

# FOR THE RECORD

American Federation of State, County & Municipal Employees, AFL-CIO

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District Council

# 37

### Testimony of Lillian Roberts

Before the City Council Committee on Civil Service and Labor

Review of DCAS' annual report

June 29, 2007

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Good afternoon Chairperson Joseph Addabbo and members of the Civil Service and Labor Committee. My name is Lillian Roberts and I am Executive Director of District Council 37 (DC 37), AFSCME, representing 121,000 municipal workers and 50,000 retirees.

I want to thank you for the opportunity to testify before you today about issues confronting the civil service examinations, provisional appointments and promotions. Today, I will concentrate my testimony on the 1 in 3 rule.

DC 37 firmly believes in the principle behind Executive Order Number 4 issued by Mayor Abraham Beame on January 1, 1974. Mayor Beame understood the true meaning of civil service's merit and fitness system in which appointments and promotions from eligible lists in list order are the only method of avoiding favoritism and discrimination.<sup>1</sup>

It is DC 37's position that the 1 in 3 rule allows managers in city agencies to bypass merit and fitness provisions that are required by law and allow these same managers to apply favoritism among employees. We understand management has the right to appoint and promote people, but we believe that many qualified people who

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<sup>1</sup> Executive Order No. 4, Mayor Abraham Beame, January 1, 1974 - In order to carry out and protect the principles which underlie the provisions of Article V, section 6 of the Constitution, to preserve the Civil Service merit system and to avoid favoritism and improper and unjust discrimination, all heads of City agencies are hereby directed to make appointments and promotions from eligible lists promulgated after competitive examinations only in the order in which the names of available candidates appear upon such eligible lists, except with the written approval of the Mayor upon good and sufficient cause shown.

take and pass civil service exams are not given a fair opportunity for appointments and promotions.

Over the years, we have received many complaints from hard working members who have taken civil service exams and have been passed over based on what they perceive as a system of discrimination and favoritism. They perceive the 1 in 3 rule as an impediment to their ability to secure promotional opportunities. This is not why the civil service system created. The fundamental principle of the civil service was to create a fair system where employees are appointed on the basis of merit and fitness and to guard against political patronage in public sector jobs.

We recognize that the 1 in 3 rule is part of the law. However, the use of 1 in 3 is not mandated by civil service law. The City chooses to use the 1 in 3 rule, while in the New York State civil service system this rule is not normally used to appoint individuals. At the very least, the use of 1 in 3 should be eliminated in the use of promotion lists. An incumbent employee who takes and passes a promotion exam should be appointed in list order without question.

Until the mid 1980's when legislation was enacted, members were not even told that they were removed from the civil service list. It took legislation that the union fought long and hard for that gave individuals the basic right to receive written notification that they were not selected.

Furthermore, eligibles who are not appointed from the civil service list do not have any right to appeal management's decision. It is bad enough that a person is not appointed to a position after passing an exam and are placed on a civil service list, but the person is not told the reason why he/she is not selected. An eligible should have the right to appeal his/her non-selection.

When the New York City Commission for Economic Opportunity released its report on Increasing Opportunity and Reducing Poverty In New York City in late September 2006, it emphasized the need for career pathways as an essential component to reduce poverty among the working poor. We believe the civil service system is critical to the mission of creating any career path for the working class. But if the system is not fairly implemented, the effect can be devastating.

Approximately 4,000 members have benefited from the education classes offered by the union's Education Department. The classes the members take further expand their knowledge and enhance their skills. DC 37's partnership with the College of New Rochelle and Cornell University has afforded members the opportunity to obtain college and advanced degrees. Their hard work and experience, along with passing civil service exams should be enough to be appointed to civil service titles.

The civil service system must provide an attractive place for people to work and to grow in talent and fulfillment. Employees must feel that their contributions make a difference--that they are engaged in valuable (and valued) public service. We believe the current 1 in 3 rule, as applied, threatens that principle and we will work hard to change it.

We ask that our members be given an opportunity for appointment and promotion to civil service based on their list number.

I strongly urge this committee and the City Council to review the impact of the 1 in 3 rule in the workforce and to explore alternatives for promotion. It is one of my top priorities and I am willing to work with the City and State to implement a fairer and just system for civil service appointments and promotions.

Thank you for the opportunity to testify before you today.



**OVERSIGHT: REVIEW OF THE ANNUAL REPORT REGARDING  
LOCAL LAW 50 OF 2004**

**COMMITTEE ON CIVIL SERVICE & LABOR  
NEW YORK CITY COUNCIL**

**STEPHEN DOBROWSKY,  
DEPUTY ASSISTANT COMMISSIONER  
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
JUNE 29, 2007**

Good morning Chairman Addabbo and members of the Committee on Civil Service & Labor. I am Stephen Dobrowsky, Deputy Assistant Commissioner in the Division of Citywide Personnel Services at the Department of Citywide Administrative Services (DCAS). I am joined by my colleague Mitchell Paluszek, Deputy General Counsel for Personnel Legal Matters at DCAS. It is my pleasure to be here again, and I thank you for this opportunity to provide the Committee with a review of the annual report we generated pursuant to Local Law 50 of 2004.

Earlier this month, DCAS submitted this annual report to the Mayor, Comptroller, Public Advocate and Speaker of the City Council. In this year's report, we also submitted a new supplemental analysis to summarize our findings. The report contains information regarding the civil service eligible lists established during calendar year 2006 and the use of eligible lists by agencies. As detailed in Section 12-206 of the New York City Administrative Code, the law specifically requires seven sets of statistics. I will now explain the components of the law and our major findings.

Pursuant to the first two subsections of Administrative Code Section 12-206, DCAS must report information regarding each eligible list established during 2006, and the

dates such eligible lists were established. During 2006, 63 open-competitive eligible lists were established, and 166 agency and division promotion lists were established.

The next subsection of Administrative Code Section 12-206 governs information regarding the number of persons appointed or promoted from each eligible list and the agencies to which those appointments or promotions were made. During 2006, there were a total of 13,467 such appointments and promotions made by 44 different agencies.

The report also includes information regarding the number of persons appointed or promoted on a provisional basis during the reporting year and the agencies to which such appointments were made, as required by Administrative Code Section 12-206, subsection (b)(4). During 2006, there were 7,872 provisional appointments and 2,132 provisional promotions – in total, 10,004 provisional actions.

As specified in Administrative Code Section 12-206, subsection (b)(5), DCAS next reports information regarding the number of persons who were “considered and not selected” (or CNS’ed) three times from promotion lists and agency-specific open competitive lists during the reporting year. Because, however, the three considerations that a candidate may receive while on such lists do not necessarily occur within one calendar year, the report also includes those persons who were CNS’ed for a third and last time in 2006. Using these parameters, 1,169 candidates were CNS’ed for a third time during 2006.

Administrative Code Section 12-206, subsection (b)(6), requires that the report include information regarding the number of persons removed from eligible and promotion lists and the reasons reported to DCAS for such removals. We include

both “temporary” and “permanent” removals in this report. Temporary removals – sometimes referred to as “offside” actions – may occur for a variety of reasons, including failure to report for an interview, failure to report for a medical or physical test, declination of an appointment, or failure to report to work after appointment. Upon request, a candidate can automatically have his or her name restored to the eligible list three times after temporary removals. Permanent removal from an eligible list occurs after a fourth “offside” action. The report shows a total of 19,691 removal actions during 2006: 83 permanent removal actions and 19,608 temporary removal actions.

Finally, Administrative Code Section 12-206, subsection (b)(7), requires that the report include information regarding the number of persons restored to eligible lists and the number of persons restored to promotion lists after having been removed. In 2006, there were 103 instances where individuals who were CNS’ed three times were restored to a list at the request of an agency, and there were 2,873 instances where persons temporarily removed from lists were subsequently restored. I would remind the Council that, because a person may be restored to a list more than once during a year, this statistic reflects the total number of restoration actions in the reporting year, and not the exact number of individuals restored to eligible lists.

Thank you again for this opportunity to discuss DCAS’s annual report on civil service eligible lists, examinations, and provisional appointments and promotions, as created by Local Law 50 of 2004. I would be happy to answer any questions you might have.

# New York City Amalgamated Professional Employees



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**Testimony of Juan Fernandez, President, Local 154,  
District Council 37, AFSCME  
Before the Civil Service Committee  
June 29, 2007**

Good morning Chairman Addabo and fellow Committee members. 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 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 status of the Civil Service System in the City of New York:

1. City agencies reluctantly use or sometimes plainly refuse to use established lists. For example, the Research Assistant list #5053 was established in October 2006 with 598 names in it. The Research Assistant is a citywide title used by no less than 15 agencies. However, to date less than 20 people have been appointed from this list.
2. Members report that the tests do not properly reflect the nature of the jobs and that after taking the test, once their names are placed on the list, they are not called. This is a waste of time, money and effort as well as a loss of morale for these.
3. Once a list has been established, some managers use it as an opportunity to retaliate against provisional workers. We are plenty aware that the Civil Service Law requires removal of provisional workers shortly after a list has been established. However, we have seen managers remove provisional workers whose names are high on the list and who never had a bad evaluation but who happened

to step on the wrong toes. This is retaliation under the cover of the Civil Service system.

4. The one-in-three rule allows managers to refuse promotional opportunities to well qualified applicants. Contrary to the well intended purpose of a system based on merit, fitness and objective testing, the rule of one-in-three introduces an element of prejudice in the selection process. People with top scores are discarded with absolutely no explanation. The current system allows managers to do the final picking without regard to the principles behind any merit system.

These factors show that the current Civil Service System is no longer a system based on merit. The existence of 26,000 provisional City workers shows that managers have systematically circumvented the system to bring in workers with no civil service protections. In addition, the current Civil Service System has been unable to deter the spread of political appointments and cronyism in City hiring practices. The excessive number of managers and deputies in many City agencies, sometimes people with no substantive previous experience, demonstrates that public resources and taxpayers moneys are being wasted to the detriment of services to the public.

To ensure that the Civil Service system is based on merit and thus will protect the taxpayers' money and the quality of the services to the public, we recommend the following:

1. Repeal the one-in-three rule and enforce a policy that candidates will be appointed according to their ranking on the civil service list.
2. Ensure that test should properly reflect job descriptions.
3. Establish and enforce a reasonable timeframe for the entire process, from examination to appointment.
4. Require agencies to move lists promptly.
5. Prohibit the use or misuse of the Civil Service System as a tool for retaliation against workers.

We commend and thank the City Council for holding this public hearing regarding the Civil Service system.

I am available to answer any questions you may have.



**Local 333**  
**UNITED MARINE DIVISION**  
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Commissioner Thomas Pattitucci  
 One Centre Street  
 14<sup>th</sup> Floor  
 New York, N.Y. 10007

May 7, 2007

OFFICE COPY

Dear Commissioner Pattitucci:

On behalf of the Staten Island Ferry Terminal Supervisors , Marine Oilers and Deckhands, I am requesting that a Civil Service Test be given for the three titles in the fiscal year 2008. For the FTS title there has not been a test in over 10 years as I had stated to you last year. In the last year we have increased 20% to nearly 50% provisional in the title of Marine Oilier that would like to become permanent Civil Servants. As for the Deckhands, the list is now exhausted and a new Civil Service list should be created to fill vacancies.

If you need any assistance in creating any of these tests, we have qualified permanent civil servants that would be happy to help. Marine Oilier Larry Conroy had helped write the last test for the Marine Oilers and would be glad to assist.

If you have any questions, please feel free to call me or Larry Conroy.

Sincerely,

Chris Larsen  
 Secretary/Treasurer  
 Local 333 United Marine Divison

*Michael Brandon & John O. Sanford*  
*Executive Board*  
*Local 333 U.M.W. I.L.A.*  
*552 Bay Street*  
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June 28, 2007

The importance of preserving and even strengthening the Civil Service System weather for entrance level positions or promotional positions is to prevent the corruption of the Civil Service System to Political Patronage or abuse by over zealous management.

The Laws enacted and redefined over many years were designed to create a level playing field where by every one would have an equal opportunity for employment and advancement.

It also offered protection to employees from retaliation by abusive managers who with the consent of the administration from time to time intentionally "stack the deck" with provisional employees. By not giving a test for an open position and waiting until the need becomes critical (creating an emergency hiring of all provisionals who may be on the pay roll for years and who are indebted to the Politician who appointed them).

A case in point Ferry Terminal Supervisors a list of 10 - 2 of which are permanent Civil Service. The contract is up for negotiation in April and management is looking for numerous changes in particular in hours worked (an 8 hour day to a 12 hour day) and management could exert pressuring on those provisionals to vote for the change or go back to their original title.



# ORGANIZATION OF STAFF ANALYSTS

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## TESTIMONY OF

**ROBERT SPENCER, STAFF REPRESENTATIVE,  
ORGANIZATION OF STAFF ANALYSTS**

**BEFORE THE NY CITY COUNCIL COMMITTEE ON CIVIL SERVICE & LABOR**

**Hearing at City Hall, June 29, 2007**

*Oversight: Review of the Dept. of Citywide Administrative Services' annual report generated pursuant to Local Law 50 of 2004, regarding civil service eligible lists, civil service exams & provisional appointments & promotions.*

Thank you Chairman Addabbo and members of the Committee for extending an opportunity for the Organization of Staff Analysts to address the Committee about the City's use of the 1 in 3 rule and related matters. We greatly appreciate the Committee's ongoing oversight of the civil service appointment process.

I'm Rob Spencer and I'm a staff representative at OSA and I'm here today on behalf of OSA's Chair Bob Croghan and Vice-Chair Tom Anderson. They both remain extremely concerned with the current approach of the Department of Citywide Administrative Services towards appointments from civil service lists pursuant to the 1 in 3 rule. The overuse of the 1 in 3 rule to bar candidates from appointment from open competitive and promotional lists is a practice that must end.

Last November, OSA's Chair Bob Croghan urged greater funding for DCAS in testimony before this Committee and we continue to recommend that DCAS have the needed funding and staff to ensure that it can fully perform its critical functions in ensuring appropriate civil service process in City agencies.

We strongly believe the City must begin to move in the direction of elimination or more restrictive use of the 1 in 3 rule and more appointments from civil service lists. We fully support DC37's publicly stated position that 100% of all candidates should be appointed in strict list number order.

The City argues it needs discretion in appointments. We believe it already has many and sufficient safeguards in the probationary process. Without violating the spirit and intent of appointments by merit and fitness, it has ample opportunity to deal with employees who, once hired, are subsequently found to be unfit.

We believe the present state of affairs is unfair to all, including provisionals, who are not being afforded the appropriate opportunities to obtain permanent appointments. And it allows favoritism, bias, and discrimination to creep back into the hiring and promotion process for the public service.

In addition, we believe in the need for citywide promotional lists, since those stuck on small lists at small agencies or those remaining at the end of appointments made from larger lists at major agencies may never have a fair opportunity for promotional appointment.

[Continued, Over]

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**Testimony of Robert Spencer/Organization of Staff Analysts**

**Hearing of the Civil Service and Labor Committee of the New York City Council, June 29, 2007**

Finally, OSA is grateful for the Council's action through Local Law 50 of 2004 in mandating annual reporting on list movement and appointments. However, we believe the current reporting could be significantly improved by regular updates in a simple format showing how individual lists are moving, shared with the unions representing the affected title.

And, DCAS must make improvements in notifying those on civil service lists during the life of the list – letting them know when they have been considered and not selected, when they have been removed from a list, and how to restore themselves to the list.

Thank you again for your vigilance. OSA looks forward to continuing to work closely with you and the Committee on these issues.