

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEES ON CONTRACTS AND CIVIL SERVICE AND LABOR

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October 15, 2009
Start: 1:24pm
Recess: 3:41pm

HELD AT: Committee Room
City Hall

B E F O R E: LETITIA JAMES, MICHAEL C. NELSON
Chairpersons

COUNCIL MEMBERS:
Melissa Mark-Viverito
Kendall Stewart
John C. Liu
Robert Jackson
David I. Weprin

A P P E A R A N C E S (CONTINUED)

Marla Simpson
Director
Mayor's Office of Contract Services

Stephen Melish
President
Local Union 1969

Jack Kittel
Political Director, District Council 9
International Union of Painters and Allied Trades

Harry Greenberg
Counsel
Local Union 1969

Henry Garrido
Representative
DC 37

Lillian Roberts
President
DC 37

2 CHAIRPERSON JAMES: Good morning.

3 My name is Letitia James and I'm Chair of the New
4 York City Council's Committee on Contracts. It's
5 my privilege to participate in this joint hearing
6 today with the Committee on Civil Service and
7 Labor. I'd like to thank all of you for
8 attending. Before we proceed I'd like to thank
9 Acting Chair Michael Nelson for letting us join
10 this hearing. I'd also like to thank the staff of
11 all of the committees who worked to prepare
12 today's hearing. This is a joint hearing. I'll
13 keep my remarks brief. Today we are going to be
14 discussing Charter Section 312(a), how it is
15 applied Citywide and how it has failed the
16 painters employed by the Department of Homeless
17 Services. Charter Section 312(a), commonly
18 referred to as Local Law 35 of 1994, was enacted
19 to ensure that an agency's decision to displace
20 City workers by contracting out their jobs is
21 based on what is in the best interest of the City
22 and not just an attempt to needlessly removed
23 unionized workers. Let me say that again; that it
24 is not--that it is in the best interest of the
25 City and not just an attempt to needlessly remove

2 unionized workers, which is, as everyone knows,
3 the backbone of the middle class in the City of
4 New York. The Law is also meant to allow the
5 unionized workers a chance to compete for the work
6 that the agency is proposing to outsource.

7 Furthermore the law is also meant to allow
8 unionized workers a chance to compete for the work
9 that the agency is proposing to outsource.

10 Unfortunately, despite the intentions and
11 requirements of section 312(a) it does not always
12 work. Lay offs still happen. In this case we
13 will discuss today it did not work for the
14 painters employed by the Department of Homeless
15 Services, and I am sure that we will hear from the
16 union representing the painters and some painters
17 themselves. Today we will discuss Section 312(a)'s
18 weakness and we will explore ways to make it
19 stronger. At this time I'm going to turn it over
20 to the acting chair of the Labor Committee,
21 Council Member Mike Nelson, who hails from the
22 great Borough of Brooklyn. Councilman Nelson?

23 CHAIRPERSON NELSON: Thank you,
24 Council Member James. My name is Mike Nelson and
25 I am the acting chair of the Committee on Civil

Service and Labor. We're here to discuss whether the system put in place to protect city workers from displacement is adequate. The protection of City jobs is crucial, especially in today's economic climate. These are good, stable jobs that provide decent salaries and benefits. Further, most city workers live here and their dollars stay and they fuel the City economy. Charter section 312 requires that if an agency plans to enter into a contract valued at more than \$100,000 to provide a technical, consultant or personal service, the agency must follow a set procedure prior to entering into that contract. Although charter section 312 outlines the process by which an agency contracts out services, it is limited in its application and may not apply to all contracts, or agencies outsource services that could be performed by City employees. Outsourcing services performed by government employers to private contractors represents a controversial practice routinely practiced by many localities including New York City. Two primary reasons often cited for contracting out public services are, one, to cut the cost of providing the

1 services to taxpaying residents; and two, to
 2 employ specialized skills and resources that may,
 3 for various reasons, be unavailable within the
 4 City government. However, the public sector
 5 unions vehemently disagree with this reasoning.
 6 Unions in New York City argue that the City
 7 employees are better trained as private sector
 8 employees are hired without merit and fitness
 9 examinations and background checks that the City
 10 requires for civil service workers. Unions also
 11 argue that City employees are more cost-effective.
 12 Additionally opponents of outsourcing are
 13 concerned that as private firms begin to perform
 14 government functions, public sector workers will
 15 lose their jobs or suffer reduced wages. Given
 16 that the contracting out of services can lead to
 17 the displacement of City workers, it is vital that
 18 the City's contracting policies encourage
 19 transparency and openness in contractual
 20 relationships and allow for the appropriate public
 21 scrutiny. I look forward to hearing testimony
 22 from the administration and unions regarding the
 23 application of charter section 312 and their
 24 analysis with respect to the painters at DHS and
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2 how the City can improve the administration of
3 such analysis to contracts overall to prevent the
4 displacement of workers. Thank you. Madam Chair?

5 CHAIRPERSON JAMES: Again, the
6 issue comes down to the section 312. Again, prior
7 to issuing an invitation for bid the agency, in
8 this case the Department of Homeless Service, must
9 determine whether the contract will directly
10 displace a City employee. And the question, I
11 guess, is the definition of the term direct and
12 how--and whether or not there can be a more
13 restrictive definition of that term directed to
14 avoid the displacement of City workers. We have
15 seen, unfortunately, in the City of New York,
16 outsourcing in a number of agencies, which has
17 resulted in the displacement of a number of
18 unionized workers. It's not just limited to the
19 Department of Homeless Service. This agency has
20 held hearings and will continue to hold hearings
21 about the practice that this administration has
22 conducted, and that is the outsourcing of City
23 contracts, resulting in the displacement of
24 workers in the Department of Education, Department
25 of Homeless Service, Administration for Children's

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2 Services and the list goes on and on and on. The
3 first witness is Marla Simpson, representing the
4 Mayor's Office of Contracts. Her title is
5 Director and she will speak to this issue. Ms.
6 Simpson?

7 MARLA SIMPSON: Good afternoon,
8 Chair James, Chair Nelson, Members of the
9 Committee. Today's hearing, I'm happy to present
10 testimony on behalf of my office, which is the
11 Mayor's Office of Contract Services and I'd like
12 at the outset to address the applicability of
13 Charter Section 312 to the situation at DHS that
14 you have referenced in the title of your hearing.
15 You are correct, Madam Chair, that there are
16 definitional questions, and I'd like to highlight
17 a number of them. This section was added to the
18 Charter by Local Law 35 in 1994. It requires
19 agencies to make this determination before they
20 solicit either a new contract or a renewal
21 contract, that's number one; and the contract has
22 to apply to technical, consultant or personal
23 services valued at \$100,000 or more. And then the
24 question, as you mentioned, is whether it would
25 result directly in the displacement of a City

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2 workers. Displacement does include layoffs as
3 well as demotions and reductions in hours. Here
4 the layoff of the DHS painters was not tied to the
5 procurement of either a new contract or a renewal
6 of any contract. The painting work that DHS has,
7 that is performed by outside vendors under an on-
8 call painting contract. That contract long, long
9 predates the decision to do this layoff. And in
10 addition painting services are not, in the view of
11 the City's law department, covered by Section
12 312(a) as they are not technical, consulting or
13 personal services; so for both of those reasons
14 this section was not triggered and the analysis
15 was not required to be performed. As you know
16 from other hearings, our human service agencies,
17 including DHS, had to make a lot of very tough
18 choices this past year because of the economic
19 downturn and its impact on our budget. As much as
20 possible, DHS tried to target its cuts to avoid
21 any that would diminish the agency's ability to
22 serve its core mission, which is the protection of
23 clients, who are among our city's most vulnerable
24 residents. All areas of the administrative budget
25 of the agency were reviewed carefully to see what

2 could be trimmed with the least possible impact.

3 And for example, DHS has cut the usage of several

4 of its on-call contracts with outside vendors,

5 including the contract that provides cleaning

6 services for its own offices. Focusing on

7 painting in particular, the simple fact is that

8 DHS anticipates that it will do less painting

9 overall in the upcoming fiscal year and beyond.

10 The on-call contract for painting that was already

11 in place is very modest in size. It has a not-to-

12 exceed value of \$2.3 million. We have reviewed

13 with DHS the level of usage of that contract, and

14 it is clear even before the layoffs that the use

15 of that contract was declining over time and that

16 that pattern of declined usage has continued since

17 the layoffs. Going forward, obviously the

18 administration recognizes that there may be

19 heightened interest in the subject and in

20 specifically the applicability of section 312(a).

21 We are confident that all agencies, including DHS

22 have and will continue to faithfully apply that

23 section and their responsibilities under section

24 312(a). My office will provide and has provided

25 detailed technical assistance to help any affected

2 agency comply with that provision as needed. And
3 I'm available to answer any questions. And I want
4 to apologize for making a mess of the table. I'm
5 sorry about that.

6 CHAIRPERSON JAMES: That's okay.

7 Ms. Simpson, thank you. We've been joined by
8 Council Member Kendall Stewart from Brooklyn, and
9 we've also been joined by Council Member John Liu,
10 the democratic nominee for the position of
11 Comptroller of the City of New York, who will play
12 a role--if in fact he is elected, and I'm
13 confident that he will be come November--and the
14 role--

15 COUNCIL MEMBER LIU: [Interposing]

16 This is not an endorsement.

17 CHAIRPERSON JAMES: It's not an
18 endorsement. By no means. It was just a
19 congratulatory statement. But the role of the
20 Comptroller of the City of New York is that if the
21 agency determines that a City employee will be
22 displaced, prior to the issuing of a bid or a
23 proposal solicitation the agency is required to do
24 a cost-benefit analysis, and you must submit that
25 analysis to none other than the Comptroller, along

2 with any supporting documentation. And after the
3 receipt of the bids or proposals, but before the
4 contract is awarded, the Agency must submit its
5 determination analysis and documentation to the
6 City Council and the unions that represent the
7 affected employees. And then it goes on to say
8 that if the agency decides to award the contract
9 to the vendor, then it must inform again the
10 Comptroller, the City Council and the Union of the
11 reasons behind the decision as well as providing
12 supporting documentation. In this case, according
13 to your testimony, your position is that this
14 contract pre-dated the layoffs. Yes?

15 MARLA SIMPSON: That is an absolute
16 fact. The contract in question--by its own terms,
17 the Section cannot apply to this situation,
18 because in fact no contract was being let. The
19 contract that was in place, the current version of
20 it was put in place in early 2008 and I have
21 traced its predecessor contracts back as far as
22 the year 2000. They may well go back before 2000,
23 but my database doesn't. So I can't confirm that
24 the contracts existed prior to 2000, but the on-
25 call painting contract goes back to at least the

2 year 2000 and there have been no actions to re-
3 solicit or renew it that were subsequent to or
4 even contemporaneous with the decision to do the
5 layoffs, therefore the section cannot have
6 applied.

7 CHAIRPERSON JAMES: We've been
8 joined by Council Member Robert Jackson from the
9 Borough of Manhattan. My question to you is the
10 following, and this is a question that I posed to
11 Counsel, you issue a bid to a contractor to
12 perform work that is currently be performed by
13 members of a particular union within a certain
14 agency. You do your bid; you do your
15 solicitation; there are no layoffs at the time
16 that you issue the bid. It's--let's say it's four
17 painters. And then six months later you lay off
18 these painters. In that scenario, in that
19 situation, would there be a violation of this
20 provision?

21 MARLA SIMPSON: I can't really give
22 you an opinion without both talking to the Law
23 Department and understanding the very detailed
24 facts that would be applicable at the time. I
25 think it would matter what the agency knew about

2 its plans at the time and much of that is
3 transparent because obviously there are certain
4 cycles in the year when budget documents are
5 issued. And so we generally know, for example,
6 when budget cuts are going to be imposed and when
7 they're going to be effective. So I think all of
8 those facts might be relevant to evaluate in any
9 situation. But again, I want to emphasize this
10 did not happen here. These contracts have been
11 part of the DHS portfolio for at least ten years
12 and nothing about them changed in the timeframe
13 that we're talking about other than we're using
14 them less. So not only did we not procure a new
15 contract, we didn't even give extra work to the
16 existing vendor. It's literally the same universe
17 that has been in place for a very long time.

18 CHAIRPERSON JAMES: When an agency
19 conducts an analysis, is there a report that is
20 prepared or is it only a form that is provided to
21 the office of the Comptroller and to the City
22 Council? Is there any analysis that is provided
23 to the agencies that I've just outlined?

24 MARLA SIMPSON: TO be clear, I
25 don't believe this provision has been triggered

2 since I have been in my present position. There
3 may be an exception to that, but I can't
4 generalize about it, because it is so rarely
5 triggered that there is not a standard report that
6 I could point to. Obviously in a report that
7 would be done or any analysis that would be done
8 would be available not only to the Comptroller
9 under the law but to this Committee as oversight
10 in the process; presumably it's a public document.

11 CHAIRPERSON JAMES: So based on
12 what you just said, during your tenure there has
13 been no analysis. Have there been layoffs--

14 MARLA SIMPSON: [Interposing] There
15 had been no reason to do the analysis because the
16 provision does not apply to any actions that have
17 been taken.

18 CHAIRPERSON JAMES: Right. Let me
19 ask you this question; have there been layoffs
20 during your tenure?

21 MARLA SIMPSON: I assume there have
22 been layoffs. I have read about layoffs in the
23 press.

24 CHAIRPERSON JAMES: Okay. So there
25 have been layoffs of City employees. And let me

2 just ask you another question. Have there been
3 contracts that have been awarded to outside
4 companies for jobs, duties, functions that were
5 previously performed by these displaced or laid
6 off workers?

7 MARLA SIMPSON: Not within the
8 structure of this, no.

9 CHAIRPERSON JAMES: Okay. And let
10 me just ask you this other question. Since you--

11 MARLA SIMPSON: [Interposing]
12 Again, I need to preface that by saying it is
13 conceivable that, you know, in some circumstance
14 that those reports were issued. You could ask the
15 Comptroller whether he received those reports, if
16 there was a particular one. But at the time that
17 you're talking about in terms of when layoffs have
18 occurred, the City's general position has been one
19 of budget reduction and therefore in most cases
20 all of our services in those areas are declining,
21 so the contract services are being cut at the same
22 time.

23 CHAIRPERSON JAMES: Let me be more
24 specific, is this the first time that the
25 Department of Homeless Service has contracted out

2 painting services?

3 MARLA SIMPSON: To my knowledge.

4 CHAIRPERSON JAMES: To your
5 knowledge. What is your jurisdiction with regards
6 to the compliance of this section of law, section
7 312(a)?

8 MARLA SIMPSON: This section is
9 listed as a compliance requirement on every pre-
10 solicitation report that would come to my office
11 for any type of service that is being procure that
12 is within the meaning of the law. Now again as I
13 noted, the law applies to personal services,
14 technical and consulting services. So the role of
15 my office under the Charter is to act on behalf of
16 the Mayor to certify that the procedural
17 requisites of every contract have been met. When
18 we certify we are certifying that every law that
19 applies to that particular contract has been met,
20 and this particular law appears on the face of our
21 document as one of the checklists that we are
22 certifying. So every time a contract has come
23 through my office that was a technical, consulting
24 or personal service, we will have checked for that
25 issue.

2 CHAIRPERSON JAMES: Now when you
3 say you would have checked for that issue, what
4 does that involve, checking for that issue?

5 MARLA SIMPSON: My staff in the
6 procurement review unit that interacts with each
7 agency would--there is a section on the agency's
8 submission to us that states what their reason for
9 saying that this doesn't apply is. Most often the
10 reason is no employees displaced. If there is a
11 question of displacement, then they would have to
12 analyze whether it was a result of this contract.
13 But again, every single time that any consulting
14 contract or technical services contract were to
15 come across our desk, we will be in effect cross-
16 examining the agency to make certain that that
17 hoop has been understood, and that if they believe
18 they've cleared it that they've given us a reason.
19 And all of that documentation on every single
20 contract that's registered as a result of that,
21 all of that goes to the Comptroller, so they also
22 have the ability to see the reasoning that we had
23 when we approved that contract.

24 CHAIRPERSON JAMES: So besides the
25 check off list and the self-representation that in

2 fact one, the agency has not violated this charter
3 provision, does your Agency do any other
4 independent due diligence besides just looking to
5 see whether or not the box is checked?

6 MARLA SIMPSON: I don't think any
7 agency that's ever dealt with my procurement staff
8 would refer to that as a self-certification that
9 they got away with easy. My staff is extremely
10 knowledgeable about the nature of each agency's
11 portfolio, what kind of business they do, what
12 their mission is, how they accomplish it. They
13 put people through their paces and if they have
14 any reason to doubt a representation they will go
15 behind it. However, it's not just a
16 representation that can be lightly made by anyone.
17 These contracts require certifications and people
18 understand that there are penalties to them as
19 City officials if they certify something that they
20 don't know. So there is a certification that is
21 required by the agency's contracting officer.
22 There's a certification that is required by my
23 office. On some categories of contracts under the
24 charter there is a submission to the Deputy Mayor.
25 Everyone takes all of these certifications very,

2 very seriously and we are not certifying things
3 that we do not know. We are certifying based on
4 facts that we know.

5 CHAIRPERSON JAMES: And do you ever
6 reach out to any of the unions to inquire whether
7 or not any displacement has occurred as a result
8 of an outsourcing of a contract.

9 MARLA SIMPSON: I don't know that I
10 reach out in an abstract way to ask, however it is
11 very--it is not unusual for unions to communicate
12 with my office. We have a very robust dialogue
13 with the unions, for example with the work that we
14 do to ensure the enforcement of prevailing wages.
15 We do receive communications from unions on
16 contract issues all the time, and I do recall on
17 occasion receiving communications from unions
18 about a particular issue that they felt triggered
19 this provision. However, to my memory those
20 circumstances were found not to be covered by the
21 charter during the time that we were talking.
22 However, it's totally an open door in terms of our
23 relationship with the unions and if they have had
24 any issue with this, they've been able to bring
25 that to the administration.

2 CHAIRPERSON JAMES: We've been
3 joined by David Weprin from the Borough of Queens.
4 Are there any training sessions to your ACO
5 [phonetic] Officers with regards to the
6 displacement determination?

7 MARLA SIMPSON: We did to a
8 training session on this. There was a significant
9 concern about this. I believe it was in the 2003
10 or 2004 cycle where there were some circumstances,
11 I don't believe they were carried out, but there
12 was some attention at that point to possible
13 actions that would trigger it, and we did a
14 training session on it, specifically on this
15 provision at that time. We also as a routine
16 matter do detailed training for all procurement
17 personnel through the Procurement Training
18 Institute on, for example, the pre-solicitation
19 process as a whole. And as I mentioned, this is
20 an integral part of that, so it would always be
21 covered in our training sessions, which we do
22 routinely throughout the year and are widely
23 attended by personnel from the procurement
24 offices.

25 CHAIRPERSON JAMES: Would you

2 support a change in the Charter, which would
3 change the initial inquiry from one where the
4 contract is not directly resulting in the
5 displacement of employees but rather the inquiry
6 is related to--poses the questions will the
7 contract, will it--may result in the displacement
8 of workers as opposed to directly. Change the
9 word directly to may result. Would you support a
10 change in the Charter?

11 MARLA SIMPSON: I will convey your
12 request to the Mayor's Office of Legislative
13 Affairs.

14 CHAIRPERSON JAMES: Okay. So you
15 don't have a position on that one way or the
16 other?

17 MARLA SIMPSON: The mission of my
18 office is to certify compliance with existing
19 laws, and therefore I'm here to tell you that I've
20 performed that function. If you're asking whether
21 the Mayor has a position on a particular piece of
22 legislation, I will refer that to the Mayor's
23 Office of Legislative Affairs.

24 CHAIRPERSON JAMES: Would you
25 recommend or make any suggestions to the Mayor of

2 the City of New York with regards to a change in
3 the law.

4 MARLA SIMPSON: If the Mayor asks
5 me for a recommendation I would give a
6 recommendation to the Mayor.

7 CHAIRPERSON JAMES: Hypothetically,
8 if the Mayor did ask you for your recommendation,
9 what would be your position?

10 MARLA SIMPSON: I would discuss
11 that with the Mayor.

12 CHAIRPERSON JAMES: Would you
13 discuss it with a Member of the City Council?

14 MARLA SIMPSON: Certainly not in
15 advance of discussing it with the Mayor and not
16 until the Mayor authorized me to proceed.

17 CHAIRPERSON JAMES: Another
18 suggestion, perhaps you can discuss it with the
19 Mayor of the City Of New York, is would they
20 perhaps consult with the unions to see whether or
21 not they could perform the same function at a
22 reduced rate as opposed to outsourcing out at the
23 outset?

24 MARLA SIMPSON: Again, I think
25 you're raising policy issues. And I know the

2 members of the Committee are interested in hearing
3 from the members of the public on those policy
4 issues, and I will be having my staff here to make
5 sure that we hear all of the discussion on this
6 issue, but I'm not going to speculate on a
7 position that hasn't really be formally requested
8 and piece of legislation that doesn't exist; and I
9 need to talk to the Mayor if those circumstances
10 are going to happen.

11 CHAIRPERSON JAMES: Council Member
12 Nelson.

13 CHAIRPERSON NELSON: Thank you.
14 Ms. Simpson, what was the cost of DHS to operate
15 the in-house painters unit in the last four years?

16 MARLA SIMPSON: I don't have that
17 information.

18 CHAIRPERSON NELSON: Any estimate?
19 Idea?

20 MARLA SIMPSON: No. I'm sure it's
21 in the budget and I'm sure, if you wish, we can go
22 back and get you that information.

23 CHAIRPERSON NELSON: Okay. It
24 couldn't be all that much I would think.

25 MARLA SIMPSON: Well neither is the

2 contract, that's what I'm saying. And the
3 contract is a very low dollar amount and we don't,
4 at this point, even anticipate utilizing the full
5 dollar amount.

6 CHAIRPERSON NELSON: Has MOCS
7 introduced the study or produced one that gives an
8 estimate about how much we're saving on
9 outsourcing? Any particular contract or overall
10 would be great.

11 MARLA SIMPSON: No. It's not the
12 role--again it's not the role of our office to do
13 financial analysis per se. I know that obviously
14 as a general rule the City has a lot of analysis
15 that are performed by the Office of Management and
16 Budget and those analyses are often discussed with
17 this Council during the budget time and elsewhere.
18 The role of our office is to certify whether or
19 not the existing law is complied with, and that
20 does not require us to do financial analysis.

21 CHAIRPERSON NELSON: Is there any
22 agency that you're aware of that might be doing
23 this analysis?

24 MARLA SIMPSON: Again, I believe
25 the role in the City of New York to do analysis of

2 budget impacts is probably the Office of
3 Management and Budget, when those analyses are
4 called for.

5 CHAIRPERSON NELSON: They should
6 really, because we may have a false economy going
7 here were you can, you know, lay off City workers
8 and outsource and you're losing these people and
9 the taxes that they produce and spend. It may
10 look good on paper, so it may be really a game
11 that could be play. I'm not suggesting that you
12 are; I'm suggesting that there's some other people
13 in some other levels of government could be doing
14 this, if we don't know, in other words.

15 MARLA SIMPSON: I do know.
16 There's--

17 CHAIRPERSON NELSON: [Interposing]
18 No, no. I mean if we don't know what the
19 difference is in the cost.

20 MARLA SIMPSON: There was a--I
21 don't think it matters to the answer to that
22 question, with all due respect. The \$2 million
23 contract has been on the books. It was on the
24 books at--this particular one since 2008, and its
25 predecessors many years before that. No net new

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2 work is being added to that contract and our use
3 of it is declining. Less painting is happening.
4 So the question, I suppose is the intangible issue
5 of whether less painting should occur versus--but
6 it's not a question of more dollars because the
7 dollars are not being added.

8 CHAIRPERSON NELSON: That could be
9 intangible, it's true, but as far as I mean an
10 overall analysis by, you know, Office of
11 Management and Budget--if they would be following
12 through on some of these contracts in reference in
13 fact are we truly saving with out sourcing. We
14 may be. But I'd like to see that in dollars and
15 cent. I think that would be very--of big import
16 to all concerned. Okay. We've got to get on OMB
17 with this. I thank you.

18 CHAIRPERSON JAMES: Ms. Simpson,
19 again, I'm sort of sitting here incredulous that
20 this charter provision has never been triggered in
21 you tenure as head of MOCS. I find that really
22 incredible, particularly given all the layoffs
23 that I personally know of in each and every
24 agency. And so, obviously the recommendation, the
25 legislative recommendation that I've put forth is

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 2 very serious and I would hope that your agency
 3 would engage in further oversight, because I
 4 suspect that somehow they are either averting or
 5 skirting the law that this outsourcing is
 6 resulting, directly or otherwise, in the
 7 displacement of unionized workers in the City of
 8 New York. You also indicated in your testimony
 9 that painting does not fall within personal
 10 services. What then is personal services? How do
 11 you define it?

12 MARLA SIMPSON: Personal services,
 13 and again, I don't have the benefit right now of
 14 case law, but there is case law that would define
 15 personal services to mean the type of service
 16 where the performance by a specific individual is
 17 the essence of what one is contracting for.
 18 Obvious examples would be when you hire a musician
 19 or an artist. Certainly a technical specialist,
 20 someone with a particular area of expertise, and
 21 that doesn't need to be a particular area of
 22 creative expertise. But the expectation is that
 23 you're hiring an individual for that individual's
 24 knowledge or talent and that is not what we do
 25 when we hire on the basis of a competitive sealed

2 bid based on price only, a painting services
3 contract.

4 CHAIRPERSON JAMES: Council Member
5 John Liu:

6 COUNCIL MEMBER LIU: Thank you,
7 Madam Chair and thank you, Ms. Simpson, for
8 joining us today. So I mean I keep--your
9 testimony and also some of your answers to the
10 questions basically state that this is a contract
11 that's been out there for a long time and so it's
12 okay for the City to continue to use that contract
13 to do certain types of work. But the employees
14 had also been hired before all the fiscal
15 difficulty. SO the agency basically decided to
16 keep the contract, even though my understanding is
17 that the City has the ability of terminating
18 contracts on relatively short notice.

19 MARLA SIMPSON: Oh absolutely.

20 COUNCIL MEMBER LIU: Right?

21 MARLA SIMPSON: Yes.

22 COUNCIL MEMBER LIU: So they could
23 have terminated the contract or at least cut down
24 on the contract.

25 MARLA SIMPSON: They did cut down

2 on the contract.

3 COUNCIL MEMBER LIU: They could
4 have terminated the contract and kept the
5 employees in place, but that was a decision that
6 the administration made.

7 MARLA SIMPSON: Yes.

8 COUNCIL MEMBER LIU: So I guess
9 you're arguing that the Local Law allows that to
10 happen, whereas I think the intent of this hearing
11 is that we don't think that was the right thing to
12 do, to get rid of people and keep an expensive
13 contract around.

14 MARLA SIMPSON: The contract is not
15 expensive. The contract is a very modest
16 contract, and again, I don't have all the dollars
17 in front of me but I wouldn't be surprised if
18 you're talking about--given that we're using the
19 contract so little, I wouldn't be surprised at all
20 if the in-house cost was higher. Nevertheless,
21 this contract has existed and been in place side
22 by side with the in-house operation for some time.
23 And not only did we not add a new contract, we
24 didn't renew this contract and we didn't shift
25 extra work to this contract. The whole pattern of

2 usage is a steady decline. So--

3 COUNCIL MEMBER LIU: [Interposing]
4 well I mean--

5 MARLA SIMPSON: [Interposing] So it
6 doesn't trigger this situation.

7 COUNCIL MEMBER LIU: Sure, I mean
8 but even if, and I don't know it to be true
9 necessarily, but even if the pattern was one of
10 steady decline, it's not going to go to zero like
11 next year or the year after.

12 MARLA SIMPSON: No.

13 COUNCIL MEMBER LIU: We're still
14 going to need some people to paint.

15 MARLA SIMPSON: Yes.

16 COUNCIL MEMBER LIU: Facilities.
17 Right? But by the administration letting these
18 people go, laying them off and then continuing
19 with the contract, presumably the contract has
20 some expiration; you're just drawing that down.

21 MARLA SIMPSON: Well these are on-
22 call contracts. So let me explain a little bit
23 about how an on-call works, because that's also I
24 think--

25 COUNCIL MEMBER LIU: [Interposing]

2 It's like a retainer, right? It's like a
3 retainer.

4 MARLA SIMPSON: No in the sense
5 that you're not getting service most of the time.
6 That is the difference between when you would have
7 an on-call and when you would have an in-house
8 person. Obviously when you have an in-house
9 person they have a shift they show up for. With
10 on-call we could go for an extended period of time
11 and not be requesting service. And so, for
12 example, I know this to be the case because I did
13 look into this contract in particular, there may
14 be three days worth of service that's being used
15 for a crew this month and then five days next
16 month. It's not a continuous pattern. And so it
17 can be targeted to when there actually is a need
18 to use the contract, and that's why, you know, to
19 the extent that the agency, as I said, nobody
20 likes having to make these choices to do cutbacks.
21 They chose to try and cut where they could, where
22 it would have less effect on clients, and so they
23 decided to paint less frequently, or less
24 extensively, or just in general less. And they
25 can do that by using the on-call contract, but

2 simply not seeking its services as often.

3 COUNCIL MEMBER LIU: Well I mean
4 that's--the administration and you know, of course
5 you're not taking this personally--

6 MARLA SIMPSON: [Interposing] Not
7 at all.

8 COUNCIL MEMBER LIU: But the
9 administration is still making a choice. The
10 choice is to keep the contracts going, even though
11 the City could cut back the contracts on short
12 order, or keep the people on, even though the City
13 can let the people go on short order. And in this
14 case instead of keeping the people around, the
15 City decided to let them go and keep the contracts
16 around. That's privatization.

17 MARLA SIMPSON: Again I'm not sure
18 and I can't speak for the workers and I wouldn't
19 presume to. But I don't think that the in-house
20 workers would have wanted a schedule that had them
21 coming in three days one month and five days the
22 next month or whatever that sort of approach is.
23 And if that's what the agency deemed it needed in
24 the way of service, it's hard to envision how you
25 would do that with a full-time in-house person.

2 COUNCIL MEMBER LIU: Why does DHS
3 undertake its own painting work?

4 MARLA SIMPSON: Well DHS--

5 COUNCIL MEMBER LIU: [Interposing]
6 Isn't that something that's usually done by some
7 overall agency like DCAS?

8 MARLA SIMPSON: No. There are
9 three ways in which this type of work is general
10 is done. There's the DDC, DCAS and agencies. So
11 if it's being done as a capital--a major
12 renovation, then most often that type of work
13 would be done by DDC under its contracts. If it's
14 a City-owned building that's in the DCAS portfolio
15 that DCAS manages, I think it's 50 some odd number
16 of buildings that DCAS has, then yes, DCAS has on-
17 call contracts for the maintenance of those
18 facilities. But many of our human service, social
19 service, agencies have far flung facilities sort
20 of all over the City. They are not in the DCAS
21 portfolio. When DHS needs a major renovation at
22 one of these shelters then yes, DDC does that work
23 for them. But when you're talking about the day-
24 to-day maintenance that's DHS.

25 COUNCIL MEMBER LIU: I understand

2 that. And this goes, Madam Chair, this goes
3 certainly beyond Ms. Simpson's responsibilities or
4 portfolio, but of course we understand the
5 difference between DDC and DCAS. DDC is involved
6 in construction or renovations, whereas DCAS is
7 more involved in basic ongoing maintenance. And
8 this is just a clear example of, you know, when
9 the testimony is that a department like DHS
10 occasionally or maybe on a regular basis needs
11 sporadic painting and maintenance, that perhaps
12 this kind of work that may be more sporadic within
13 a particular agency, should actually be handled by
14 DCAS. That would then allow a more regular
15 workflow, better managed workflow, thus
16 necessitate less use of sporadically called upon
17 contracts, like this on-call contract that Ms.
18 Simpson testified to. So that's the issue here.
19 Better management here clearly could have, in my
20 opinion, kept these people doing the work that the
21 City and the people of the City actually need to
22 be done, without spending a whole lot of money on
23 expensive contracts. And these contracts are
24 expensive. But again, that last part is really
25 beyond Ms. Simpson's responsibility. And then my

2 other question is, so would an agency like DHS be
3 responsible for making sure that these on-call
4 contracts are paying prevailing wage or is that
5 something that's approved by the Comptroller's
6 office?

7 MARLA SIMPSON: All three parties,
8 including my office, have a role there. The
9 Comptroller has, obviously, under state law,
10 oversight and can take complaints from any
11 individual workers. DHS as an agency that has a
12 significant number of these contracts has a
13 prevailing wage coordinator that has to work with
14 our office. And there are in every procurement
15 for any contract that has a prevailing wage
16 component there is a certification that they need
17 to make that they've done their due diligence.
18 And then the Mayor issues an executive order 103,
19 which requires in situations where the bids are
20 low, are disproportionately low, my office also
21 vets them and my staff goes over them with a fine
22 tooth comb to make sure that it is not being done
23 with an eye toward misrepresenting the prevailing
24 wage obligations. And then we also do training
25 sessions for the agencies and we do spot checks at

2 the agencies to make sure that they are fulfilling
3 their compliance obligations.

4 COUNCIL MEMBER LIU: So in this
5 case this particular on-call contract, does it pay
6 prevailing wages?

7 MARLA SIMPSON: We certainly did
8 take a look at this contract and we looked at the
9 compliance documents that had been submitted. We
10 vetted them with the same due diligence that we
11 would, you know, do under the executive order and,
12 you know, look at them very intensely. We felt
13 that there was nothing untoward on these in terms
14 of what had been submitted. We were actually
15 thinking about doing a site visit. Again, that's
16 why I know the contract isn't used that often
17 because we took a look at whether there was a
18 moment where we could send our team out to do a
19 site visit between when we got the notice for the
20 hearing and today, and we did not feel there was
21 an appropriate time for us to do a site visit.
22 But I think it's the kind of things we can do.
23 And then that again is something I would say both
24 to you and directly to the unions. If you have
25 any information that in any way leads you to

2 believe there is a problem with prevailing wage,
3 our door is open and we are as aggressive as you
4 could ever want. We will find that situation out
5 and we will take action if it's there. WE are
6 fully committed under Executive Order 102, and the
7 Mayor's direct instruction to me. We are fully
8 committed to make certain that all of our
9 contracts that are covered by prevailing wage pay
10 prevailing wage to their workers.

11 COUNCIL MEMBER LIU: Thank you very
12 much and thank you, Madam Chair.

13 CHAIRPERSON JAMES: Before I turn
14 to Council Member Nelson, Council Member Liu, just
15 basically to summarize the testimony of Ms.
16 Simpson, you know, basically what she said is, you
17 know, section 312 of the charter is not applicable
18 in this case because the layoffs predated the
19 contract; two, during her tenure at MOCS, section
20 312 has not been triggered; and three, any
21 recommendations with regards to changing the law
22 is something that has to come from the top, and
23 they have done effective training. And I say to
24 you, Mr. Liu, no pressure, but when you become
25 Comptroller, my recommendation is that you conduct

2 an audit. Council Member Nelson?

3 CHAIRPERSON NELSON: Okay. I just
4 want to revisit a question that my co-chair asked
5 you that was in reference to DHS contracting out
6 the painting services if this was the first time.
7 And you said, to the best of your knowledge. If
8 you could please research that and get back to
9 this committee I'd appreciate that.

10 MARLA SIMPSON: Which issue?

11 CHAIRPERSON NELSON: Whether
12 you've--we contracted out prior to this for the
13 painting contract.

14 MARLA SIMPSON: For anything else?

15 CHAIRPERSON JAMES: Well that would
16 be great, but painting contracts, outsourced.

17 MARLA SIMPSON: But I know that.
18 The answer to that is this on-call contract goes
19 back as far as my database does, to the year 2000.
20 I don't know how far back before 2000 it goes
21 because the City's financial management system was
22 changed in Y2K, so I can't look. But it goes back
23 at least through the year 2000, same thing, same
24 on-call contract. I mean not the same vendor, but
25 the same contract.

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CHAIRPERSON NELSON: Okay. We still have those questions for OMB to see actually if this is a profitable deal for the City and then that's even extracting out the human part of this.

MARLA SIMPSON: Right. But if they did that analysis it would have predated presumably that original procurement and I don't know what happened with that original procurement.

CHAIRPERSON NELSON: All right. Thank you.

CHAIRPERSON JAMES: Council Member Jackson?

COUNCIL MEMBER JACKSON: Thank you. Good afternoon.

MARLA SIMPSON: Hello.

COUNCIL MEMBER JACKSON: How are you? I guess in looking at this whole issue, you know, even though I heard what you said, that from your perspective as the head person at the Mayor's Office of Contracts, you don't see a violation of the law has occurred here. But let's not talk technically for a minute. In my opinion, this is a lot of nonsense that employees were laid off and you still have a contract in place. And

2 regardless of the fact that they may not be every
3 single day, this contract from New Jersey, another
4 state, is replacing the workers in New York City.
5 For me, that's the bottom line. Bottom line is
6 employees of the City of New York are being laid
7 off. And I looked at the data and I said when was
8 this layoff occurred? It says September 26th,
9 2009. I said oh, are these employees represented
10 by DC 37? Does DC 37 endorse Mike Bloomberg for
11 Mayor? Did this have a political overtone to it?
12 These are all questions that came in my mind. Now
13 I'm not expecting an answer from you. I think
14 you're too smart to answer that. Because I don't
15 think you can answer that, not unless you're
16 involved in this whole campaign for reelection.
17 And you can't talk about that, but I can. So I'm
18 questioning the logic and reasoning here, because
19 I do know that, you know, that employees, if in
20 fact an agency determined in good faith that they
21 don't need all of the workers, then you can retain
22 some of them, the most senior ones. The least
23 senior ones can be put on a layoff or even more
24 positive, either can say well what other jobs you
25 can do in the Department of Homeless Services, and

2 we can negotiate with your union; rather than lay
 3 you off you can do some other jobs. They could
 4 have done that, Marla, Ms. Simpson. And I know
 5 that you're not the head of DHS, but you're the
 6 head of Contracts. I'm saying to you that if I
 7 was the head of Department of Homeless Services, I
 8 would have gone to the union and said, let's talk
 9 about this; what else can your workers do in order
 10 to keep their jobs so that they can pay their
 11 rent, so they can pay their mortgage, so they can
 12 pay their car note. Basic, you now, understanding
 13 that people are working in order to try to
 14 maintain a living to pay their bills. And today I
 15 heard that unemployment insurance is at its
 16 highest. Today I heard that foreclosures is up
 17 five percent and it's going up every single year;
 18 it's going up in the future. And so people need
 19 their jobs. And today I heard that Crane's
 20 Business Breakfast where Bill Thompson was talking
 21 and Mayor Bloomberg is talking next week, about
 22 the fact that we need to stop contracting out,
 23 period. And also, if in fact you have to, then do
 24 it in New York City where New York City employees
 25 are working, not in California, Texas, Maryland

2 and other places like that. So, I'm a little
3 angry and frustrated at the direction of this
4 administration. But let me ask you a question.
5 You had said that between the time of the notice
6 of the hearing and today's hearing that if in fact
7 you could have basically gone to a site where
8 painting was occurring to determine, you know, X,
9 Y, Z, whether or not employees were being paid
10 prevailing wages as per the law is concerned. But
11 under your jurisdiction, it is my understanding
12 that all contractors with the City of New York
13 should keep payroll records.

14 MARLA SIMPSON: They do. And
15 that's what I examined.

16 COUNCIL MEMBER JACKSON: Okay. You
17 examine the payroll records.

18 MARLA SIMPSON: Yes.

19 COUNCIL MEMBER JACKSON: And as you
20 know that if I'm not paying someone prevailing
21 wage, I'm not going to put down \$7 an hour; I'm
22 going to put down whatever the prevailing wage is--
23 -

24 MARLA SIMPSON: [Interposing]
25 You're a little bit off on how that--

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COUNCIL MEMBER JACKSON:

[Interposing] Okay, let me just ask a question so that you can respond to it.

MARLA SIMPSON: Okay.

COUNCIL MEMBER JACKSON: Can't you or your office say, okay, let's see your records; okay, you've hired five employees on this job, three or fifteen or whatever is necessary. Their names should be there, as far as the records of the company, their address, their social security number. And couldn't you contact these employees to actually determine whether or not they were paid whatever the records of that company states? Can you do that?

MARLA SIMPSON: Okay. Is it my turn?

COUNCIL MEMBER JACKSON: Yes. But I want to know first, can you do that, before you explain. In determining whether or not the employees were actually paid prevailing wage.

MARLA SIMPSON: Councilman, I will answer your question but--

COUNCIL MEMBER JACKSON:

[Interposing] Okay.

2 MARLA SIMPSON: --I will take a
3 point of personal privilege and I'm going to make
4 a statement before I do that.

5 COUNCIL MEMBER JACKSON: Okay, go
6 ahead.

7 MARLA SIMPSON: Okay. You are
8 correct; I'm not going to comment on everything
9 that you said earlier. And I would respectfully
10 suggest that this hearing is perhaps not the right
11 venue. However, I need to say a couple of things
12 just to correct the record. Number one, the
13 circumstances of DHS and all of our human service
14 agencies having to make deep and painful budget
15 cuts was well known before September 26th, was
16 discussed with this Council in budget hearings,
17 and I think as is stated in my testimony, we made
18 every effort and it was the direction of the Mayor
19 for us to do that, to make every effort to ensure
20 that where we could we would make the cuts in what
21 are considered to be administrative operations,
22 and not in client service, where we could do that.
23 And as you know sometimes that's not possible
24 either. However, it was well known and there are
25 documents that will go well earlier than September

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2 that make clear that this was the direction that
3 DHS had decided to go. And so I really don't
4 think that it speaks fairly to the commitment of
5 the many, many employees, many--and most of them
6 unionized--who are at DHS and most of them every
7 day are trying to deliver services to the very
8 vulnerable clients. And I have a great deal of
9 sympathy for anyone affected by this terrible
10 economy. I understand the hardship that this
11 action or any action like this puts a worker and
12 his or her family in. Obviously DHS has a mission
13 of dealing with people who are in the direst of
14 economic straights and they made choices that no
15 one would have to make in a better economy and
16 that I'm sure they did not relish having to make.
17 They made them in good faith. They came to budget
18 hearings and talked about what they were going to
19 do. The budget was adopted. And you know, we're
20 going forward to implement that. And I recognize
21 that in the course of doing that we will disagree
22 on elements of that implementation, but I would
23 hope that we would not disagree on each other's
24 good faith in trying to do it. Second point by
25 way of commercial, which I know you know from our

2 previous discussions of other bids. The City of
3 New York's hands are completely tied by the Courts
4 and the State on issues of where a vendor comes
5 from. We are required under state competitive
6 bidding laws to open our competitive bidding
7 process to all comers from anywhere in the world
8 and to issue a competitive, sealed, publicly
9 advertised bid to do that. We have no discretion
10 under state law to apply even so much as a
11 preference for local residents, much less to be
12 exclusive.

13 COUNCIL MEMBER JACKSON: Not yet.
14 We're going to pass a law to that effect.

15 MARLA SIMPSON: You would have to
16 pass that in Albany.

17 COUNCIL MEMBER JACKSON: Wherever
18 it's going to go, we're going to have to do it.

19 MARLA SIMPSON: That's what I'm,
20 you know, suggesting. Now to your point, I
21 confess I forget a little bit what I'm supposed to
22 be answering. So I apologize and seek your
23 indulgence.

24 COUNCIL MEMBER JACKSON: Whether or
25 not you can actually look at the records, see the

2 employees--

3 MARLA SIMPSON: [Interposing] Yes,
4 sorry. Yes, we do.

5 COUNCIL MEMBER JACKSON:
6 [Interposing] And to communicate with them to
7 determine if in fact they were paid prevailing
8 wage.

9 MARLA SIMPSON: Yes, we do. We
10 can. And in appropriate circumstances we do. And
11 I do want to note--and I'm not going to give away
12 all the trade secrets--

13 COUNCIL MEMBER JACKSON:
14 [Interposing] Okay.

15 MARLA SIMPSON: --in a public
16 hearing, but I'm happy to talk to you privately.
17 It is not difficult when examining certified
18 payroll records; it is not difficult to find the
19 cheaters. Yes, they are not going to write down a
20 lower than prevailing wage in the box. It's not
21 usually that easy. But they do a wide variety of
22 pretty stupid things, and we are able to find
23 cheaters through looking at certified payroll
24 records. We do that, and we teach the agencies
25 how to do that. And as you might imagine, it's a

2 complicated document that they have to submit.

3 And if someone is really a crook, they usually do
4 it wrong. So we can find cheaters that way and we
5 aggressively try to do that. In circumstances
6 where, you know, people are suspicious that
7 there's something going on. We also have the
8 ability to send out a team to just chat with the
9 workers and we try to do that in a way that won't
10 intimidate the worker, won't alert the business so
11 that they do anything to hurt the worker. So
12 we're very careful about how we do that, which is
13 why I can't just parachute them in, you know, in a
14 situation where it might cause harm to the worker.
15 But we have the capability to do both.

16 COUNCIL MEMBER JACKSON: Well I
17 would say considering this situation, knowing how
18 difficult the economy is and that everyone is
19 depending on their jobs in order to maintain their
20 standard of living, basic standard of living, that
21 you do everything to determine whether or not a
22 violation has occurred in this contract. And if
23 so, terminate the contract. That's one thing.
24 Number two, as far as you mentioned, as far as
25 administrative versus human, well in this

2 particular case there's been a human displacement
3 here as far as employees of DHS. And I know
4 you're not here representing DHS, but you're
5 representing the Mayor's Office of Contracts, and
6 in essence, you're representing the Mayor right
7 now. And I'm saying that DHS made an executive
8 decision to lay off workers rather than eliminate
9 an administrative contract, and that contract is
10 with a firm in New Jersey. And I understand as
11 far as open, competitive process, but if I was a
12 commissioner, I may have kept the employees rather
13 than continuing a contract, and especially an out
14 of state contract. So that's a decision that is
15 made by the head of an agency. And I'm just
16 saying that in this particular case, in my opinion
17 the wrong decision was made. And as far as the
18 budget situation, you and I know that we know what
19 the budget situation is and we're dealing with
20 that and we will be dealing with that for years to
21 come in my opinion. But I question, as I said to
22 you, in my mind when I looked at the date I
23 wondered on whether or not the political decisions
24 of DC 37 had an impact on the final decision of
25 the Mayor's Office. Now it may not have, and

2 quite frankly if you're not in the room you don't
3 know either, but I'm saying to you, when I was
4 reviewing the document that's what came up in my
5 mind. I hope I'm wrong in that. But you know one
6 thing? It came up because it's a possibility.
7 And anyone knows, I have people that want to come
8 testify at the Department of Education hearings
9 that are afraid for retaliation, that they want to
10 wear a paper bag. I'm telling you; I'm very
11 serious and I'm not joking. Even today in a task
12 force meeting, my Education Committee Staff, we
13 talked about the fact that people want to testify
14 but they are afraid to testify because of
15 retaliation. And I'm not saying that that's the
16 situation here, Ms. Simpson, I'm just telling you
17 some of the general realities. They may not be
18 specific to DSH, but I'm just saying to you that I
19 know that you're here on behalf of the
20 administration, but I'm telling you what comes
21 across in my mind when I look at all the
22 information I have. So I appreciate the fact that
23 you're here representing the Mayor's Office of
24 Contracts and I have the utmost respect for you,
25 from the dealings I've had with you as the former

2 Chair of the Contracts Committee and everything
3 that I know about you and everything that my
4 colleague Gale Brewer has said when you first came
5 on board--the highest regard for you and your
6 honesty and your integrity. I don't have the same
7 feelings about other people.

8 MARLA SIMPSON: I appreciate that
9 we disagree. I want you to know that I have no
10 doubt that there was not a political consideration
11 in this situation. I have no doubt in the good
12 faith in the Commissioner's decision and how he
13 made tough budget choices. As I sit here I'm
14 proud to represent the administration on this
15 point and I'm sorry that there will be occasions
16 that we disagree, but I also have the utmost
17 respect for you and for your colleagues who have
18 been my kind hosts as the chairs of this Committee
19 throughout my tenure here.

20 CHAIRPERSON NELSON: I'd just like
21 to say I don't think they were very good political
22 decisions, so I don't think it was done for
23 political reasons. I think it had some very
24 negative splash back, some of the decisions that
25 the administration has made.

2 CHAIRPERSON JAMES: Let me just say
3 this, Ms. Simpson you and I have history beyond
4 City Hall and I have nothing but the greatest
5 respect for you and I recognize that you have a
6 job to do as well as I. And I recognize that
7 there are individuals who have to engage in good
8 faith, but the reality is, is that this particular
9 vendor was awarded this contract and submitted a
10 bid that was \$1 million lower than the next
11 highest bid. To me that would jump out at me and
12 say, how is this bid \$1 million lower than the
13 next bid? And is the vendor cutting corners? Is
14 he not paying prevailing wages? Is he not
15 painting an extra coat? His he hiring--who is he
16 hiring? It raises serious concerns. So I
17 recognize that you indicated that the
18 administration is sensitive to the needs of the
19 City workforce. But the reality is that you have
20 a number of bureaucrats and bean counters who are
21 only concerned with the bottom line. And because
22 of these fiscal times that we find ourselves in,
23 their objective is to reduce the deficit, reduce
24 the budgets of each agency, to come in and to
25 accept bids that are lower than the next bid to

2 comply with the law Lowest Responsible Bidder.

3 But at the same time it's having an effect on the
4 City workforce, which is the backbone of the
5 middle class. And so I know the Commissioner is
6 ultimately responsible, but I know that there are
7 bureaucrats that make these decisions, and again,
8 it comes down to dollars and cents over families.
9 And so how is it that this particular vendor, who
10 won this bid, his bid was \$1 million lower than
11 the next. That should have raised flags, bells,
12 whistles and should have resulted in immediate
13 meetings for him or her to explain their numbers.

14 MARLA SIMPSON: And under this
15 administration it does. And what I'm telling you
16 is--

17 CHAIRPERSON JAMES: [Interposing]
18 What does?

19 MARLA SIMPSON: We look at those
20 types of bids with additional due diligence in
21 order to ensure, before we go into contract, that
22 we are going to be paying prevailing wage. We
23 look at it very carefully. We looked at it then.
24 Once that contract was raised as a point of
25 complaint recently, we looked at it again. And

2 again, if someone has information that they want
3 to bring to our attention we will--this is on our
4 radar. We will continue to monitor this. This is
5 important that we make sure--because obviously--

6 CHAIRPERSON JAMES: [Interposing]

7 So you're placing the burden upon the Union--

8 MARLA SIMPSON: [Interposing] Both.

9 CHAIRPERSON JAMES: --to report to
10 you.

11 MARLA SIMPSON: No.

12 CHAIRPERSON JAMES: Do you engage
13 in any independent investigation--

14 MARLA SIMPSON: [Interposing] Yes,
15 that's what I said I did.

16 CHAIRPERSON JAMES: A bid was
17 submitted \$1 million lower--

18 MARLA SIMPSON: [Interposing] Yes.

19 CHAIRPERSON JAMES: That doesn't
20 raise flags? Do you not call them then?

21 MARLA SIMPSON: It does. The Mayor
22 issued an executive order that applies to that
23 situation.

24 CHAIRPERSON JAMES: So what did you
25 do?

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MARLA SIMPSON: We vet the bids at the time--

CHAIRPERSON JAMES: [Interposing]
What does that mean?

MARLA SIMPSON: We look at the--it depends--

CHAIRPERSON JAMES: [Interposing]
In this particular case, what did you do?

MARLA SIMPSON: In order to answer it for this particular case I will have to go back to my office and I'm happy to do that and give you information subsequently.

CHAIRPERSON JAMES: Council Member Stewart?

MARLA SIMPSON: But I can tell you what we generally do.

CHAIRPERSON JAMES: Council Member Steward.

MARLA SIMPSON: All right. Then I will wait.

CHAIRPERSON JAMES: I don't want general.

COUNCIL MEMBER STEWART: Thank you, Madam Chair.

2 CHAIRPERSON JAMES: I mean, I don't
3 want generalities when I ask specific questions.

4 MARLA SIMPSON: Okay.

5 CHAIRPERSON JAMES: In response to
6 specific questions I've asked.

7 MARLA SIMPSON: I will be happy to
8 get you a specific outline of what we did for due
9 diligence here.

10 CHAIRPERSON JAMES: Councilman
11 Stewart.

12 COUNCIL MEMBER STEWART: Thank you,
13 Madam Chair. I want a little clarity on the on-
14 call contracts.

15 MARLA SIMPSON: Yes.

16 COUNCIL MEMBER STEWART: When a
17 contract is issued, let's say \$2.3, as was
18 mentioned here, million dollars. That's for the
19 on-call contracts. Is that for a year?

20 MARLA SIMPSON: Three years.

21 COUNCIL MEMBER STEWART: Three
22 years. Now you may call them maybe once a month
23 or twice a month, whatever the case may be. At
24 the end of the three years is that--all that money
25 is paid out even though--

2 MARLA SIMPSON: [Interposing] No.

3 COUNCIL MEMBER STEWART: How is it
4 being calculated then?

5 MARLA SIMPSON: Again, the contract
6 itself will specify what the payment terms are.
7 But the terms are dependent on the nature of the
8 jobs that they're called on. Typically there are
9 stated rates by hourly. There may be minimums per
10 job. I don't know the specifics of any given
11 contract, but absolutely not. We do not pay the
12 full dollar amount of an on-call contract. It is
13 not unusual for an on-call contract to be
14 registered at a \$2.3 million level and ultimately
15 only \$1.8 paid.

16 COUNCIL MEMBER STEWART: It's not
17 unusual.

18 MARLA SIMPSON: Not unusual, very
19 common.

20 COUNCIL MEMBER STEWART: Now, but
21 you're saying that that \$2.3 million is what is
22 set aside to pay for this type of work within
23 those three years.

24 MARLA SIMPSON: It's in the budget
25 at that amount.

2 COUNCIL MEMBER STEWART: Well then
3 in terms of the City employees, the City
4 workforce, if we had calculated in that matter
5 what we have to do within that three years and we
6 say well, it might cost us \$2.3 million, could we
7 use that \$2.3 million to pay the City workers?

8 MARLA SIMPSON: Could who use it?
9 I don't understand.

10 COUNCIL MEMBER STEWART: Well
11 instead of laying off City workers, which will,
12 you know when laying them off is saving--let's say
13 you're saving \$2.3 million. And you're setting
14 aside that \$2.3 million in a sense to give it to
15 someone on a contract who you are going to call
16 from time to time, you may not even use it up,
17 whatever the case may be. So I'm saying that
18 money could have been saved, could have been kept
19 in the coffers for the City workers.

20 MARLA SIMPSON: No, because it
21 wouldn't have accomplished the--first of all I
22 don't think the economics would work the way that
23 you're--if you're talking about 12 or 14 people, I
24 don't think that the economics would work that
25 way. And the circumstances are very different.

1
 2 The way an on-call contract is used, it's less
 3 than a part time job in the sense that what we're
 4 doing is we're asking for workers at particular
 5 times for particular purposes. We're not keeping
 6 people on hold for a contingency. And again I
 7 remind you that going back at this point to at
 8 least the year 2000, this same contract has been
 9 there, or version of it, has been there and
 10 workers have been doing different work at the
 11 same, you know, parallel to the same contract.
 12 What DHS did fundamentally here is it decided to
 13 paint less. And so in that situation presumably
 14 it's very difficult with an in-house operation to
 15 have an in-house operation that you only use a
 16 couple of days a month.

17 COUNCIL MEMBER STEWART: But my
 18 point basically is that you have the different
 19 agencies that may be using different methods of
 20 doing the same job, which you explained a while
 21 ago that DHS or DDC or all these different
 22 agencies may be doing the same job, but they use
 23 different methods--whether some of them use
 24 contracts--

25 MARLA SIMPSON: [Interposing] Yes.

2 COUNCIL MEMBER STEWART: Or some of
3 them us the in-house--

4 MARLA SIMPSON: [Interposing] Yes.

5 COUNCIL MEMBER STEWART: I'm
6 saying, in the overall picture, we could have used
7 the same City workers to do the same job moving it
8 from agency to agency, doing the same job. Their
9 responsibility should be painting. And if DHS
10 wants painting, they put in the request. Or if
11 it's a school--whatever the agency is, they could
12 have done that and keep the workers, the in-house
13 workers and eliminate the contracts. I'm looking
14 at it from the point of view that what you have
15 been saying is because the contracts were there
16 for years--and you haven't given an explanation
17 why we should continue to have those contracts.
18 You have not given an explanation why those
19 contracts why those contracts should still stay in
20 place.

21 MARLA SIMPSON: The explanation is
22 that we were cutting the budget and this was the
23 way in which that budget cut could be accomplished
24 and continue to reduce--

25 COUNCIL MEMBER STEWART:

2 [Interposing] So you're saying the easiest way for
3 it to cut the budget is by eliminating workers
4 rather than eliminating contracts.

5 MARLA SIMPSON: No. I'm saying in
6 this case the circumstance of what DHS needed in
7 the way of its services fell within the framework
8 of the on-call contract and DHS--I mean this was
9 not the only cut that DHS made; they made painful
10 cuts throughout the agency and there were other
11 circumstances where they had to make difficult,
12 difficult choices. Obviously their priority was
13 to try and make sure that as much as possible the
14 families and vulnerable individuals who depend on
15 their services were protected against the impact
16 from those cuts. That doesn't mean the cut had no
17 pain, it just means they were trying to make
18 choices as to which cuts to make. In this case
19 they felt they could cover the bare bones needs of
20 what they had for painting, which is they realize
21 they couldn't afford to do as much painting as
22 they had done in the past and they realized that
23 they could cover their needs--

24 COUNCIL MEMBER STEWART:

25 [Interposing] With contracts.

2 MARLA SIMPSON: --through the
3 occasional use of an on-call vendor. That is not,
4 again, it's not constant. There may be a period
5 where they work for a couple of weeks and then a
6 period when they don't work. It's the way in
7 which they're able to target the work when they
8 need it and not have to pay for it when they don't
9 need it.

10 COUNCIL MEMBER STEWART: I just
11 feel that, you know, it's sad to know that we will
12 get rid of the City workers first rather than get
13 rid of a contract that, you know... The same way
14 you could use the City workers to send them
15 wherever you need them at the time you need them,
16 I think it's the same as to what you have done
17 with the contracts; you call them when you need
18 them; the same way you could have sent the City
19 workers to do the same job, because they can do
20 the same. A while ago you spoke about skills in
21 terms of--I think painters are skillful people.

22 MARLA SIMPSON: I do too. I'm just
23 saying--

24 COUNCIL MEMBER STEWART:
25 [Interposing] Because the way you explained it a

2 while ago is as if painters are not skillful
3 people.

4 MARLA SIMPSON: No, I--

5 COUNCIL MEMBER STEWART:

6 [Interposing] And you have to have--if someone is
7 working within the City workforce as a painter,
8 that's a skillful job that they have to be doing
9 that for a while and understand that and know what
10 to do.

11 MARLA SIMPSON: Absolutely. But
12 when we hire a painting company we are not hiring
13 an individual painter, and that's the issue. In
14 the case law it talks about the individual
15 services of the person, so that in effect if you
16 hire for a computer--you know if you want to build
17 a computer system and you hire a particular
18 company because it has a consultant that works
19 there who is the expert in your type of data needs
20 and you hire that company and then they come to
21 you and they say, great we're ready to work but by
22 the way we fired him and here's so and so and
23 they're new. You can in effect negate that
24 contract because that's a contract that you hired
25 because you wanted the personal service of that

2 individual and they're not there. That's what a
3 personal service is. In this situation when you
4 hire a company, of course we expect them to
5 provide skilled painters and of course we expect
6 them to meet the terms of their contract, but
7 nothing in there is requiring the service of a
8 particular individual painter for that particular
9 individual's skill.

10 COUNCIL MEMBER STEWART: All right,
11 thank you.

12 CHAIRPERSON JAMES: Ms. Simpson,
13 just a few last questions before we let you go.

14 MARLA SIMPSON: You have to let me
15 go soon because I have a meeting with ACOS where I
16 do training, so I have to go train ACOS.

17 CHAIRPERSON JAMES: Okay, I'll hold
18 for maybe five, ten minutes and then you can go do
19 your training. Are you training them on this
20 issue?

21 MARLA SIMPSON: Not today.

22 CHAIRPERSON JAMES: What is the
23 reason why this RFP was issued? Was it to
24 increase person power because of all of the
25 painting needs in the City of New York? Was it

2 because you wanted to improve standards? Or was
3 it because you wanted to cut costs?

4 MARLA SIMPSON: There was no RFP
5 issued.

6 CHAIRPERSON JAMES: The bid that
7 was issued.

8 MARLA SIMPSON: That bid would have
9 been issued earlier than the year 2000 and I can't
10 comment what motivated it in--and again it could
11 have been issued, as far as I know, in 1986. I
12 don't know when it was issued; I know it predates
13 the year 2000.

14 CHAIRPERSON JAMES: So you don't
15 know the reason why the bid was in fact issued.

16 MARLA SIMPSON: No.

17 CHAIRPERSON JAMES: And have there
18 been any bids issued for painting services in the
19 City of New York during your tenure?

20 MARLA SIMPSON: Well sure, and this
21 bid has been reissued periodically. You asked
22 when it was first issued and that's what I was
23 answering.

24 CHAIRPERSON JAMES: So then let me
25 ask you this question, why was it renewed?

2 MARLA SIMPSON: I don't mean to
3 misspeak. Under this type of contract, I'm not
4 even sure it has a renewal clause, periodically
5 because of bidding laws we are required to refresh
6 competition, so we do a full out new bid every
7 four years; like three, four years we'll do
8 another bid for the same thing. A contract has a
9 term and at the end of that term we do a full out
10 bid for new competitors. We don't just renew it
11 with the individual company always. We--

12 CHAIRPERSON JAMES: [Interposing]
13 But the basis for that bid you are unaware of.

14 MARLA SIMPSON: One assumes that
15 the decision is being made. If back in the past--

16 CHAIRPERSON JAMES: [Interposing]
17 Correct.

18 MARLA SIMPSON: --a decision was
19 being made that an on-call service contract would
20 work well for DHS, and one of the reasons why you
21 would choose an on-call contract for a social
22 service agency is that it gives you the
23 flexibility, for example, to do work nights,
24 weekends, sort of in different circumstances. So
25 they made a decision, back whenever 1990 whatever,

2 to have this contract.

3 CHAIRPERSON JAMES: Right.

4 MARLA SIMPSON: Presumably at that
5 point each time it came up the agency would
6 evaluate, is this contract working for us, yes,
7 and then they would renew the competition, do it
8 all over again and get a new vendor in place.

9 CHAIRPERSON JAMES: Right. But as
10 Director of the City Contracting Services, when
11 one renews a contract, because one wants to--I
12 believe the term that you used, refresh
13 competition--

14 MARLA SIMPSON: [Interposing] Yes.

15 CHAIRPERSON JAMES: Do you not
16 question what is the basis for that renewal? Is
17 it to save money? Is it because you want to
18 improve standards or because you want to save
19 dollars?

20 MARLA SIMPSON: There are certain--

21 CHAIRPERSON JAMES: [Interposing] I
22 would imagine there would be some sort of cost
23 benefit analysis whenever one renews a contract.
24 Or do you just step back and defer to the
25 commissioner of the respective agency? What role

2 do you play at all in the renewal of contracts?

3 MARLA SIMPSON: There's a mix of
4 roles. There are specific laws and regulations
5 that apply--if the decision is literally to renew
6 an existing contract and to take an existing
7 vendor and give that vendor a new term, that's
8 allowed if the original contract specified it.
9 And there are specific findings in the PPB rules
10 that are required to be made, and yes, my office
11 would certify with the agency that they have
12 performed those--made those findings. And if we
13 had reason to we would go behind that and check
14 the accuracy of their statements to us.

15 CHAIRPERSON JAMES: And do the
16 findings include any of the three things that I
17 outlined?

18 MARLA SIMPSON: They're mostly
19 outlined--

20 CHAIRPERSON JAMES: [Interposing]
21 Cost, standards--

22 MARLA SIMPSON: [Interposing]
23 Performance. I think the key findings relate to
24 performance in the past, whether there has been
25 performance that met the city's needs and

1
2 expectations. I want to distinguish that
3 situation from a new bid. If a new bid is issued
4 generally speaking under the Charter of the City
5 of New York, the agencies are each charged with
6 the ability to do competitive sealed bids. There
7 is not a requirement for a competitive sealed bid
8 to have a mayoral certification at its inception.
9 Under this administration we have imposed a number
10 of compliance mandates on competitive sealed bids,
11 so it actually is the case that my office is
12 frequently involved in the decision.

13 CHAIRPERSON JAMES: So let's make
14 it more specific. In this particular case, did
15 your office make a determination when you renewed
16 this contract whether or not this would save the
17 City money, this would somehow improve the
18 outcomes, the standards and or whether or not this
19 company could perform--would have a flexible
20 schedule that the City workers could not provide.

21 MARLA SIMPSON: I don't know that
22 there would be any--we would not have looked at
23 the question of whether or not a City worker could
24 do it because it was not triggered. We certainly
25 looked at the performance of the vendors that were

2 bidding for the contract to ensure that they were
3 responsible bidders.

4 CHAIRPERSON JAMES: And when you
5 renewed the contract, did you ever take into
6 consideration whether or not maybe the City
7 workers could have performed this same contract
8 and saved the City money?

9 MARLA SIMPSON: The contract that
10 you're talking about hasn't been renewed and there
11 isn't a requirement that would trigger an analysis
12 of what the City workers could do, so again, since
13 my office's role is to look at whether existing
14 laws were complied with, we would not have had
15 occasion to look at that issue.

16 CHAIRPERSON JAMES: You mentioned a
17 flexible schedule. Is it your position that City
18 workers do not have the capability of--

19 MARLA SIMPSON: [Interposing] No--

20 CHAIRPERSON JAMES: --performing a
21 flexible schedule?

22 MARLA SIMPSON: I don't have a
23 position on that at all. I'm simply saying
24 historically that an on-call contract, which is
25 different than a retainer, different from a

2 contract that's you know, project based or
3 facility based, it provides a level of service
4 that is consistent with often sporadic use. It
5 tends to be the case that workers are, you know,
6 would have a normal shift that they would work.
7 And so if that's not the time or the date that you
8 have the service need then you would have a
9 situation where you have some difficulty. But
10 that's not my expertise. You can certainly pursue
11 that with experts in the City's personnel policy.

12 CHAIRPERSON JAMES: Okay.

13 MARLA SIMPSON: All I was saying is
14 that an on-call contract does give you that
15 flexibility.

16 CHAIRPERSON JAMES: In the agency's
17 pre-solicitation report, DHS stated that one of
18 the reasons for contracting out an on-call
19 painting service was that they did not have the
20 personnel or expertise in-house. Can you
21 elaborate on this? Because DHS had an in-house
22 painting unit, which meant that the agency had
23 both personnel and expertise.

24 MARLA SIMPSON: What document are
25 you referring to?

2 CHAIRPERSON JAMES: The pre-
3 solicitation report for this particular contract.

4 MARLA SIMPSON: Back in 2008?

5 CHAIRPERSON JAMES: Yes.

6 MARLA SIMPSON: Well again,
7 remember at the time you are talking about
8 services that were running in parallel--

9 CHAIRPERSON JAMES: [Interposing]
10 Or--go ahead. I'm sorry. I said 2008, at the
11 time that this contract was initially bid.

12 MARLA SIMPSON: Well I don't know
13 what the pre-solicitation report said then,
14 because I don't know when it was. Remember the
15 charter itself changed in 1989. For all I know
16 this contract pre-dates that. I don't know. I
17 mean I doubt it because DHS didn't exist then, but
18 I don't know when--this contract goes back to at
19 least the year 2000.

20 CHAIRPERSON JAMES: I was told by
21 Counsel it's 2007, in the pre-solicitation report
22 of 2007.

23 MARLA SIMPSON: For the 2008
24 contract.

25 CHAIRPERSON JAMES: Right.

2 MARLA SIMPSON: Okay. That makes
3 sense. Then again, at that time there would have
4 been a parallel operation and obviously what they
5 were saying at that point is that they did not
6 feel that they could use the in-house contract for
7 all of the purposes that they were going to use.

8 CHAIRPERSON JAMES: They could not
9 or they did not have?

10 MARLA SIMPSON: They did not have
11 the ability to use the contract that way.

12 CHAIRPERSON JAMES: Is it one or
13 the other. They could not because they refused to
14 or they did not have. Which is it?

15 MARLA SIMPSON: If they certified
16 that they did not have the expertise they believed
17 they did not have the expertise.

18 CHAIRPERSON JAMES: Did you check
19 to see whether or not that was an accurate
20 statement?

21 MARLA SIMPSON: At the time of that
22 certification, that particular certification at
23 that time would not have come to my office because
24 this law, section 312(a) was not triggered, and
25 this is a competitive sealed bid. It was not a

2 renewal. It would not have come to my office. It
3 came to my office later, because of the bids.

4 CHAIRPERSON JAMES: Ms. Simpson, it
5 just seems that in this contracting process in the
6 City of New York, your office is taking a hands
7 off position.

8 MARLA SIMPSON: I don't think any
9 agency would tell you that they think our position
10 is hands off--

11 CHAIRPERSON JAMES: [Interposing]
12 But in this particular case.

13 MARLA SIMPSON: --we are very much
14 in their business all the time.

15 CHAIRPERSON JAMES: Well if you are
16 in their business, then which one is it? Is it
17 because they could not contract or they did not
18 have the expertise?

19 MARLA SIMPSON: They certified that
20 they did not have the expertise, and that's what
21 they meant.

22 CHAIRPERSON JAMES: And therefore--

23 MARLA SIMPSON: [Interposing] You
24 asked me if I reviewed it then and I'm telling you
25 I did not review it then, I was not--

2 CHAIRPERSON JAMES: [Interposing]
3 No, what you're saying is that you accepted their
4 statement--

5 MARLA SIMPSON: [Interposing] No.
6 I'm saying I did not review it then.

7 CHAIRPERSON JAMES: Okay. When an
8 agency lays off a worker in a common civil service
9 title like painter, what are the responsibilities
10 of the agency in terms of recalling that worker?

11 MARLA SIMPSON: You would have to
12 direct that to the City's personnel agencies.

13 CHAIRPERSON JAMES: What did you
14 say? I'm sorry.

15 MARLA SIMPSON: I mean that is not
16 the expertise of the Office of Contract Services,
17 so you, I assume, could ask for Labor Relations or
18 DCAS to comment on what our personnel policies
19 are.

20 CHAIRPERSON JAMES: And I don't
21 know whether or not you answered this question.
22 Has MOCS performed a study about how much money
23 this City would save by outsourcing?

24 MARLA SIMPSON: Your co-chair asked
25 that question and I indicated that that was not

2 the role of the Office of Contract Services. We
3 certify compliance with the existing laws, and it
4 does not require that.

5 CHAIRPERSON JAMES: And I don't
6 know if my co-chair asked this same question.
7 What was the cost to the Department of Homeless
8 Service to operate the in-house painters unit in
9 the last four years?

10 MARLA SIMPSON: He did ask that
11 question and I said I would get back to him.

12 CHAIRPERSON JAMES: Okay. And is
13 an agency's methodology and analysis when
14 determining the displacement of a City employee;
15 is that something that can be released to the
16 public? But I guess since you have not done that,
17 you would not know that.

18 MARLA SIMPSON: It would be a
19 public document if it were done, when the law
20 applied. But if the law doesn't apply there isn't
21 a document.

22 CHAIRPERSON JAMES: And the law
23 hasn't applied in your tenure.

24 MARLA SIMPSON: Not to my
25 knowledge.

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CHAIRPERSON JAMES: Thank you. No further questions.

MARLA SIMPSON: Thank you.

CHAIRPERSON JAMES: Thank you. The next panel will consist of Mr. Jack Kittel [phonetic], representing District Council 9; Steve Melish, I apologize if I mispronounce. Melish, thank you. Local 1969. And Mr. Greenberg, I can't understand your handwriting, your first name. I apologize. Also representing Local 1969. Just let me ask you a question, a political question and I think referring to Council Member Jackson's comments, did your Locals endorse the Mayor of the City of New York?

[Off Mic]

CHAIRPERSON JAMES: I just wanted to know.

JACK KITTEL: If that's an appropriate question, it has nothing to do with this hearing. The District Council has indeed endorsed the re-election of Mayor Bloomberg.

CHAIRPERSON JAMES: You may go forward with your testimony.

STEPHEN MELISH: Good afternoon.

2 My name is Stephen Melish. I am the president of
3 Local Union 1969. Local 1969 represents
4 approximately 465 Civil Service employees employed
5 by the City of New York and its covered
6 organizations, including members in titles such as
7 Supervisor Painters, Painters, and Glaziers and
8 Glazier Supervisors. I want to thank the City
9 Council, the Committee on Contracts and the
10 Committee for Civil Service and Labor for holding
11 this hearing. Oversight of New York City Charter
12 section 312(a) of the Charter, or referred to as
13 the Charter, and the failure of the Charter to
14 protect painters in the Department of Homeless
15 Services further referred to as DHS, are of the
16 utmost importance during this hearing. I cannot
17 emphasize enough that these issues are of great
18 importance to my union members, their families and
19 all public sector workers, given the City's ever-
20 expanding use of outside contractors and the ever-
21 increasing number of layoffs of New York City
22 employees. On October 23rd, 2007, the Department
23 of Homeless Services held a bid opening where
24 outside contractors were permitted to place bids
25 for services required by DHS. Riverdale Painting

2 Corporation, further referred to as Riverdale,
3 submitted the lowest bid at \$2,237,920, and thus
4 was awarded the contract by DHS. The Riverdale
5 contract began April 1, 2008 and will end March
6 31, 2012. The total cost of the contract is not
7 to exceed \$2,034,960. As a result of the
8 shortsighted contract DHS entered with Riverdale,
9 12 painters and 2 supervisors lost their jobs at
10 DHS as a part of a larger Citywide layoff, where
11 nearly 1,100 employees were laid off. This layoff
12 resulted in the complete elimination of all public
13 sector painters and supervisor painters in that
14 agency. Now in spite of the clear intent of the
15 charter, all painting at DHS will be done by
16 Riverdale, a New Jersey based company employing
17 New Jersey residents. According to DHS the
18 purpose of the contract is to provide on-call
19 painting services for adult and family shelters.
20 My members, New York City Painters, previously
21 were responsible for painting at DHS. The facts
22 in our particular case demonstrate the complete
23 disregard this City has for the requirements of
24 the Charter and how it chooses to narrowly
25 interpret the Charter's language to avoid

2 compliance. For example, on July 27th, 2007 DHS
3 certified in its pre-solicitation review report,
4 further referred to as the report, that the
5 contract will not result in the direct
6 displacement of City employees, pursuant to
7 Charter section 312(a). DHS further certified
8 that the basis for contracting out was in order to
9 obtain cost-effective services and to obtain
10 personnel or expertise not available in the
11 agency. None of the representations made by DHS
12 in its report are true. My painters are more
13 experienced; they're more familiar with DHS
14 facilities than any private sector painters. I
15 challenge the City to prove that painting shelters
16 requires a greater level of expertise than that
17 exercised by City painters. Further, due to the
18 constraints of Labor Law 220, which mandates that
19 any person performing public work must be paid the
20 prevailing wage rates and benefits, it is always
21 cheaper to paint with in-house personnel than with
22 outside private contractors. Outside contractors
23 mark up the cost to the City to cover profit,
24 inventory, overhead, etcetera. As the DHS
25 certification that no painters would be displaced

2 as a direct result of the contracting out painting
3 to Riverdale, the layoffs of September 2009 have
4 shown that this was yet another agency
5 misrepresentation. DHS turned over its entire
6 painting operation to Riverdale. As you know,
7 under Local Law 35, later codified as New York
8 City Charter 312(a), the Mayor is required to
9 justify laying off City workers when replacing
10 them with private contractors. As such, each time
11 a City agency decides to contract out for services
12 such as painting, it is required under the Charter
13 to make sure that it will not displace City
14 workers in the process. If it makes a
15 determination that the contract will displace
16 workers, the City must then make certain that the
17 outside contract is more cost-effective. This is
18 accomplished by performing a cost-benefit
19 analysis, which is subject to the review by the
20 City Council. Given these tough economic times, I
21 believe you share my opinion that strict adherence
22 to the Charter is more critical than ever to
23 ensure that the City uses its scarce resources in
24 the most efficient manner. After having a labor
25 management meeting with representatives from DHS,

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2 it is my opinion that the agency never too Charter
3 section 312(a) into consideration when deciding on
4 layoffs. DHS never considered alternatives to
5 layoffs by identifying services it outsources,
6 which can be performed in a more efficient manner
7 by in-house painters. It became very clear to me
8 after my meetings with DHS that the agency never
9 performed any cost-benefit analysis prior to
10 making its decision to lay off painters. Instead,
11 the agency simply reacted to the Office of
12 Management and Budget's, OMB, mandate to reduce
13 the head count, regardless of whether there was a
14 more cost-effective way to obtain painting
15 services. If DHS had correctly followed the
16 mandates of the charter, it would not have
17 certified that employees would not be displaced as
18 a result of the outside contract. The contract
19 was an on-call contract spanning four years and in
20 excess of \$2 million. Any reasonable person would
21 have concluded that the execution of such a
22 contract may lead to layoffs of City employees in
23 the future. As evidenced by the sudden downturn
24 in the economy, a lot can happen in four years.
25 To give a blanket representation that no City

1
 2 employee will be displaced by this type of
 3 contract can only be explained as an attempt by
 4 DHS to avoid the public scrutiny afforded under
 5 Charter 312(a), which mandates that the agency
 6 perform a cost-benefit analysis subject to the
 7 City Council review. If that process had been
 8 followed, we believe the City Council would have
 9 uncovered some significant financial and legal
 10 problems with the agency's decision to fire all
 11 its painters and supervisors and contract out for
 12 painting services. As I mentioned earlier,
 13 because Labor Law 220 requires the agency to pay
 14 the prevailing rate of pay and benefits for the
 15 Labor, painting performed by in-house painters
 16 will always be less expensive than contracting out
 17 for these services. The cost-benefit analysis
 18 required under the City charter would have clearly
 19 shown that in these hard economic times the City
 20 would have been better off keeping the work in
 21 house. Also, because all painters and supervisors
 22 are New York City residents, the loss of jobs will
 23 result in lost tax revenue for the City and
 24 additional costs associated with providing
 25 benefits for unemployed workers. Giving this job

1
2 to a New Jersey company employing many non-
3 residents makes no economic sense for an
4 administration that has been preaching the need
5 for cost-efficiency. Second, and equally
6 alarming, is that had the Charter been followed
7 the City Council would have had an opportunity to
8 inquire as to why the winning bid was so low as
9 compared to the other bids. The Council would
10 have had a forum to raise questions regarding the
11 contractor's intent to follow Labor Law 220. For
12 example, Riverdale was the lowest bid at
13 \$2,237,920. The second lowest bidder was
14 \$1,157,080 higher than Riverdale. The third
15 lowest bidder came in at \$1,538,880 higher than
16 Riverdale. And the fourth lowest bidder came in
17 at \$1,650,280 higher than Riverdale. Given that
18 the labor cost pursuant to Labor Law section 220
19 would be equal, the huge disparity in bids should
20 have set off alarms at DHS. The winning bid begs
21 the question as to whether Labor Law 220 was
22 actually going to be followed. Instead it appears
23 DHS blindly awarded the contract to Riverdale and
24 thereafter 14 hardworking New York City employees
25 lost their jobs. The approximately \$2.2 spent

1
 2 paying the outside contractor could have been used
 3 to save my members' jobs and to save the City
 4 money. Representatives from DHS indicated to us
 5 that there was no violation of 312(a) because at
 6 the time DHS made its certification there was no
 7 displacement of workers due to the outside
 8 contract. The argument does not pass muster.
 9 However, DHS's use of an on-call contract spanning
 10 four years is a blatant attempt to circumvent the
 11 spirit and intent of Local Law 35. An on-call
 12 contract permits the agency to use or not use the
 13 services of a painting contractor during the four-
 14 year term. So while it may have been the case in
 15 2007 that the agency was not planning on laying
 16 off painters, it nevertheless needed to think more
 17 prospectively, as the contract was for four years.
 18 DHS evaded the scrutiny of the City Council, even
 19 though the contract with Riverdale most certainly
 20 did result in the elimination of all City painters
 21 at that agency. Local 1969 is fully aware of the
 22 economic pressures the City has faced, however
 23 these pressures cannot foreclose the operation of
 24 Charter section 312(a), and instead aggressive
 25 enforcement is of critical importance. The

2 welfare of the City, the taxpayer and public
3 sector employees is at issue. If DHS had followed
4 the law, any fair, impartial analysis would have
5 shown that contracting out all painting services
6 at DHS is far more expensive to the City than
7 using in-house personnel. I am asking the City
8 Council to aggressively compel the City to comply
9 with section 312(a) and to reinstate my fired
10 painters and supervisor painters. As we told DHS
11 and the Office of Labor Relations, my union is
12 ready willing and able to sit down and discuss
13 ways to save the City money. We cannot, however,
14 tolerate the lack of transparency and integrity on
15 the part of DHS when applying Local Law 35. DHS's
16 behavior has resulted in every DHS painter and
17 supervisor of painters being laid off while
18 outside New Jersey contractors profit. We can do
19 better as a City. Before I conclude I would just
20 like to touch on a couple of things that were
21 said. First I'd like to thank you for your
22 patience and for your time and attention. I would
23 just like to mention that many of the laid off
24 painters are sitting directly behind me. I'll
25 just ask them to stand up.

2 [Pause]

3 STEPHEN MELISH: Thank you brothers
4 and sisters for being here. Two things I would
5 like to bring up. Ms. Simpson, she had mentioned
6 that Riverdale Painting is--scratch that. She had
7 mentioned that DHS is not or will not be doing a
8 lot of painting. What she says is very incorrect
9 in that we know that Riverdale Painting has been
10 painting day and night for the last couple of
11 months. The agency goes through Callahan
12 Inspections [phonetic] and they have done a lot of
13 work. We suspect that Riverdale Painting painted
14 as recently as last week in the Bronx. Also in
15 response, well not really responding, but she has
16 mentioned that DHS will not be doing a lot of
17 painting. We know for a fact our employees have
18 seen many, many increased work orders, especially
19 during the last year. So there is or will not be
20 any slow-down of painting, particularly because of
21 the work orders and because of the mandates.
22 There are state mandates that govern how often and
23 how clean these shelters need to be. Really the
24 choice of the agency to paint or not paint is
25 really not their choice. There are state mandates

2 that govern that they must paint or they must keep
 3 their shelters in cleanly order. One other thing
 4 that I find very contradicting is she says, well
 5 there's not enough painting in DHS to employ 14
 6 painters or 12 painters and two supervisors. She
 7 also says that they're going to paint
 8 periodically. Well that makes no sense. Because
 9 going back when they implemented the contract in
 10 2007, they had more than 14 painters present and
 11 they still had so much painting needed to be done
 12 that they hired this contractor. So I would argue
 13 very strongly about her testimony in regards to
 14 what they believe they're going to be painting in
 15 the future. With that I conclude my testimony and
 16 thank you very much for your time.

17 CHAIRPERSON JAMES: I thank you for
 18 your testimony. I have some questions for you,
 19 but I'll until the entire panel completes its
 20 testimony.

21 JACK KITTEL: Thank you Chair
 22 James. I don't want to add to the time that you
 23 have to be here, especially since I haven't had
 24 lunch yet either. And I did say I was not going
 25 to testify.

2 CHAIRPERSON JAMES: Could you state
3 your name for the record?

4 JACK KITTEL: Oh, I'm sorry. My
5 name is Jack Kittel and I am the Political
6 Director of District Council 9, International
7 Union of Painters and Allied Trades. I do not
8 have any testimony to hand in, but of course, as
9 everybody knows I never read what I hand in
10 anyway. I just was jotting down some notes as I
11 was listening to the previous testimony and the
12 questions. So if you would allow me a minute and
13 a half just to make a couple of quick comments I
14 would appreciate that. The first thing I do want
15 to say on behalf of District Council 9 and all of
16 our members is I want to thank you very much for
17 taking the time to listen to us and also
18 acknowledge the seriousness with which you're
19 taking it and your understanding of our side of
20 the issue. The level of engagement is something
21 that we don't often see. It seems like you do
22 understand the issue and are committed to even
23 understanding it better than you do, and we do
24 appreciate it, all of us at District Council 9.
25 We represent 18 local unions; Local 1969 is one of

2 them. Now, I'll bet you the lawyer is going to
3 kick me under the table, but I'm not a lawyer so I
4 can say some stuff that you guys can't. And the
5 first one is, Madam Chair, we appreciate the way
6 that you emphasized that the workers that are
7 losing their jobs are union workers. This company
8 that has been awarded this contract is not a
9 signatory contractor; he is not using union
10 workers. And I was kind of happy to hear
11 Commissioner Simpson tell us how easy it is to
12 catch prevailing wage violations, and that makes
13 me think my life is going to get easier as we go
14 forward, because we have never found that to be
15 the case. And I am sure that they are watching
16 this contract closely, but if Riverdale painting
17 is paying his workers a prevailing wage, it will
18 be the first time that they've ever done that.
19 This is anecdotal, I understand, but our
20 organizers chased this contractor all over New
21 Jersey and have successfully removed him from
22 every prevailing wage job he's ever been on. So I
23 guess he's paying it here if the Commissioner says
24 so. And that's a positive step; because that's
25 the first time he's ever done it. So I'm happy to

2 hear that. What else did I just down.

3 CHAIRPERSON JAMES: I want an
4 audit.

5 JACK KITTEL: You know, if you did
6 that we would be thrilled. And I was happy to see
7 that the next Comptroller was in the room and
8 actively engaged in this conversation as well.
9 And I did hear during his questioning the
10 Commissioner mentioned that there was a trigger
11 when the numbers on bids become questionable.
12 This particular bid, the second bidder is one-
13 third higher than the bid that was accepted. I
14 don't know what their trigger is but, you know, in
15 the interest of full disclosure, I am a cynic. So
16 me, I look at that and I have questions going off.
17 You pounded on this very well too, Madam Chair. I
18 cannot imagine how somebody--I do wish DHS was
19 here to answer for a lot of this. And I guess
20 smart on their part not to be. But I have some
21 serious questions about everything that you
22 mentioned. How are we going to determine if
23 prevailing wage is being paid? This is the type
24 of contract where you do not know where they are
25 on any given day. Oh, hi, Council Member. In

1 this industry it's very quantifiable. A square
 2 foot is a square foot. But there are ways to
 3 cheat more than just the workers, and that is
 4 basically my interest is that the workers are paid
 5 correctly. But there are issues of public safety,
 6 environmental protection, quality, all should come
 7 into play when you're looking at a bid one-third
 8 less than the next one. I always hate to bring
 9 common sense into the equation when we're talking
 10 about government, but this is a case where any
 11 reasonable person has to sit down and wonder how
 12 we're going to do this especially when the second
 13 bidder--go ahead and kick me--but he's another guy
 14 that we've been chasing around who does work with
 15 less than prevailing wage. So that's it on that
 16 topic. I wrote some notes. Oh, you know the
 17 other thing I thought was interesting, two things.
 18 Number one, when Chairman Nelson used the words
 19 false economy, I think that actually bears looking
 20 into. You know what? I'll admit there are times
 21 when contracting out makes sense. But when you're
 22 going to contract something out to a contractor
 23 who is not going to pay his workers any kind of
 24 wage near what he should be, I think if you did
 25

2 the math, underpaid workers from New Jersey--and I
3 did understand that there are issues about
4 discriminating against the great state of New
5 Jersey--but I do wonder if it is actually cheaper
6 if you really took in the big picture and did all
7 of the math involved when you're underpaying out
8 of state workers versus our own taxpaying
9 residents. And the other thing I thought was
10 interesting that Councilman Jackson raised, I did
11 hear the Commissioner say they were scaling back
12 their painting operation, and that's a whole other
13 question that we can argue another day about how
14 smart that is. All we've got to do is walk next
15 door and look up at the ceiling and see how that
16 may not be the smartest thing to do sometimes.
17 But this is a case where they completely
18 eliminated the entire department. It's not that
19 they laid off a couple of people because they're
20 scaling back. And then at the same time she said
21 that this on-call contract is also going to be
22 scaled back, if not finished completely. So I
23 thin what she's saying is not that they're going
24 to completely eliminate it. I don't see how else
25 they're going to get it done. I actually never

2 thought of it like that. This is the entire
3 department, not a cutback. I'm sorry if I'm
4 rambling; I was just listening and jotting some
5 notes down and I do not want to take up more time
6 than I have to. But on behalf of the District
7 Council, we absolutely appreciate taking the time
8 and the interest that you have in the
9 understanding of the issue. Thank you, Madam
10 Chair and Council Member Viverito.

11 CHAIRPERSON JAMES: Thank you.

12 We've been joined by Council Member Melissa Mark-
13 Viverito from the Borough of Manhattan. Counsel?

14 HARRY GREENBERG: Harry Greenberg;
15 I'm counsel to 1969. Thank you for this
16 opportunity. A lot of information has been said
17 so I'm not going to repeat it. However I'd just
18 like to state for the record that we think section
19 312 is applicable to this situation. I don't
20 think it's a question. It's a creative
21 interpretation that was told to Director Simpson
22 by the lawyers who weren't here today. I think
23 you indicated that there would be an audit. We
24 would welcome that audit. We'd assist in that
25 audit and we'd ask for you to ask for all

1
2 documentation. And what's interesting is while
3 somebody may certify something, the Devil is in
4 the details. So, whatever they find out and
5 report we'd like to see the backup information on
6 how they got that. And, you know, painting is
7 painting and I don't think anybody here today what
8 type of special expertise we need to paint
9 homeless shelters. And with that, thank you for
10 your time.

11 CHAIRPERSON JAMES: Thank you,
12 Counsel. First let me say this, from the outset
13 the initial question that I asked was not to put
14 you on the spot, but we have been accursed in the
15 City Council of not disclosing everything and I
16 wanted to put that on the record so everyone knows
17 where we stand, every respective party. And that
18 was important for me, again, for full disclosure.
19 But as your members stood up, what I noticed about
20 your members, and I have spoken to Mr. Kittel in
21 the past, one of the reasons why I support Local
22 District Council 9 is because of the diversity of
23 your workforce and because they represent the
24 middle class. And I believe that there has been a
25 systematic attempt by this administration to lay

2 off unionized workers, not only in the Department
3 of Homeless Service, but every agency. This
4 Committee, the Contracts Committee that I chair
5 has held several hearings about this issue and in
6 every City agency they have laid off workers. And
7 most of the workers, again, reflect the rainbow of
8 this City. And that is unfortunate. They are
9 gutting the middle class and I put that blame at
10 the top. In addition to that, I too believe,
11 Counsel, that this was a crock of stuff. The
12 testimony was a crock. And counsel, from attorney
13 to attorney, my question to you; does District
14 Council 9, Local 1969, are there any legal
15 remedies?

16 HARRY GREENBERG: We'll be
17 discussing that with District Council 9 and 1969.
18 I think at least there's two items that we'll be
19 discussing, one is an amendment to 312 to give it
20 a little bit more teeth and possibly an article
21 78.

22 CHAIRPERSON JAMES: Excellent. And
23 again, if you need an affidavit from this Council
24 Person, again separating myself as an individual
25 councilperson now, not as chair, not involving the

2 body of the City Council, I would join you in that
3 if you need anything from me. Because again, I
4 believe that the testimony here, despite the fact
5 that she's a very nice person and she and I are
6 friends, is a crock of baloney, tuna fish,
7 whatever you want.

8 HARRY GREENBERG: Thank you.

9 CHAIRPERSON JAMES: And my other
10 question is the fact that this New Jersey Outfit--
11 do they provide their members any health benefits,
12 any benefits at all as far as you know? I think
13 it's disgraceful.

14 STEPHEN MELISH: It's our
15 understanding that if they do provide benefits
16 it's very little. That's our understanding from
17 speaking to our counterparts in the New Jersey
18 District Council.

19 CHAIRPERSON JAMES: I've asked the
20 Counsel to this Committee, Ms. Camilo, to send a
21 letter to the Mayor's Office and to the Department
22 of Homeless Service seeking that backup
23 information that you've requested, and
24 specifications, and have asked and will be asking
25 the current Comptroller of the City of New York

2 and the new Comptroller of the City of New York to
3 conduct and audit of this agency. I've also asked
4 my Counsel that I would like to have another
5 follow up hearing on prevailing wages, not just
6 limited to this company, but again prevailing wage
7 violations and compliance with that law in the
8 City of New York. And hopefully before the
9 November date. And you know what date I'm
10 referring to.

11 JACK KITTLE: I thought we just
12 heard it's very easy to determine when that's
13 being cheated, right?

14 CHAIRPERSON JAMES: Yes. Well.

15 JACK KITTLE: I enjoyed watching
16 your face, so incredulous you were.

17 CHAIRPERSON JAMES: So how many
18 years of services has--cumulative, the workers who
19 stood up. How many years of service do they have
20 amongst them.

21 STEPHEN MELISH: I guess they did
22 their own math. They say 111. I would say 111.

23 CHAIRPERSON JAMES: 111?

24 STEPHEN MELISH: Yeah. I've
25 actually broken it down for you. One painter has

2 24 years of service. You have another painter
3 with 21 years of service. You have nine painters
4 with 11 years of service and one with three years.
5 You have two supervisor painters, one with 25
6 years of service and another supervisor painter
7 with 23 years of service. It is an average of 14
8 years of service amongst them and I would just
9 like to say that these layoffs are true layoffs in
10 the sense of the word in that many times in civil
11 service when agencies lay off, many times the City
12 or DCAS will find safe landing zones for them and
13 vacancies. And due to layoffs in the New York
14 City Housing Authority which we suffered last
15 year, there is already a preferred list for the
16 New York City Housing Authority which they will be
17 melded in to, so the bottom line, these are real
18 layoffs. These 14 employees are in the street,
19 unemployed, after 24, 25 years of services.

20 CHAIRPERSON JAMES: They're all
21 laid off.

22 STEPHEN MELISH: In the street,
23 unemployed, collecting unemployment as we speak.
24 I've never heard of anything like this ever.

25 CHAIRPERSON JAMES: That's just

2 unconscionable, particularly those who have 15
3 years, 10 years or more, that they get absolutely
4 nothing other than a pink slip.

5 STEPHEN MELISH: That's right. For
6 all their years of service, this is what they get.

7 HARRY GREENBERG: If I may, in
8 1975, I happen to have been around at that time,
9 even when there were thousands of layoffs, the
10 City took great pains at that time for bump and
11 retreat.

12 CHAIRPERSON JAMES: Right.

13 HARRY GREENBERG: And in this
14 situation that didn't happen.

15 CHAIRPERSON JAMES: Do we
16 anticipate any vacancies opening so that these
17 workers can be brought back on?

18 STEPHEN MELISH: No reason to
19 believe so, especially with what we're hearing
20 what the budget is going to be in 2010.

21 CHAIRPERSON JAMES: Has DHS ever
22 called or scheduled a meeting with the union to
23 discuss more cost-effective ways to paint the
24 shelters in the City of New York?

25 STEPHEN MELISH: Absolutely not,

2 and what's really surprising is that on August
3 11th, I had a meeting with Deputy Commissioner
4 James Russo where I sat in a meeting where he told
5 me that these workers sitting behind me were very
6 productive. But he never ever mentioned to
7 discuss more cost-effective ways. On the
8 contrary, he said they were very productive.

9 CHAIRPERSON JAMES: So you were
10 here when Ms. Simpson testified, when I asked her
11 the question about whether or not before
12 contracting out, whether or not the same services
13 can be performed in-house. And she sort of gave a
14 legal mumbo-jumbo answer to that. Do you have a
15 response to her testimony?

16 STEPHEN MELISH: She has no answer.
17 When we had meetings at the Office of Labor
18 Relations and Commissioner Hanley's Office, when
19 we had meetings with Labor Management meetings, if
20 you will, with DHS, DHS couldn't even answer that
21 question there. They don't have an answer because
22 there is no expertise that Riverdale painting is
23 providing that these folks sitting behind me can
24 provide.

25 CHAIRPERSON JAMES: And were you

2 also here in response to the question that I asked
3 did they lay these workers off or did they issue
4 the bid one, because they wanted to save money;
5 two, because there was too much work and maybe the
6 14 couldn't handle it; or three, they had a
7 problem with the standards or the outcomes of
8 these workers.

9 STEPHEN MELISH: Do I understand?
10 You're asking me why I think DHS hired them?

11 CHAIRPERSON JAMES: Yes.

12 STEPHEN MELISH: I really don't
13 have any idea why they did hire them at all,
14 except for maybe to save money.

15 CHAIRPERSON JAMES: Do you think
16 it's bottom line, dollars and cents?

17 STEPHEN MELISH: Is it dollars and
18 cents? You know, if in fact these contractors are
19 not paying the prevailing rate to the employees
20 and if in fact they are cheating the City, that is
21 a possibility, because that's what agencies
22 sometimes to, and some more often than others.
23 But they will engage with a contractor who bids
24 lower than prevailing rate.

25 CHAIRPERSON JAMES: Right.

2 STEPHEN MELISH: So therefore we
3 can't compete and this definitely seems to be the
4 case here with this contractor bidding a clear
5 \$1.1 million under the second, the third and the
6 fourth lowest bidder. I have never seen anything
7 like it in my life. Before I was president of
8 Local 1969, I served as a supervisor painter for
9 the New York City Housing Authority. And although
10 I am at odds with the Housing Authority on some
11 issues, but the Housing Authority would never
12 accept any type of bid like that. And the reason
13 why I know it is because I was involved in
14 inspecting contracts, and that would never pass.
15 Like it says in our testimony, it would never pass
16 muster. It just should not happen.

17 CHAIRPERSON JAMES: So was the--

18 STEPHEN MELISH: [Interposing] That
19 contract should have never been let. And the only
20 reason I believe it was let is because they're
21 cheating.

22 CHAIRPERSON JAMES: So--

23 HARRY GREENBERG: [Interposing] If
24 I may? In Mr. Melish's testimony, and I'll re-
25 read it because it goes directly to your question.

2 CHAIRPERSON JAMES: Yes.

3 HARRY GREENBERG: It became very
4 clear to me after meeting with DHS that the agency
5 never performed any cost-benefit analysis prior to
6 making its decision to lay off painters. Instead
7 the agency simply reacted to OMB's mandate to
8 reduce the headcount regardless of whether there
9 was a more cost-effective way to obtain painting
10 services. That was Mr. Melish's testimony.

11 CHAIRPERSON JAMES: That answers
12 the question. Thank you, Counsel. And to
13 Counsel, what specific provisions in the City
14 Charter would you amend? And do you have any
15 specific recommendations that perhaps we should
16 consider for legislation?

17 HARRY GREENBERG: Certainly. We'll
18 forward them to you, but one of the things we're
19 thinking about is to give this Council some teeth
20 to force the City to live up to the provisions.
21 You know, and it's difficult to do that without
22 imposing penalties. And once you impose
23 penalties, you're talking about additional taxes,
24 so we've got to be very careful. So we'll be
25 getting back to you on that.

2 CHAIRPERSON JAMES: And I would
3 love to sponsor it, so I look forward to your
4 submission. My question to you is, are there any
5 penalties? If in fact you go to court and you
6 discover that in fact they were dumb, deaf and
7 blind to this violation, in addition to asking
8 that all of these employees be re-hired, what else
9 would you be asking for?

10 HARRY GREENBERG: Certainly any
11 damages they may have incurred. And what I'm
12 talking about is they'll lose their health
13 benefits. It's not just money; it's a lifestyle,
14 and possibly punitive damages. But then again, if
15 we do that, there's a tax implication.

16 CHAIRPERSON JAMES: Yes. But are
17 there any penalties in the City Charter currently?

18 HARRY GREENBERG: I'll have to
19 review that. I wasn't prepared for that today.

20 CHAIRPERSON JAMES: Okay. Again,
21 in any submission to this Committee I hope that
22 you would take that into consideration. I mean
23 there has to be some teeth to the law. And again,
24 this is not just limited to the Department of
25 Homeless Service, it's unfortunate.

2 HARRY GREENBERG: We welcome the
3 invitation.

4 CHAIRPERSON JAMES: Thank you, sir.
5 And again, to the City workers, I stand by you. I
6 stand with you. I look forward to one day when
7 you guys and women will get your jobs back. You
8 sisters and brothers need to come back into the
9 employment of the City of New York and it's
10 unfortunate that the City of New York turned its
11 back on you. Thank you.

12 [Applause]

13 CHAIRPERSON JAMES: Thank you. And
14 you can paint in the City Hall over there. Our
15 last witness is Mr. Henry Garrido, representing
16 District Council 37 and President Lillian Roberts.

17 HENRY GARRIDO: Good afternoon. In
18 the interest of time I'm going to submit my
19 written testimony for the record, but I want take
20 a moment to address, I think, two very important
21 issues that were raised here by the administration
22 in their explanation of, you know, this process
23 that the City engages on the whole displacement of
24 City workers. I am not surprised by Ms. Simpson's
25 testimony because since my tenure in District

1
2 Council 37, I've been responsible for monitoring,
3 and as you've probably seen, also analyzing the
4 trends in the City's procurement policies. In my
5 tenure there our Council represents over 1,000
6 titles Citywide. We are the largest
7 representative of any union in terms of diversity.
8 WE have never, ever seen a notification come to
9 our union notifying that displacement was taking
10 place, never. All, you know, 20,000 contracts a
11 year, that has never happened. Yet every time
12 that we have had to go to court to try to get a
13 stay on some impending layoffs and negative impact
14 to the workers, we've prevailed--every single
15 time. So at the same time that the hearings were
16 taking place here for the last fiscal budget, what
17 we found is that this administration hand
18 implemented a hiring freeze. And in that hiring
19 freeze two things happened in the process of
20 letting contracts and the procurement. Agencies
21 were even using the fact that they couldn't hire
22 workers as justification for entering into
23 contracts. Agencies were also at the same time
24 certifying that there was not going to be any
25 displacement. And so I think the whole issue of

1 certification has to be addressed because it has
 2 been reduced to nothing more than a checkmark that
 3 ACO office has made throughout all City agencies.
 4 I'll give you quick examples of how that
 5 displacement is taking effect. During this budget
 6 cycle the Commissioner of DoITT, Mr. Paul
 7 Cosgrave, was testifying here in a joint hearing,
 8 between the Technology and Finance Committees,
 9 indicating that DoITT was going to achieve a
 10 budget reduction gap by reducing the headcount of
 11 48 people. Among those were positions that were
 12 created for 311 operators. And this
 13 administration has talked very highly of the 311
 14 system. At the same time that same Commissioner
 15 had put out a bid to contract out an additional
 16 contract for Kintella [phonetic] Services for the
 17 same 311 services, for the same operation they
 18 couldn't cover with City workers. Likewise,
 19 Commissioner Scopetta was here testifying about
 20 how they needed to reduce headcounts. Among those
 21 were institutional aides represented by Local 420
 22 who are actually in the process of being laid off
 23 right now. And at the same time an RFP was out
 24 for a contract for Urban Maintenance to do the
 25

1 same work that those workers are doing. The
 2 current situation with the Department of Education
 3 where in a couple of weeks workers are going to be
 4 hitting the streets; they're going to be laying
 5 off over 600 school aides and several computer
 6 titles, including computer specialists, when they
 7 were procuring millions and millions of contracts.
 8 And one specific that comes to mind is the Future
 9 Technology Associates contract, which included
 10 computer specialist work as part of the contract.
 11 This is happening all over the place. So this
 12 exercise, this front, that we are doing a real
 13 true certification is not real. And I think the
 14 proof is in those examples and several others that
 15 we can give you to no end. And secondly, I'd like
 16 to make a point to address what we think would be
 17 appropriate actions in terms of the issue of
 18 section 312 on the issue of displacement. I think
 19 you need to expand the definition of displacement
 20 to include the encroachment and the erosion of
 21 existing represented civil service titles. Where
 22 you have agencies where you had 100 workers doing
 23 the work and maybe no contracts, now you have 20
 24 contractors and maybe ten workers. That's because

2 attrition and headcount reduction is not
3 considered displacement. Or at least this
4 administration doesn't see it that way; we see it
5 differently. And that has to be taken into
6 consideration. So whether work has been done in
7 whole or in part by union workers, we've got to
8 consider the fact that if the headcount has been
9 reduced that there is a cause and effect between
10 increasing the amount of contract activities
11 within an agency and reducing the headcount of
12 workers that are doing the same amount. With that
13 I'll stop there, again in the interest of time. I
14 will submit my testimony for your consideration.
15 You know we've done a tremendous amount of work on
16 the issue of contracting out. We do believe that
17 where there are instances that the City will save
18 money--in most instances the City is not saving
19 money, specifically when you're talking about
20 prevailing and living wage titles where there's
21 already an existing salary that has to be met.
22 And I just want to say for the record, we stand in
23 support of Local 1969 because we think this is a
24 perfect example of what we've been talking about
25 in terms of a policy by this administration to

2 kill unionized, well-paid, good jobs and contract
3 out under the guise of saving money, when in
4 reality if the intention was to save money a cost
5 analysis would have been performed and
6 consideration would have been given to those
7 workers first. Thank you.

8 CHAIRPERSON JAMES: Thank you. At
9 one point in time Civil Service protection was,
10 you know, like money in the bank. What protection
11 do civil service employees have currently? And
12 what can they do given the situation?

13 HENRY GARRIDO: Well we have seen
14 this administration has actually looked beyond
15 that. Because what normally you would see is the
16 layoff of provisional workers who are not
17 protected, many times, under the civil service
18 system. We are now facing layoffs for permanent
19 and provisional employees as well, throughout many
20 of the City agencies. The civil service and merit
21 system as it was created was not only intended to
22 protect nepotism and collusion and placement of
23 positions in City government, but it was also a
24 way to provide some job security for people who
25 qualified for a job. And this system of

2 contracting out thousands and thousands of
3 positions is not just a way of eliminating and
4 eroding the middle class, it's also about
5 eliminating that protection, eliminating the
6 protection and job security that normally comes
7 along with a union-represented job, and have the
8 ability and control to let go of the workers at
9 whatever time they may see appropriate and bring
10 another contractor to do the work. It's also a
11 threat on our pension. Even though the issue
12 really--of cost, if you consider most City
13 contractors are now operating between an 20 and a
14 30% profit margin over existing prevailing and
15 living wage laws where benefits have to be
16 provided, you know, I don't see the saving
17 anywhere. But the issue of control remains a
18 large one also.

19 CHAIRPERSON JAMES: And what
20 happens to the title?

21 HENRY GARRIDO: Well over time they
22 erode the title and eventually it disappears. And
23 what you see is a title in place--and I'll give
24 you a good example of that. As this Council was
25 taking a very large initiative to provide services

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 2 for translation and interpretation services in
 3 many of the City's Human Services agencies, the
 4 agencies were implementing a plan to comply with
 5 that law. All of that was done by contractors.
 6 And yet we have a title of interpreter that has
 7 been in place since the 1950s in the City of New
 8 York, that has not been used. We now have a total
 9 of one interpreter in the entire City of New York,
 10 with the exception of the Department of Education.
 11 At the same time there have been over 1,000
 12 contract interpreters that have been hired since
 13 at a much, much higher cost. And I believe you've
 14 seen our white papers, our research papers, that
 15 we have. And that has been a subject of
 16 discussion. But we have yet to, for the record,
 17 receive any reply by this administration on how
 18 that cost, which they claim is lower, how they
 19 computed that. We have had meetings with
 20 Commissioner Hanley. We've had meetings with
 21 representatives from the administration here and
 22 we still have not received any reply or response
 23 to our position paper. So we have to assume that
 24 what we said is on point.

25 CHAIRPERSON JAMES: And has the

2 City hired any employees from these private
3 companies permanently?

4 HENRY GARRIDO: On occasion. The
5 City put out a plan to hire a lot of computer
6 consultants, for instance. They created or
7 revitalized a title called a Certified Title in
8 the Computer area, which was the beginning of what
9 the City--at the time Commissioner Mancini said
10 the City would be saving somewhere in the
11 neighborhood of \$75 to \$100 million by converting
12 over 1,000 consultants. The truth is the problem
13 they had is they wanted to hire who they wanted to
14 hire. So when they hit an issue or a roadblock
15 with the civil service provisions of the state,
16 that essentially said this is a promotional title
17 you can't just hire people off the street and make
18 them provisionals, they stopped and then reverted
19 back to contracting out the same work. So you had
20 City workers that--or City positions that went
21 from City positions to consultants, back to
22 consultants, back to consultants and vendors. So
23 we went full cycle on that.

24 CHAIRPERSON JAMES: So the painters
25 that are here today, in total, cumulatively they

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2 have about 111, I believe 111 years of service.
3 Is there a provision under the law which talks
4 about protection of those who are more senior than
5 others? If you're going to lay anyone off can you
6 start with those who are just hired and protect
7 those who are more senior? Or was this just a
8 complete gutting of a unit.

9 HARRY GREENBERG: Well I'm not
10 familiar with the individual contract, but most
11 contracts that I'm familiar with have provisions
12 of seniority when you're talking about excessing
13 or laying off workers. I think one of the
14 problems that we see, especially specifically with
15 contracting out this type of work, when you have
16 prevailing wages, the only way the savings could
17 be achieved would be through cheating workers out
18 of the prevailing wage money. It's the only way.
19 Because if there's a standard that you have to
20 page that prevailing wage in, in many instances
21 the prevailing wage in the private sectors pay
22 more than our own City workers.

23 CHAIRPERSON JAMES: And that
24 explains the difference in the bid from, in this
25 case, the lowest responsible bid. There was a

1
2 difference of \$1 million from the next closes bid.
3 And it's your position that it relates directly to
4 the failure of this contractor, in all likelihood,
5 to pay prevailing wage to its employees.

6 HENRY GARRIDO: In our experience
7 that has been the case. We have, ask you know, we
8 have not only done some research on this, but we
9 actually collected hundreds and hundreds of pay
10 stubs of workers that are doing parallel odd jobs;
11 because the truth is it's not their fault, they're
12 looking for a job also. We have initiated a
13 compliant with the Attorney General's office, with
14 the Human Rights Commission. We have an ongoing
15 investigation and a compliant with the City
16 comptroller's office. And we have in fact engaged
17 those hundreds of workers to try to organize to
18 fight for themselves in enforcing the law. And
19 it's interesting that Ms. Simpson said here that
20 the Office of Contracts under the Mayor's
21 Executive Order 102 was to look at a lot of those
22 contracts prior to entering into an agreement and
23 then making a determination whether there was
24 every any intention based on the bid. We raised
25 an issue last time as it applies to the issue of

2 the living wage. Since 2007 when the executive
3 order was issue, the first exercise of that
4 executive order under the living wage by the
5 Mayor's Office of Contracts happened this past
6 year. And in that, the previous here their
7 justification was, well, we don't see this area as
8 a big problem. Right? We have not had any
9 instances because there's a lot of non-profits or
10 there may be some non-profits doing that, but yet
11 in the first year they exercised, they sent back
12 nine bids from people who were not complying with
13 the law. And I submit to you that for every one
14 bid that they discover there are about 20 out
15 there that they have not even reviewed that are
16 not complying with living wage or prevailing wage
17 laws.

18 CHAIRPERSON JAMES: So I hope that
19 you would work wit this Committee. I would like
20 to hold in the next week or two or three a hearing
21 on prevailing wage violations in the City of New
22 York. And I'd like to get that on the schedule as
23 soon as possible. My co-chair, any departing
24 words?

25 CHAIRPERSON NELSON: No, just that

2 you always--

3 [Off Mic]

4 CHAIRPERSON NELSON: We will be
5 looking into the realities, of course, of the
6 fiscal problem. We have to also take that into
7 consideration as well, so hopefully we come up
8 with a balance. And surely people who've been
9 with us for over 20 years especially, it's
10 particularly sinful to just let them depart.

11 HENRY GARRIDO: I would just like
12 to say in closing, this. I don't think everybody
13 is saying here that every work should be done by
14 City workers. I think that was stated. I think
15 there has to be a healthy balance between the two
16 and an appropriate balance. And if we're looking
17 at this fiscal problem the City is facing, we have
18 cases where the City has done it's own analysis,
19 like in the Department of Health, and determined
20 that the printing of the jobs was done 30% cheaper
21 in-house. And yet still this administration
22 continues to contract out the work where it could
23 be done in-house. Not my analysis, their own
24 analysis. So I think we've got to look at that.
25 Because in striking a healthy balance, those are

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some of the things I would like to submit for your consideration and your role as a Council. Thank you.

CHAIRPERSON NELSON: Sure. That looks like fodder for DOI, as a matter of fact.

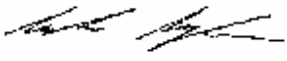
CHAIRPERSON JAMES: Well.

CHAIRPERSON NELSON: That's absurd.

CHAIRPERSON JAMES: You know, again, I'd like to hold a hearing. We're adjourning this hearing, but you know, obviously this issue continues. The struggle continues. It's not just limited to Department of Homeless Service. As we face a major budget deficit next year, I think it's critically important that we review this practice of outsourcing and how much money we could save if in fact we were to keep that work in house and keep City workers employed. And I believe it's just outrageous and I believe the numbers bear it out. And I just believe that this is really a systematic attempt to break the backs of unions in the City of New York. This hearing is concluded, but the struggle continues. Thank you.

C E R T I F I C A T E

I, Erika Swyler, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.


Signature _____

Date October 26, 2009