richmond County 6
30828 <i>Assistant Chief Detective Investigator</i>	1	1	

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Title	# Total		Agency	# Incumbents
	Incumbents	Provisionals		
31013 Interpreter (Spanish)	13	12	905 District Attorney Richmond County	1
31310 Safety Specialist	1	1	781 Department of Probation	3
31316 Associate Air Pollution Inspector	13	9	902 District Attorney Bronx	7
31455 Supervising Institutional Inspector	1	1	996 NYC Housing Authority	3
31671 Inspector (Low Pressure Boilers)	6	5	069 Department of Social Services	1
31690 Inspector (Housing Construction)	7	5	826 Department of Environmental Protection	13
33972 Market Agent	15	0	067 Administration for Children Services	1
33973 Associate Market Agent	4	0	810 Department of Buildings	6
33996 Associate Inspector (Consumer Affairs)	17	7	996 NYC Housing Authority	7
34170 Quality Assurance Specialist Trainee	3	2	831 Business Integrity Commission	15
			831 Business Integrity Commission	4
			866 Consumer Affairs	17

Title	# Total		# Total		# Incumbents
	Incumbents	Provisionals	Agency	Incumbents	
34171 <i>Quality Assurance Specialist</i>	17	4	740 Department of Education (Non-Pedago 806 Housing Preservation and Development	1 2	
			740 Department of Education (Non-Pedago 841 Department of Transportation 868 Department of Citywide Administrative 996 NYC Housing Authority	4 1 7 5	
34176 <i>Quality Assurance Specialist (Foods)</i>	12	5	740 Department of Education (Non-Pedago 868 Department of Citywide Administrative	9 3	
34177 <i>Quality Assurance Specialist (Fuel)</i>	6	1	868 Department of Citywide Administrative	6	
34183 <i>Quality Assurance Specialist (Pupil Transportation)</i>	14	11	740 Department of Education (Non-Pedago	14	
34192 <i>Associate Quality Assurance Specialist (Foods)</i>	13	9	740 Department of Education (Non-Pedago 740 Department of Education (Non-Pedago 868 Department of Citywide Administrative	11 2	
34193 <i>Associate Quality Assurance Specialist (Fuel)</i>	3	1	868 Department of Citywide Administrative	3	
34195 <i>Associate Quality Assurance Specialist (Metals)</i>	1	0	826 Department of Environmental Protection	1	
34196 <i>Associate Quality Assurance Specialist (Pupil Transportation)</i>	10	6	740 Department of Education (Non-Pedago	10	

Title		# Total		Agency	# Incumbents
		Incumbents	Provisionals		
34201	Construction Project Manager Intern	5	5		
				846 Department of Parks & Recreation	4
35115	Transportation Inspector	1	0	996 NYC Housing Authority	1
40235	Insurance Adviser	1	1	740 Department of Education (Non-Pedago	1
40236	Insurance Adviser (Health)	3	3	868 Department of Citywide Administrative	1
40563	Contract Reviewer (Office of Labor Services)	15	10	214 Office of Labor Relations	3
40925	Investment Analyst	16	16	801 Department of Small Business Service	15
				015 Office of the Comptroller	12
				041 Teachers Retirement System	1
41122	Associate Parking Control Specialist	15	15	740 Department of Education (Non-Pedago	3
50837	Supervising Medical Record Librarian	1	1	056 Police Department	15
51014	Consultant Public Health Nurse (Communicable Disease	7	6	057 Fire Department	1
51210	Occupational Therapist	9	0	816 Department of Health and Mental Hygie	7

<i>Title</i>	<i># Total Incumbents</i>	<i># Total Agency Provisionals</i>	<i>Agency</i>	<i># Incumbents</i>
51211 Physical Therapist	1	0	740 Department of Education (Non-Pedago	9
51213 Rehabilitation Counselor	1	1	740 Department of Education (Non-Pedago	1
51216 Senior Counselor (Addiction Treatment)	8	1	827 Department of Sanitation	1
			071 Department of Homeless	3
			072 Department of Correction	3
			816 Department of Health and Mental Hygie	2
51217 Supervising Counselor (Addiction Treatment)	2	2	781 Department of Probation	2
51225 Fitness Instructor	11	11	056 Police Department	11
51235 Senior Occupational Therapist	2	0	740 Department of Education (Non-Pedago	2
51240 Supervising Audiologist	2	1	816 Department of Health and Mental Hygie	2
51241 Supervising Therapist	2	2	740 Department of Education (Non-Pedago	2
51273 Correctional Counselor	2	0	072 Department of Correction	2
51274 Associate Correctional Counselor	18	6		

<i>Title</i>	<i># Total Incumbents</i>	<i># Total Provisionals</i>	<i>Agency</i>	<i># Incumbents</i>
51310 X-Ray Technician	14	12	072 Department of Correction	18
51380 Environmental Health Technician	11	10	816 Department of Health and Mental Hygie	14
51444 Supervisor of Youth Services	1	0	816 Department of Health and Mental Hygie	11
51613 Consultant (Public Health Social Work)	8	8	846 Department of Parks & Recreation	1
51638 Senior Consultant (Public Health Social Work)	10	10	816 Department of Health and Mental Hygie	8
51800 Probation Assistant	1	1	069 Department of Social Services	10
52085 Assistant Coordinator of Mortuary Services	3	3	781 Department of Probation	1
52090 Coordinator of Mortuary Services	1	1	816 Department of Health and Mental Hygie	3
52279 Superintendent of Adult Institutions	17	1	816 Department of Health and Mental Hygie	1
52315 Supervisor of Child Care	12	11	069 Department of Social Services	1
			071 Department of Homeless	16
			067 Administration for Children Services	12

<i>Title</i>		<i># Total Incumbents</i>	<i># Total Agency Provisionals</i>	<i># Incumbents</i>
54910	<i>Commissary Manager</i>	8	8	
				072 Department of Correction 8
55015	<i>Senior Intergroup Relations Officer</i>	2	2	
				806 Housing Preservation and Development 2
56091	<i>Community Liaison Trainee</i>	1	0	
				831 Business Integrity Commission 1
60216	<i>Public Records Officer</i>	5	5	
				826 Department of Environmental Protection 1
				860 Department of Record and Information 4
60217	<i>Associate Public Records Officer</i>	8	5	
				017 Office of Emergency Management 1
				860 Department of Record and Information 6
				996 NYC Housing Authority 1
60414	<i>Puppeteer</i>	3	3	
				846 Department of Parks & Recreation 3
60580	<i>Chief of Housing Community Activities</i>	1	1	
				996 NYC Housing Authority 1
60621	<i>Program Producer</i>	8	7	
				012 Borough President - Brooklyn 1
				057 Fire Department 1
				067 Administration for Children Services 1
				740 Department of Education (Non-Pedago 2
				858 Department of Information Technology 2

Title	# Total		Agency	# Incumbents
	Incumbents	Provisionals		
60666 Director (Television)	9	9	905 District Attorney Richmond County	1
60810 Public Relations Assistant	8	7	858 Department of Information Technology	9
			025 Law Department	1
			069 Department of Social Services	1
			846 Department of Parks & Recreation	2
			868 Department of Citywide Administrative	1
			996 NYC Housing Authority	1
70312 Pilot	14	0		
70314 Wiper (Uniformed)	10	10	057 Fire Department	14
70400 Correction Administrative Aide	7	7	057 Fire Department	10
71685 Sanitation Compliance Agent	12	2	072 Department of Correction	7
80102 Real Property Assistant	3	0	827 Department of Sanitation	12
80810 Assistant Laundry Supervisor	2	2	808 Housing Preservation and Development	3
81560 Ferry Terminal Supervisor	10	8	072 Department of Correction	2

<i>Title</i>	<i># Total Incumbents</i>	<i># Total Agency Provisionals</i>	<i># Incumbents</i>
82104 <i>Laboratory Helper (Competitive)</i>	12	12	10 841 Department of Transportation
82980 <i>Administrative Psychologist</i>	4	3	12 781 Department of Probation
82982 <i>Administrative Sanitation Enforcement Agent</i>	1	1	1 056 Police Department
82984 <i>Telecommunications Manager</i>	18	17	2 072 Department of Correction
82985 <i>Administrative Actuary</i>	10	9	1 816 Department of Health and Mental Hygiene
82987 <i>Manager of Radio Repair Operations</i>	4	4	1 827 Department of Sanitation
82988 <i>Administrative Deputy Register</i>	3	3	1 057 Fire Department
82989 <i>Administrative Public Health Sanitarian</i>	14	14	2 069 Department of Social Services
			4 740 Department of Education (Non-Pedago
			10 858 Department of Information Technology
			1 996 NYC Housing Authority
			10 008 Office of the Actuary
			2 056 Police Department
			2 057 Fire Department
			3 836 Department of Finance

Tuesday, March 25, 2008

<i>Title</i>	<i># Total Incumbents</i>	<i># Total Provisionals</i>	<i>Agency</i>	<i># Incumbents</i>
82994 <i>Administrative Labor Relations Analyst</i>	10	10	072 Department of Correction 816 Department of Health and Mental Hygiene 826 Department of Environmental Protection 056 Police Department 057 Fire Department 214 Office of Labor Relations 313 Office of Collective Bargaining 816 Department of Health and Mental Hygiene 836 Department of Finance 996 NYC Housing Authority	1 9 4 2 2 1 1 2 1 1
82998 <i>Administrative Superintendent of Bridge Operations</i>	1	1	841 Department of Transportation	1
90238 <i>Food Service Supervisor</i>	2	2	067 Administration for Children Services	2
90311 <i>Television Equipment Operator</i>	14	12	858 Department of Information Technology	14
90313 <i>Film Manager</i>	4	3	858 Department of Information Technology	4
90411 <i>Radio and Television Operator</i>	11	9	858 Department of Information Technology 868 Department of Citywide Administrative	9 2
90436 <i>Supervisor of Radio and Television Operations</i>	10	10		

Tuesday, March 25, 2008

<i>Title</i>	<i># Total Incumbents</i>	<i># Total Provisionals</i>	<i>Agency</i>	<i># Incumbents</i>
90336 <i>Supervisor of Housing Exterminators</i>	9	7	858 Department of Information Technology	8
90571 <i>Repair Crew Worker (HDA)</i>	1	0	868 Department of Citywide Administrative	2
90573 <i>Repair Crew Chief (HDA)</i>	1	1	996 NYC Housing Authority	9
90574 <i>Senior Repair Crew Chief (HDA)</i>	4	4	806 Housing Preservation and Development	1
90621 <i>Assistant Media Services Technician</i>	1	0	806 Housing Preservation and Development	1
90706 <i>Carriage Upholsterer</i>	1	0	806 Housing Preservation and Development	4
90737 <i>School Equipment Maintainer</i>	1	1	740 Department of Education (Non-Pedago	1
90760 <i>Supervisor of Radio Repair Operations</i>	10	8	827 Department of Sanitation	1
			740 Department of Education (Non-Pedago	1
			056 Police Department	4
			057 Fire Department	3
			740 Department of Education (Non-Pedago	1
			841 Department of Transportation	1
			858 Department of Information Technology	1

<i>Title</i>	<i># Total Incumbents</i>	<i># Total Agency Provisionals</i>	<i># Incumbents</i>
90836 <i>Senior Office Appliance Maintainer</i>	1	1	056 Police Department 1
91350 <i>Supervising Superintendent of Maintenance</i>	16	13	841 Department of Transportation 16
91548 <i>Marine Oiler (DC)</i>	3	3	072 Department of Correction 3
91555 <i>Mate (DC)</i>	1	0	072 Department of Correction 1
91631 <i>Pile Driving Engineer</i>	1	0	841 Department of Transportation 1
91632 <i>High Pressure Boiler Operator (Floating Equipment)</i>	1	1	841 Department of Transportation 1
91697 <i>Area Manager of School Maintenance</i>	15	13	740 Department of Education (Non-Pedago 15
91910 <i>Pipe Caulker</i>	1	1	826 Department of Environmental Protectio 1
92073 <i>Supervisor Ship Carpenter</i>	1	1	841 Department of Transportation 1
92110 <i>Compositor (Job)</i>	3	3	056 Police Department 3
92248 <i>Urban Archeologist</i>	2	1	136 Landmarks Preservation Commission 2

Tuesday, March 25, 2008

Page 21 of 22

Title	# Total		Agency	# Incumbents
	Incumbents	Provisionals		
92320 Horseshoer	3	1	056 Police Department	3
92376 Supervisor of Ironwork	4	4	057 Fire Department 827 Department of Sanitation	1 3
92587 Marine Maintenance Mechanic	5	5	056 Police Department 057 Fire Department	2 3
92590 Telephone Service Technician	10	9	056 Police Department 072 Department of Correction 846 Department of Parks & Recreation	3 3 4
92706 Furniture Maintainer (Finisher)	1	1	740 Department of Education (Non-Pedago	1

Classifying New Titles or Reclassifying Current Competitive Titles to the Exempt Class where State has Exempt Class titles Performing Comparable Work]

- 2.3.4.01 Public Information positions:**
DCAS will seek approval to classify in the Exempt Class a position of Director of Public Information and Assistant Director of Public Information for each agency. More Assistant positions may be requested for larger agencies.
- 2.3.4.02 Legislative Coordinator positions:**
DCAS will seek approval to classify in the Exempt Class a position of Director of Legislative and Assistant Director of Legislative for use by each City agency. More Assistant positions may be requested for larger agencies.
- 2.3.4.03 Intergovernmental Affairs positions**
DCAS will seek approval to classify in the Exempt Class a position of Director of Intergovernmental Affairs and Assistant Director of Intergovernmental Affairs for each agency. More Assistant positions may be requested for larger agencies.
- 2.3.4.04 Equal Employment Opportunity program positions**
DCAS will seek approval to classify in the Exempt Class a position of Director of Equal Employment Opportunity and Assistant Director of Equal Employment Opportunity for each agency. More Assistant positions may be requested for larger agencies.
- 2.3.4.05 Budget and Fiscal Affairs positions**
DCAS will seek approval to classify in the Exempt Class a position of Director of Budget and Fiscal Affairs and Assistant Director of Budget and Fiscal Affairs for each agency. More Assistant positions may be requested for larger agencies.
- 2.3.4.06 Human Resources positions**
DCAS will seek approval to classify in the Exempt Class a position of Director of Human Resources and Assistant Director of Human Resources for each agency. More Assistant positions may be requested for larger agencies.
- 2.3.4.07 Labor Relation positions**
DCAS will seek approval to classify in the Exempt Class a position of Director of Labor Relations and Assistant Director of Labor Relations for each agency. More Assistant positions may be requested for larger agencies.
- 2.3.4.08 Community Relations positions**

DCAS will seek approval to classify in the Exempt Class a position of Director of Community Relations and Assistant Director of Community Relations for each agency. More Assistant positions may be requested for larger agencies.

2.3.4.09 Technology positions

DCAS will seek approval to classify in the Exempt Class a position of Director of Technology and Assistant Director of Technology for each agency. More Assistant positions may be requested for larger agencies.

2.3.4.10 Communications positions

DCAS will seek approval to classify in the Exempt Class a position of Director of Communications and Assistant Director of Communications for each agency. More Assistant positions may be requested for larger agencies.

2.3.4.11 Security positions

DCAS will seek approval to classify in the Exempt Class a position of Director of Security and Assistant Director of Security for each agency. More Assistant positions may be requested for larger agencies.

2.3.4.12 Chief of Staff positions

DCAS will seek approval to classify in the Exempt Class a position of Chief of Staff and Assistant Chief of Staff for each agency. More Assistant positions may be requested for larger agencies.

2.3.4.13 Employee Assistance Counselors:

DCAS will seek approval to classify positions of Employee Assistance Counselors in the Exempt Class. [Number of positions to be determined.]

Appendix VIII: Temporary Titles with Provisionals Serving

06765	EMERGENCY PREPAREDNESS MANAGER (OEM)
06766	EMERGENCY PREPAREDNESS SPECIALIST (OEM)
06408	EMPLOYEE ASSISTANCE PROGRAM SPECIALIST
05346	EMPLOYEE HEALTH BENEFITS PROGRAM DIRECTOR (OMLR)
06773	EQUAL RIGHTS COMPLIANCE SPECIALIST (DOE)
05395	EXECUTIVE ADMINISTRATOR OF GRACIE MANSION (MA)
05418	EXECUTIVE ASSISTANT TO THE CITY CLERK
09963	EXECUTIVE ASSISTANT TO THE COMMISSIONER (SANIT.)
09840	EXECUTIVE ASSISTANT TO THE COORD. OF CRIM. JUST. (MA)
06242	EXECUTIVE ASSISTANT TO THE FIRST DEPUTY CITY CLERK
09989	EXECUTIVE COOK (OFFICE OF THE MAYOR)
06670	EXECUTIVE DEPUTY CITY SHERIFF (DF)
06743	EXECUTIVE DEPUTY COMMISSIONER FOR MENTAL HYGIENE
06683	EXECUTIVE DIRECTOR (POLICE COMMISSION-DOI)
05085	EXECUTIVE DIRECTOR OF ADMINISTRATION (DEPT. OF PROBATION)
06407	EXECUTIVE DIRECTOR OF FOOD SERVICES (CORRECTION)
06574	EXECUTIVE INSPECTOR (FD)
06426	FIELD INVESTIGATION SPECIALIST
06366	FISCAL RESPONSIBILITY OFFICER (MA)
06593	FOOD SERVICE ADMINISTRATOR (DC)
05058	FOOD SERVICE MANAGER
06624	GENERAL MANAGER (TBTA)
06124	HEAD NURSE (DS)
06432	HIGH SCHOOL STUDENT AIDE (CW)
06314	INCINERATOR FACILITY MANAGER (DS)
06750	INTELLIGENCE RESEARCH SPECIALIST (POLICE DEPARTMENT)
0675A	INTELLIGENCE RESEARCH SPECIALIST (POLICE DEPARTMENT)
06313	INTERPRETER (PART-TIME - BOARD OF EDUCATION)
06754	INTERPRETER/TRANSLATOR (DOE)
06316	INVESTIGATOR (DISCIPLINE) (ALL MAYORAL AGENCIES)
06688	INVESTIGATOR (EMPLOYEE DISCIPLINE) MAYORAL AGENCIES ONLY
05383	LEGISLATIVE AIDE (OFFICE OF THE MAYOR)
05483	MANAGEMENT CONSULTANT (FIRE PREVENTION)
06753	MARINE ELECTRONICS TECHNICIAN
06405	MAYORAL OFFICE ASSISTANT (MA)
06423	MAYORAL PROGRAM COORDINATOR (MA)
06591	MEDICOLEGAL ANALYST (LAW DEPARTMENT)
06611	NURSE PRACTITIONER (DH)
06752	NYCAPS PROCESS ANALYST
0675B	NYCAPS PROCESS ANALYST (DCAS CONFIDENTIAL)
06760	NYCAPS PROCESS ANALYST MANAGER
06216	OCCUPATIONAL THERAPIST (BOARD OF EDUCATION)

05306	PARK BOROUGH COMMISSIONER (DPR)
06218	PHYSICAL THERAPIST (BOARD OF EDUCATION)
06664	PLAYGROUND ASSOCIATE
06663	POISON INFORMATION SPECIALIST (DOH)
06772	PORT MARINE ENGINEER (DOT)
05421	PRESS AND SPEECH AIDE (MA)
05481	PROJECT PLANNER (MA)
06023	PROJECT PLANNER (PR)
06771	PROTECTION AGENT (ACS)
06421	PUBLISHING ASSOCIATE (MA)
06070	RECREATION SPECIALIST (DPR)
09909	RESEARCH & LIAISON COORDINATOR (PB)
05144	RESEARCH AND LIAISON COORDINATOR (PX)
05145	RESEARCH LIAISON AND GOVERNMENTAL COORDINATOR (PX)
05277	RESEARCH PROJECTS COORDINATOR (MA)
0527A	RESEARCH PROJECTS COORDINATOR (MA) (MANAGERIAL ASSIGNMENTS)
06745	SCHOOL BUSINESS MANAGER
05384	SECRETARY (MA)
06021	SECRETARY (PR)
09910	SECRETARY TO ASSISTANT TO THE PRESIDENT (PB)
05107	SECRETARY TO ASSISTANT TO THE PRESIDENT (PX)
06680	SECRETARY TO COUNSEL (HA)
06679	SECRETARY TO DEPUTY EXECUTIVE DIRECTOR (HA)
06678	SECRETARY TO EXECUTIVE DIRECTOR (HA)
06429	SECRETARY TO PUBLIC ADMINISTRATOR (RICHMOND COUNTY)
06757	SECRETARY TO THE CHAIR (BIC)
09880	SECRETARY TO THE CHANCELLOR
06770	SECRETARY TO THE CHIEF ACTUARY
06694	SECRETARY TO THE COMMISSIONER (AFCS)
06767	SECRETARY TO THE COMMISSIONER (OEM)
06715	SECRETARY TO THE COUNSEL TO THE CHANCELLOR
06655	SECRETARY TO THE DEPUTY CHANCELLOR (BOARD OF EDUCATION)
06596	SECRETARY TO THE DEPUTY COMMISSIONER (FD)
05108	SECRETARY TO THE EXECUTIVE ASSISTANT (BRONX BOROUGH PRES.)
06463	SECRETARY TO THE EXECUTIVE DIRECTOR (CFB)
06738	SECRETARY TO THE FIRST DEPUTY COMMISSIONER (OLR)
06612	SECRETARY TO THE SPECIAL COMMISSIONER OF INVEST. NYC SCHOOL
06716	SENIOR ACCOUNTANT INVESTIGATOR (RACKETS) (DX)
06217	SENIOR OCCUPATIONAL THERAPIST (BOARD OF EDUCATION)
06219	SENIOR PHYSICAL THERAPIST (BOARD OF EDUCATION)
05482	SENIOR PROJECT PLANNER (MA)
05322	SENIOR RACKETS INVESTIGATOR (BRONX COUNTY D.A.)
06583	SENIOR RACKETS INVESTIGATOR (SNC)

09709	SENIOR SERVICE INSPECTOR (PROJECT SCORECARD)
06517	SENIOR STUDENT LEGAL SPECIALIST (LAW DEPARTMENT)
09708	SERVICE INSPECTOR (PROJECT SCORECARD)
06581	SIGN LANGUAGE INTERPRETER (BOARD OF EDUCATION)
0668A	SPECIAL ASSISTANT (MA) (MANAGERIAL ASSIGNMENTS)
06689	SPECIAL ASSISTANT (OFFICE OF THE MAYOR)
03647	SPECIAL ASSISTANT TO THE BOROUGH PRESIDENT (BRONX)
06431	SPECIAL ASSISTANT TO THE BOROUGH PRESIDENT (BROOKLYN)
09273	SPECIAL ASSISTANT TO THE BOROUGH PRESIDENT (QUEENS)
09879	SPECIAL ASSISTANT TO THE CHANCELLOR
05450	SPECIAL ASSISTANT TO THE DISTRICT ATTORNEY (NY COUNTY)
06472	SPECIAL ASSISTANT TO THE EXECUTIVE DIRECTOR (HA)
06550	SPECIAL COMMISSIONER OF INVESTIGATION FOR THE NYC SCHOOLDIS
06658	SPECIAL INVESTIGATOR (TBTA)
06393	STAFF ASSISTANT (OFFICE OF THE AUDITOR GENERAL-MA)
05363	STATISTICAL SECRETARY (OMB)
05072	STUDENT LEGAL SPECIALIST (LD)
06719	SUPERVISING ACCOUNTANT INVESTIGATOR (RACKETS-QUEENS DA)
05323	SUPERVISING RACKETS INVESTIGATOR (DX)
06165	SUPERVISOR OF NURSES (BOARD OF EDUCATION)
06602	SYSTEMS ADMINISTRATOR (CAMPAIGN FINANCE BOARD)
06253	THIRD ASSISTANT MARINE ENGINEER (DIESEL) (DEP)
06252	THIRD MATE (DEP)
06569	VICE PRESIDENT (ENGINEERING AND CONSTRUCTION)(TBTA)
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Appendix VIII: Temporary Titles with Provisionals Serving

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06252	THIRD MATE (DEP)
06569	VICE PRESIDENT (ENGINEERING AND CONSTRUCTION)(TBTA)
06617	VICE PRESIDENT, OPERATIONS (TBTA)

Exhibit **B**

NOTICE OF EXAMINATION

EXAM. NO. 9624

PROMOTION TO FERRY TERMINAL SUPERVISOR

The City of New York is an Equal Opportunity Employer.

THE GENERAL PROVISIONS OF THE NOTICE OF EXAMINATION APPLY TO THIS EXAMINATION AND ARE PART OF THIS NOTICE OF EXAMINATION. THE GENERAL PROVISIONS OF THE NOTICE OF EXAMINATION ARE POSTED, AND COPIES ARE AVAILABLE, IN THE APPLICATION SECTION OF THE DEPARTMENT OF PERSONNEL AT 49 THOMAS STREET, NEW YORK, NEW YORK.

THE GENERAL EXAMINATION REGULATIONS OF THE DEPARTMENT OF PERSONNEL APPLY TO THIS EXAMINATION AND ARE A PART OF THIS NOTICE OF EXAMINATION. THE GENERAL EXAMINATION REGULATIONS ARE POSTED, AND COPIES ARE AVAILABLE, IN THE APPLICATION SECTION OF THE DEPARTMENT OF PERSONNEL AT 49 THOMAS STREET, NEW YORK, NEW YORK.

FILING DATES: From December 2, 1981 through December 22, 1981.

FILING FEE: \$ 15.00.

TEST DATE: The written test will be held on February 27, 1982.

REQUIREMENTS

ELIGIBILITY: Open to each employee of the Department of Transportation who on the date of the written test: (1) is permanently employed in the titles of Deckhand or Laborer; (2) has served as a permanent employee in such title or titles for a period of not less than six months preceding that date; and (3) is not otherwise ineligible.

LICENSE REQUIREMENTS: At the time of appointment, candidates must possess a valid radio-telephone third class operator's permit, issued by the Federal Communications Commission, for operation of shore stations. This license must be presented to the appointing officer at the time of appointment interview.

JOB DESCRIPTION

DUTIES AND RESPONSIBILITIES: Under general supervision, is in charge of a ferry terminal and the terminal personnel; performs related work.

EXAMPLES OF TYPICAL TASKS: Arranges schedules for complete 24-hour, 7-day week coverage. Is responsible for the maintenance of ferry-boat schedules. Keeps log of arrival and departure of boats. Regulates all passenger and vehicle traffic and supervises safe loading and unloading of boats. Makes arrangements for fueling and emergency repairs. Inspects fire stations in terminal and dock. Supervises maintenance of cleanliness of terminal. Checks concessionaires on the observance of rules of cleanliness and safety. Checks all solicitors around or in terminal for the possession of written orders of permission. Takes charge of accidents occurring on boats and terminals. Makes out accident and damage reports. Occasionally operates bridges and takes tickets. Is responsible for proper operation of radio-telephone to notify proper officials in the event of an emergency. Makes reports of all incidents and makes spot checks of the vehicle tickets to determine their accuracy.

TEST INFORMATION

TESTS: Seniority, weight 15; written, weight 85, 70% required. The written test will be of the multiple-choice type and may include questions on: all aspects of ferry terminal operations, including proper maintenance, traffic control, and safety; the proper use, maintenance and operation of a ferry boat, including nautical and mechanical trades nomenclature, and proper safety procedures and precautions; resolution of emergency situations; public relations and supervisory techniques; and the rules and regulations of the Department of Transportation, including the provisions

of Mayor's Executive Order No. 16

DEPARTMENT OF PERSONNEL: Juan U. Ortiz, City Personnel Director, T.C. #81560

Exhibit C

10719 P.02

3100

THE FERRY SERVICE

CCDT NO. 81560
MAXIMUM SALARY: \$8,875 PER ANNUM
EFF. 7.1.66: \$9,184 PER ANNUM

FERRY TERMINAL SUPERVISORGeneral Statement of Duties and Responsibilities

Under general supervision, is in charge of a ferry terminal and the terminal personnel; performs related work.

Examples of Typical Tasks

Arranges schedules for complete 24-hour, 7-day week coverage.

Is responsible for the maintenance of ferry-boat schedules.

Keeps log of arrival and departure of boats.

Regulates all passenger and vehicle traffic and supervises safe loading and unloading of boats.

Makes arrangements for fueling and emergency repairs.

Inspects fire stations in terminal and dock.

Supervises maintenance of cleanliness of terminal.

Checks concessionaires on the observance of rules of cleanliness and safety.

Checks all solicitors around or in terminal for the possession of written orders of permission.

Takes charge of accidents occurring on boats and terminals.

Makes out accident and damage reports.

Occasionally operates bridges and takes tickets.

Qualification Requirements

1. High school graduation plus two (2) years experience in ferry terminal work;
or
2. Completion of the eighth grade plus four (4) years of experience in ferry terminal work.

Direct Lines of Promotion

From: None

To: None

R 8.31.65

Exhibit **D**



OPERATIONS GUIDE

Organization**Ferry Terminal Supervisor - Section 2.9****Job Description**

The Ferry Terminal Supervisor (FTS) reports directly to the Executive Director of Safety and Security and provides leadership for Dock Office personnel including the Ferry Terminal Clerk and Deckhands assigned to ferry terminal positions.

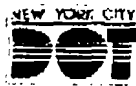
The FTS shall coordinate closely with Port Office personnel and ferry Captains to achieve effective scheduling arrangements. The position is responsible to coordinate slip assignments for arriving ferries and to maintain safe operating conditions within the passenger terminal at all times. The FTS shall ensure that machinery and systems are properly operated including passenger boarding systems, communication systems, terminal lighting, HVAC, etc.

The FTS assists Administration personnel as necessary to coordinate replacement crewmembers.

The FTS shall ensure that management system requirements and procedures are implemented by Dock Office personnel including the Clerk and Deckhands.

Duties & Responsibilities

- 1) Provide effective leadership, commitment and involvement to implement terminal and ferry operations procedures (TOM 1);
- 2) Serve as Dock Office Team Leader to coordinate safe operating conditions within terminals for passengers and ferries at all times (TOM 2.1);
- 3) Ensure Dock Office Team members are properly informed of management system requirements and that specified requirements have been implemented (TOM 2.2);
- 4) Ensure specified documents and records are maintained in the Dock Office (TOM 2.3);
- 5) Ensure compliance with uniform standards by Port Office Team members (TOM 2.4);
- 6) Coordinate implementation of Dock Office Team duty assignments (TOM 5.1);
- 7) Coordinate precautions to safely assign ferries to appropriate slips (TOM 5.2);
- 8) Ensure that ferry terminal announcements are properly performed (TOM 5.3);
- 9) Coordinate safe passenger boarding and disembarking operations as detailed by procedures (TOM 5.4 & 5.5);
- 10) Ensure that passenger counting is properly coordinated (TOM 5.6);
- 11) Implement ferry terminal safety requirements with Dock Office Team members (TOM 5.7);
- 12) Perform ferry terminal inspections at the commencement of each shift (TOM 5.8);
- 13) Assign linehandlers as necessary to assist with mooring operations (TOM 5.9);
- 14) Ensure weather observations are coordinated in accordance with requirements (TOM 5.10);
- 15) Advise personnel of severe weather conditions affecting safety of passenger traffic and vessel operation (TOM 7.2);



OPERATIONS GUIDE



Organization

Ferry Terminal Supervisor - Section 2.9

- 16) Ensure *Ferry Terminal Logbook* and *Radio Station Log* are properly maintained (TOM 5.11);
- 17) Coordinate first aid assistance for passengers and personnel as necessary (TOM 7.1);
- 18) Participate in operations meetings to determine operational requirements and daily schedules (OPS 5.1);
- 19) Ensure that records are maintained as specified by related procedures (SSG 4.5);
- 20) Participate in event reporting and analysis activities as necessary (SSG 5.1 & 5.2);
- 21) Assist with risk assessment as requested by Safety & Security personnel (SSG 6.1);
- 22) Ensure compliance with communications procedures (OPS 4.1, 4.3 & 4.4); and
- 23) Perform additional duties as directed by the Executive Director of Safety & Security.

Exhibit **E**

C - X

CODE NO. 91529

THE FERRY SERVICE [011]

GROUP 1 - DECK [011.1]

DECKHAND

General Statement of Duties and Responsibilities

Under supervision, performs deckhand duties in compliance with agency standard operating procedures, the Safety Management System (SMS), the Vessel Security Plan (VSP) and applicable local, state and federal rules and regulations on a municipal ferry vessel and at a ferry terminal; performs related work.

Examples of Typical Tasks

Performs general deckhand duties, including cleaning the vessel and/or terminal areas, as directed.

Performs lookout and emergency duties of the assigned duty station, such as: launching and manning rescue boats and life rafts; operating firefighting equipment; and assisting in vessel to vessel transfers, under the direction of an Officer.

Operates boarding doors, gates, aprons and bridges.

Handles gangways and mooring lines.

Directs passenger and vehicle traffic, as assigned.

Patrols deck and assigned duty station to ensure that all is in a safe and clean condition; assists passengers, as needed; reports any suspicious circumstance or object to an Officer or Ferry Terminal Supervisor.

C - X

CODE NO. 91529

THE FERRY SERVICE [011]

GROUP I - DECK [011.1]

DECKHAND (continued)

Examples of Typical Tasks (continued)

Performs heavy manual labor, such as: handling vessel and terminal supplies and trash; and loading and unloading freight.

Participates in safety meetings and fire and lifeboat drills.

Qualification Requirements

1. Two years of full-time satisfactory paid experience as a deckhand on ocean, coastwise or inland steam or motor vessels, or equivalent seagoing experience in a sea service of the Armed Forces of the United States; or
2. Graduation from an acceptable training program, such as the Kingsborough Community College marine technology program, including or supplemented by at least one year of deck duty; or
3. Graduation from one of the U.S. Coast Guard approved maritime or sea service academies listed below, including the curriculum, program or qualification indicated:
 - a) The U.S. Merchant Marine Academy (deck curriculum); or
 - b) The U.S. Coast Guard Academy or the U.S. Naval Academy with a qualification as an Underway Officer in charge of a navigational watch; or

C - X

CODE NO. 91529

THE FERRY SERVICE [011]

GROUP I - DECK [011.1]

DECKHAND (continued)

Qualification Requirements (continued)

- c) The Deck Class of a Maritime Academy approved by and conducted under rules prescribed by the Maritime Administrator and listed in part 310 of 46 USC, including the program in the Deck Class of the Great Lakes Maritime Academy.

Note: To be acceptable, the education and experience described in "1", "2" and "3" above must have been obtained within the last 10 years.

Medical/Physical Requirements

Medical guidelines established by the U.S. Coast Guard apply to the position of Deckhand. Candidates will therefore be required to undergo a medical examination prior to appointment and thereafter, pursuant to Coast Guard regulations. Candidates must also pass a drug screening to be appointed. Deckhands are subject to random drug and alcohol testing during their employment.

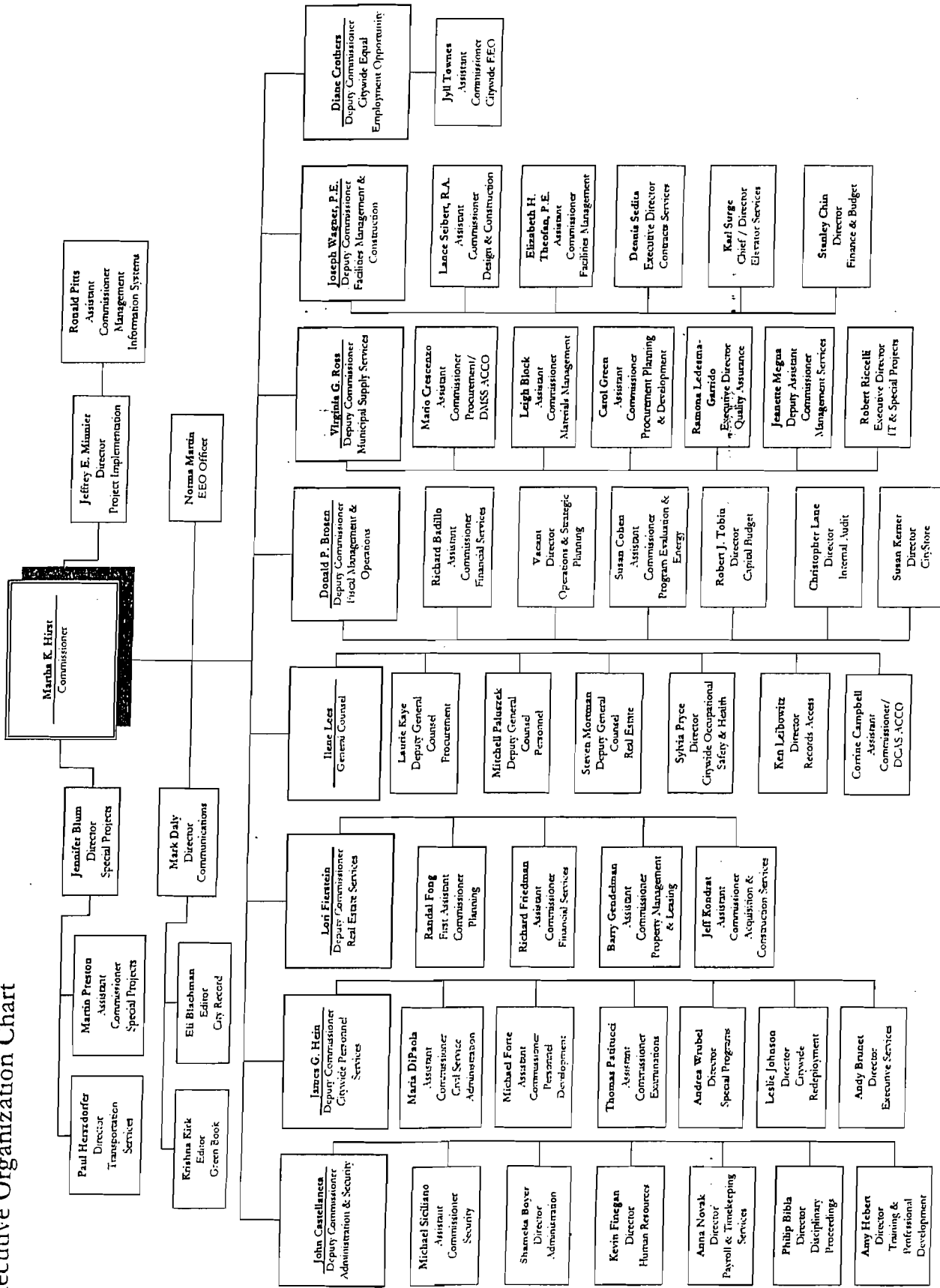
Direct Lines of Promotion

From: None

To: Mate (Ferry) (91556)
Assistant Captain (Ferry) (91504)
Captain (Ferry) (91510)
(Limited to candidates possessing
the required licensure.)

Appendix II: DCAS Organizational Chart

DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES Executive Organization Chart



December 1, 2007