NYPIRG
NEW YORK
PUBLIC INTEREST
RESEARCH GROUP

TESTIMONY OF THE NEW YORK PUBLIC INTEREST RESEARCH GROUP REGARDING THE IMPACTS OF THE MAYOR'S NOVEMBER 2010 PLAN ON STUDENTS AT THE CITY UNIVERSITY OF NEW YORK

BEFORE A JOINT HEARING OF THE NEW YORK CITY COUNCIL FINANCE AND HIGHER EDUCATION COMMITTEES

PATRICK KRUG, NYPIRG CHAIRPERSON

Good afternoon. I'm Patrick Krug, a student at Brooklyn College and chairperson of NYPIRG's Board of Directors.

Through NYPIRG, CUNY students are empowered to impact policy decisions on issues that affect them, including decisions about funding for public higher education and financial aid. Interns and other students involved with our nine CUNY chapters learn to become effective advocates by working hand-in-hand with full-time campus organizers and a team of issue experts, policy analysts, and attorneys to educate their peers, spur civic engagement on campus, conduct research, generate media coverage, testify before governmental bodies, and meet directly with lawmakers.

I'm here to ask you to reject Mayor Bloomberg's proposals to reduce New York City funding for CUNY's community colleges by $13 million in the remainder of the 2011 fiscal year. This cut, which would amount to $16 million in subsequent years, would undermine our city's most important learning institutions at a time when they are already overburdened and under funded.

Crucial for New York City students

For tens of thousands of low-income students in the five boroughs, CUNY's community colleges offer the only affordable entryway into higher education. CUNY community colleges also provide crucial job training for unemployed workers, and a more-affordable option for middle-income families who have seen their savings shrink and their job security disappear. Enrollment and applications at CUNY community colleges are at an all time high because students need their services now more than ever. The demand is so great that CUNY has been forced to turn students away.[1]

Cutting millions of dollars of funding and almost 100 faculty and staff from CUNY community colleges when the are being asked to serve greater and greater numbers of students is asking CUNY to perform the impossible task of doing a lot more with a lot less.

[1] Foderaro, Lisa W., "Two-Year Colleges; Swamped, No Longer Welcome All," *New York Times*, Nov. 12, 2009.

State budget cuts have already hurt students
State funding for CUNY community colleges has already been cut by $415 per full-time equivalent (FTE) in the last two years. Those cuts have amounted to about $26.3 million, and they have already led to shrunken course offerings, increased class sizes, and a decline in student services. Learning outcomes are being undermined because students, packed like sardines into overcrowded classrooms, cannot get enough face time with their professors. Some students are even graduating late because the courses that they need to graduate aren't being offered.

If city funding for community colleges is reduced, the effects of the combined cuts would be amplified. Further elimination of teaching positions and course selections, more increases in class size, and new reductions in library hours, tutoring services and campus maintenance could do irreparable harm. Community colleges need more resources, not less.

Budget cuts and tuition hikes
Community college students tend to have lower incomes than students at four-year colleges.[2] They are also more likely to have unmet need after they exhaust their financial aid.[3] Additionally, community colleges also serve a large contingent of low-income part-time students who do not receive state or federal financial aid, and many adult students who receive smaller financial aid payments from the state because they are considered independent.

A mid-year five-percent ($75/semester) tuition hike would fall particularly hard on community college students. (Annualized, it would add $150 to their tuition bills.) CUNY's proposal to increase tuition even further, by another two- to five-percent in the fall of 2011, would be even worse.

Students are counting on the City Council to restore Mayor Bloomberg's proposed cuts, and give CUNY community colleges the resources they need to serve their growing enrollments. We are also looking forward to partnering with both the Council and CUNY to press the Governor-elect and legislature to restore the recent state-level cuts to community colleges. With adequate public investment, CUNY can avoid or at least mitigate future tuition hikes.

In Closing
Thank you for your attention, and for your hard work in guiding the City through this difficult time, and I know we share the same goals of ensuring affordable, accessible high quality public higher education to the students of New York City.

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[2] The Institute for College Access & Success (TICAS), *Quick Facts About Financial Aid and Community Colleges, 2007-08*, May 2009, at http://www.ticas.org/files/pub/cc_fact_sheet.pdf.

[3] Of students with documented need, 80% at community colleges still have financial need after all aid is awarded, compared to 54% at public four-year schools and 53% at private four-year schools. TICAS, May 2009.

The Uniformed EMT's, Paramedics and Inspectors – F.D.N.Y.

Local 2507, District Council 37, AFSCME, AFL-CIO
47-09 30th Street, Suite 300, Long Island City, New York 11101
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Testimony of Patrick J. Bahnken Before The New York City Council Fire and Criminal Justice Committee Regarding New Fire Department Fees.

December 13, 2010

Good afternoon madam chairwoman and members of the committee. My name is Patrick Bahnken and I am the President of the Uniformed EMT's, Paramedics and Inspectors of the New York City Fire Department and I thank you for the opportunity to testify today.

We fully support the recently announced Fire Department Emergency Medical Dispatch fees to be assessed against those hospitals operating ambulances in the New York City 911 system.

Let's be perfectly clear on this, EMS is a business and none of these private corporations is performing EMS work out of the goodness of their heart. Simply put, they are making a significant amount of money from both their ambulance operations and their subsequent hospital admissions and ancillary care operations.

To gain a full understanding of the revenues involved, I refer you the report of the City Comptroller from 1999 that examined the impact of non-municipal ambulances on the Health and Hospitals Corporation. At the time, the report estimated the impact to HHC to be nearly one hundred million dollars in NET REVENUE!

The small fee proposed today pales in comparison to the revenues generated by their EMS operations. For decades, the New York City taxpayer has subsidized the operations of these money-making entities. In essence, the City of New York acts as a sales department for private corporations that pay zero in commission.

I wish to make clear that this has nothing to do with those EMS personnel who staff these units. These men and women are my peers and I have respect for the work they perform.

The decision to require these facilities to contribute to the expense associated with operating the EMS call receiving and dispatch center is simply a good business decision and in the best interest of all New York City tax payers.

With regards to charging fees for fire apparatus to respond to motor vehicle accidents and other incidents, this is also a normal business practice that is taking place in many other jurisdictions.

With specific regard to extrication at motor vehicle accidents, many fire departments charge a fee to insurance companies for such responses. We are simply moving to the norm.

We are living in very dire economic times and I do not envy the role of this council. The careful balance of economic demands versus the provision of public safety in this climate is like walking a tightrope over a pond filled with crocodiles in a heavy wind.

In the end, I hope you will agree that the city can no longer afford to leave millions of dollars in revenue on the table. I thank you for the opportunity to testify and will gladly answer any questions you may have.

FOR THE RECORD

Testimony of Hannah Wohl
Policy Fellow, Brooklyn Young Mothers' Collective
to
New York City Council, Committee on Higher Education
Monday, December 13th, 2010, 1:00 PM

Making CUNY Accessible to Pregnant and Parenting Students

Support services are especially important for pregnant and parenting students attending CUNY. Counseling and tutoring are crucial supports for pregnant and parenting students because, these services ease the burden of these students' competing needs as both parents and students, allowing them to better focus on their academics. Additionally, young mothers need campus-based affordable and accessible childcare in order for them to be able to attend class. Currently, some CUNY school are not offering full-day childcare, or do not offer childcare for young children. In order for all young mothers to be able to regularly attend class, each CUNY school should offer full-day, comprehensive childcare. Unfortunately, instead of making childcare services more robust, CUNY has reduced funding for child care. Additionally, young mothers may be unsure of the process of applying for childcare. Each CUNY school should have support staff who walk students through the complex process of obtaining childcare. Additionally, she may have other unmet needs, such as housing, healthcare, and public assistance, which may be interfering with her coursework. CUNY should be equipped to refer students to relevant services. In recognition of students' specialized needs, CUNY should maintain counseling and tutoring and strengthen childcare services and referral networks to social support services. Cutting, instead of fortifying these services will have devastating consequences for the academic achievement of pregnant and parenting students.

NEW YORK CITY COUNCIL
Committee on Finance and
Committee Fire and Criminal Justice Services

Testimony of Fire Commissioner Salvatore Cassano
New York City Fire Department

December 13, 2010

Introduction

Good afternoon Chairman Recchia, Charirwoman Crowley and Council Members. I am Fire Commissioner Salvatore J. Cassano. With me is our Chief of Department, Edward Kilduff, First Deputy Commissioner, Don Shacknai and Assistant Commissioner for Budget, Steve Rush.

Thank you for inviting us here today to discuss the November 2010 Financial Plan for the New York City Fire Department.

As you know, last month the Mayor issued the November Financial Plan to the City Council and the Financial Control Board. The November Financial Plan reflects the severe financial difficulties the City continues to face. Despite including $900 million in budget reductions in the November Financial Plan, OMB still projects a budget gap of $2.4 billion in Fiscal Year 2012 without considering the impact of any additional State-imposed reductions. Accordingly, we can expect additional budget reductions in the near future. Clearly, the fiscal strength of the City is being put to the test. The budget reductions that I am about to discuss should be understood in this context.

The November Financial Plan

The Fire Department has been called upon to come up with nearly $60 million worth of reductions and revenue enhancements for this and next Fiscal Year. I am aware that the City Council has a heightened interest in what is proposed for our fire companies, but all of the cuts proposed for the Department mean that we will have fewer resources to carry out our mission of saving lives and property.

The Financial Plan proposes a nighttime redeployment of uniformed Fire personnel. As you are aware, this means that 20 fire companies will close during the night tour, from 6:00 p.m. to 9:00 a.m. With these night closures, the Department will experience an increase in availability of uniformed fire personnel on the night tour. That increased availability will reduce overtime on the night tour, resulting in savings during the remainder of this Fiscal Year (through June 30, 2011).

We are examining all relevant data to determine how best to allocate our resources in light of the night closings and will soon finalize our analysis. We will keep you informed of our decisions in this regard and will provide the Council with the Charter-required, 45-day notice.

As you know, the Fiscal 2012 Budget has *no* funding for 20 full-time fire companies.

The FDNY will also attempt to improve uniformed availability -- to reduce required overtime -- through reduced medical leave and light duty assignments. The targeted savings are estimated at $15 million beginning in Fiscal 2012.

Starting in January 2012, the hospitals that participate in the 911 system will share in the costs of operating our EMS Dispatch and Medical Telemetry units, which support the entire system. While the hospitals that run 911 ambulances utilize our Dispatch and Telemetry services when dispatching their ambulances and operating in the field, until now they have borne none of these significant costs. The formula for calculating these assessments is based on each hospital's share of the overall number of tours run citywide. This cost-sharing initiative is expected to raise $8.7 million annually.

The Plan also calls for the elimination of 100 uniformed administrative/support lines. This means that positions currently filled by uniformed members off-the-line will be eliminated. The forecasted savings is $5 million. We are in the process of identifying the administrative and support positions that will be eliminated.

To generate more than $1 million in new revenue, the Fire Department will begin charging for the cost of responding to motor vehicle fires and accidents. We expect this cost to be borne primarily by motorists' insurers.

By adding three new staff for the medical boards that review uniformed pension disability applications, we will expedite that process and achieve a forecasted savings of $300,000.

The FDNY Bureau of Fire Prevention will add four new civilian positions to undertake rooftop access plan review. These positions, created as a result of the 2008 revised Fire Code, are expected to generate $300,000.

Lastly, we continue to abide by the civilian hiring freeze that has been in place since September. The Department has lost almost 30 percent of its civilian workforce since 2003, which translates to more than 550 positions.

Conclusion

Obviously, we take no pleasure in making any of these cuts. Closing fire companies is not something we take lightly. We remain committed to keeping the public safe and will continue to do so making the best use of the resources available to us.

Thank you for your time. I would be happy to take any questions that you may have.

- Consider that if you had purchased towing insurance and had an unfortunate encounter where you needed roadside assistance, wouldn't you call to get help without fearing your $50 dollar annual fee would go up?
- The assets of insurance companies continue to grow, while tax revenues have not kept pace with increased costs and growing populations. Insurance company assets have risen because they have not had to pay where coverage was present, and premiums had already been paid that took into account the coverage being utilized.

So a fire department that doesn't charge for services is "leaving money on the table"?

Consider the city subsidizing a hospital or clinic where many of the individuals being serviced by the emergency entrance had coverage, but the city elected not to invoice for any of the services. This best describes the situation with fire department billing; the only difference is the fire department goes to the scene instead of the patient coming to the hospital.

OTHER CITIES (FROM A BILLING VENDOR)

As far as confirmed cities who are doing this type of billing, such a list would be as follows:

- Dallas,TX
- SanAngelo,TX
- Buffalo,NY
- Toledo,OH
- LongBeach,CA
- SantaAna,CA
- SantaBarbara,CA
- Quincy,MA
- SaltLakeCity,UT
- Bridgeport,CT
- NewHaven,CT
- ***Oakland,CA***
- ***SanFrancisco,CA***

The last two I don't have 100% confirmation on, and are based slightly on hearsay, i.e., I have read about Oakland in competitor's literature and have understood them to be contracted with a vendor but have no idea if the program is off the ground yet. Analogously, I have heard that San Francisco passed a billing ordinance and intended to begin billing, but don't know for sure what the current status is.

Cities who are currently working on an ordinance, issued an RFP, or otherwise implementing:

.Atlanta,GA
.WichitaFalls,TX

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My name is Captain Al Hagan, President of The Uniformed Fire Officers Association (UFOA) and I am testifying on behalf of the 2,500 Fire Officers who every day put their lives on the line to protect and save the lives of every citizen in this great city.

We wish to thank Finance Chair Recchia and his fellow Committee members and staff, as well as, Fire and Criminal Justice Chair Crowley and her Committee members and staff, for your tireless work for New York Citizens and for the opportunity to testify today.

It is long past time for the City Council to put its foot down hard on an annual budget battle that Mayor Bloomberg manages to fight every year on his own terms.

I'm referring specifically to his long-standing policy of using huge annual budget surpluses to pre-pay city debt. We have had years where he used as much as three or four billion dollars of surplus revenues to pay down future debt.

Is that good management? Sometimes, but not always. Not when the practice forces cuts in essential services like firefighting. In 2003, he eliminated six engine companies in May, only to announce days later the city would soon end FY 2003 with a billion dollar surplus. Since then he has tried a half dozen times to shrink the FDNY further, even though he would soon be ending those Fiscal Years with multi-billion dollar surpluses, ranging as high as five billion dollars.

So here we are with Mayor Bloomberg's most recent scheme to shrink the Fire Department. He will close 20 fire companies for 15 hours every night, on a rotating basis that amounts to Russian Roulette for 8.5 million people, most of them sound asleep at the time. What will the surplus be for FY 2011? Well, we know that back in May, the Independent Budget Office offered their best guess for the amount of surplus the city will have by June 30, 2011. The IBO said it would be approximately $320 million, and in a few days they will update that prediction. The City Council should keep a close watch on the IBO figures, because the time has come for the Mayor to put public safety ahead of pre-payments to banks and bondholders.

If there are any reporters still listening to this testimony, maybe they could, in the public interest, check with the IBO for the new numbers too. I know that if it turns out to be anywhere north of a billion dollars, their editorial writers will have a sudden attack of writer's block.

In any case, here we are again, fighting off budget cuts that will further hamper the Fire Department's ability to save lives and property. That's what we do. That's all we do---and as we are rushing to a fire anywhere in the city, we don't distinguish between rich and poor. We don't have time to think about race or religion or nationality. Age and gender aren't part of the calculation.

Speaking of calculations, the UFOA wishes to call the City Council's attention to calculations that are being ignored by an administration that sees only dollars and cents on the city's spreadsheets. We want to submit for your consideration some recent FDNY statistics as the fight to save the FDNY picks up steam. Over the last five years, the FDNY has averaged 481,556 emergency responses, listed as Total Incidents on monthly and annual reports.

At the end of November of this year, we had logged 463,735 Total Incidents in the first 11 months of 2010. Today is December 13, and the Fire Department has already reached that five-year average of 481,556. In another week, we will have reached or exceeded the highest total ever recorded in the long history of the FDNY---490,787 in 2007.

And sometime between Christmas and New Year's Day, we will break through the 500,000 mark. In the process, we will almost certainly set new records not just for Total Incidents, but also for Medical Emergencies and Non-fire emergencies. Sometime this week we will exceed the record of 209,563 Medical Emergencies set only last year. We may be approaching that record as we speak; because we answer approximately 600 Medical Emergency calls every day. In case the members of the press have forgotten, we answer calls for help for heart attacks, strokes and choking and asthma incidents.

Is this any time to shut down 20 fire companies for 15 hours every night of the year? Is this any time to take 100 Firefighters out of service every night? Can a fire hydrant fly?

Hero of the Month

Braves 1,000-degree heat

Firefighter pulls man trapped in building through flames to safety

BY PATRICE O'SHAUGHNESSY
DAILY NEWS STAFF WRITER

THE ONLY WAY out was through a room that glowed orange with flames.

The fire in the Brooklyn apartment was burning at 1,000 degrees, so hot that it cooked the usually impenetrable bunker coat Firefighter Peter Demontreux wore.

He and the man he found trapped in a back room charged through the searing heat in lockstep and made their way to a ladder outside the third-floor window.

Demontreux was burned; the man he rescued suffered second-degree burns over 40% of his body.

The man survived and is expected to recover. Demontreux went back to work at Ladder 132.

For his bravery and boldness, Demontreux is the Daily News Hero of the Month.

"I got away with a scratch compared to him," said the 30-year-old firefighter. "I'm glad he's alive."

Demontreux, with nearly nine years in the FDNY, responded with Ladder 132 to the arson blaze that engulfed 175 Putnam Ave. on Aug. 30.

"I went in the front door and upstairs, and on the third floor, a man said his friend was inside," Demontreux said. "I did a search with my right hand; there was zero visibility; it was getting hotter and hotter and hotter."

He could hear a man screaming, who was later identified as Clyde Matheny, 51.

"He was at the window of the back bedroom. I could hear him," Demontreux said. "I went to the front window where there was an aerial ladder and told Firefighter Richard Myers of Rescue 2 that it was so hot in here, and he started to break the windows.

"I go back in and do a search with my left hand along the wall. The smoke was lifting, and I could see the flames at ceiling level," Demontreux said.

"I went through the kitchen to the back bedroom, and I saw the man with his upper body out the window, trying to breathe. I was looking for the fire escape, a ladder, but there was nothing out there.

"He's at my left side; we go to the front room, and the whole thing turns orange.

"It was like someone turned the lights on."

He could feel his bunker coat catch fire, which FDNY officials said happens rarely.

"I was pulling him. . . . We tripped up once," he recalled. "I had a good lock on his arm. I wanted to get out of there – and he was coming with me.

"We ran across the room in one motion. I could feel the burns, I could feel my face burning – it feels like people are sticking you with needles.

"But he was in worse shape."

They got to the front window, and Demontreux threw Matheny onto the aerial ladder. Firefighters brought Matheny down and rushed him to an ambulance – and they also put water on Demontreux.

"The FDNY safety people said the stitch that holds the sleeve where it meets the vest popped from the heat," said Demontreux, explaining how his coat melted. "They tested my gear, and the coat was up to 1,000 degrees."

Nine people were injured in the fire, which is still under investigation.

Demontreux was treated at the burn center at New York-Presbyterian Hospital Weill Cornell for first-degree burns on his face and second-degree burns behind his left shoulder.

He returned weekly for treatment until early October, when he went back to work at the firehouse.

Matheny is still in the burn center.

"I went to see him and I didn't know what to expect," Demontreux said. "He was unconscious. They had just taken a breathing tube out.

"I took a look. I saw his face; he looked relatively good. I feel bad for him."

Demontreux said he would like to visit Matheny sometime, if he was agreeable.

Born and raised on Staten Island, Demontreux and his wife, Gina, a teacher, are parents of four kids all under the age of 5.

He took all the civil service tests [for the fire department] when he was 17 years old, then got a bachelor's degree in business at the College of Staten Island before joining the FDNY. He spent five years in Engine 248 before coming to Ladder 132.

Demontreux said he went back to the scene of the fire weeks later.

"I can't believe me and this guy fit through the narrow kitchen. . . . Thank God there was a clear shot to the window."

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MAYOR BLOOMBERG'S FIRE DEPARTMENT

FIRE DEPARTMENT CITY OF NEW YORK
Total Incidents 2002 – 2010

Year	Uniform Force	Structural Fire	Struct. Fire Resp. Times	Non Structural Fires	Non Fire Emergencies	Medical Emergencies	Malicious False Alarms	Total Incidents	Serious Fires	Civilian Deaths
2002	10,734	26,248	4:13	25,315	170,867	158,461	45,651	426,542	2,946	97
2003	11,177	27,105	4:20	24,015	178,156	173,694	41,018	443,988	3,202	125
2004	11,314	27,718	4:21	22,437	180,047	189,162	37,332	456,696	3,164	82
2005	11,387	28,455	4:36	22,940	199,643	202,526	32,138	485,702	3,382	102
2006	11,487	27,817	4:29	20,702	198,202	209,397	28,836	484,954	3,243	85
2007	11,550	28,004	4:27	19,388	209,943	207,677	25,755	490,767	3,143	96
2008	11,639	26,862	4:12	17,192	191,926	211,776	25,579	473,335	2,715	86
2009	11,259	26,666	4:02	17,011	194,406	209,563	25,378	473,024	2,485	73
*** 2010	10,951	24,064	4:00	17,121	197,372	200,708	24,470	463,735	2,431	--

Projected 2010 Total Incidents - 500,000 plus

***11 Month Statistics (Jan-Nov 2010)

UNITED STATES OF AMERICA, Plaintiff, -and- THE VULCAN SOCIETY, INC., MARCUS HAYWOOD, CANDIDO NUNEZ, and ROGER GREGG, Plaintiff-Intervenors, -against- THE CITY OF NEW YORK, Defendant.

07-cv-2067 (NGG) (RLM)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

2010 U.S. Dist. LEXIS 111064; 110 Fair Empl. Prac. Cas. (BNA) 1331

October 19, 2010, Decided

PRIOR HISTORY: *United States v. City of New York, 2010 U.S. Dist. LEXIS 95083 (E.D.N.Y., Sept. 13, 2010)*

COUNSEL: [*1] For Mary Jo White, Special Master: Mary Jo White, Debevoise & Plimpton, New York, NY.

For United States of America, Plaintiff: Elliot M. Schachner, Michael J. Goldberger, LEAD ATTORNEYS, David Michael Eskew, Varda Hussain, United States Attorneys Office, Brooklyn, NY; Eric Bachman, LEAD ATTORNEY, Meredith L. Burrell, U.S. Department of Justice, Washington, DC; Sharon Seeley, LEAD ATTORNEY, U.S. Dept of Justice, Civil Rights, Washington, DC; Allan K. Townsend, United States Department of Justice, Washington, DC; Jennifer Swedish, United States Department of Justice, Civil Rights Division, Washington, DC.

For Vulcan Society, Marcus Haywood, Candido Nunez, Roger Gregg, Intervenor Plaintiffs: Richard A. Levy, LEAD ATTORNEY, Allyson L. Belovin, Dana E Lossia, Robert H. Stroup, Levy Ratner P.C., New York, NY; Shayana Devendra Kadidal, LEAD ATTORNEY, Anjana Samant, Darius Charney, Center for Constitutional Rights, New York, NY; Beth A. Kaswan, Scott + Scott, LLP, New York, NY; Judith S Scolnick, Scott and Scott, LLP, New York, NY.

For City of New York, Defendant: Georgia Mary Pestana, LEAD ATTORNEY, Office of the Corporation Counsel, New York, NY; William S.J. Fraenkel, LEAD ATTORNEY, Corporation [*2] Counsel of the City of NY, New York, NY; Edward Lee Sample, II, New York City Law Department, New York, NY; James Lemonedes, NYC Office of Corporation Counsel, New York, NY; Kami Zumbach Barker, Office of Michael A. Cardozo, New York, NY; Vivien V. Ranada, The City of New York Law Department, New York, NY.

For Fire Department of the City of New York, New York City Department of Citywide Administrative Services, Mayor Michael Bloomberg, NYC Fire Comm. Nicholas Scoppetta, in their individual and official capacities, Defendants: William S.J. Fraenkel, LEAD ATTORNEY, Corporation Counsel of the City of NY, New York, NY; Edward Lee Sample, II, New York City Law Department, New York, NY; James Lemonedes, NYC Office of Corporation Counsel, New York, NY; Kami Zumbach Barker, Office of Michael A. Cardozo, New York, NY.

For Uniformed Firefighters Association, Friend of the Court, Amicus: Michael N. Block, Sullivan Papain Block McGrath & Cannavo P.C, New York, NY.

For Uniformed Fire Officers Association Local 854, Amicus: Richard M. Betheil, LEAD ATTORNEY, Pryor Cashman Sherman & Flynn LLP, New York, NY.

JUDGES: NICHOLAS G. GARAUFIS, United States District Judge.

OPINION BY: NICHOLAS G. GARAUFIS

OPINION

DECISION AND INJUNCTION

NICHOLAS G. GARAUFIS, [*3] United States

District Judge.

On June 29, 2010, the City -- asserting that it had an "immediate" need for additional firefighters -- notified the court of its intent to initiate a new firefighter class by the first week of September. (Docket Entry # 456.) On July 16, 2010, the City claimed that if hiring were delayed by "three to six months," it "would impair public safety in the City of New York." (Docket Entry # 491 at 15-16.) At that time, the parties were preparing for a hearing on the validity of Exam 6019, the City's current written examination for entry-level firefighters.

The court asked the parties to suggest hiring methods that the City could use if the court were to find that some aspect of Exam 6019 was inconsistent with Title VII of the Civil Rights Act of 1964. The City proposed random selection from a pool of the highest scorers on Exam 6019, selected "in proportion to the rates at which those ethnicities took the examination." (Docket Entry # 491 at 17.) This approach would have ensured that the City did not use Exam 6019 in a way that disparately impacted black and Hispanic firefighters. The City touted two additional benefits of its proposal: (1) "it would [*4] ensure that only top candidates are selected" and (2) it did not involve a "quota." (Id.)

The City has since repudiated each of these positions. It first represented that its need for firefighters was based on safety, and later that it was based on financial considerations. Now, the City asserts that even the financial benefits of hiring are minor -- and it appears to be contemplating eliminating existing firefighter jobs to save money. The City has also rejected interim hiring procedures that would have allowed it to hire many of the firefighter applicants it has already processed. Some of those applicants have been patiently waiting to join the Fire Department since well before July 2008, the last time that the City hired new firefighters.

Moreover, when presented with an interim hiring option that was nearly identical to the City's own proposal, the City called it a "quota," "bad policy," and -- without any support -- "illegal." The City has not come forward with any other method of hiring that is both acceptable to it and compatible with the law. Now, in the City's own Orwellian phrasing, delaying hiring until a new exam is created "is not an unacceptable alternative." (Docket Entry [*5] # 561 at 5.)

The City's shifting and contradictory positions have needlessly diverted the parties from the critical work of developing a new examination. The City has imposed unnecessary burdens on the other parties, a Special Master who has generously donated her time, and this court. [1] The City gave hope to candidates who took Exam 6019, only to capriciously dash that hope based on contrived and fundamentally irreconcilable positions. With its hyperbolic -- and ultimately baseless -- claims regarding public safety, the City has needlessly jeopardized its own credibility in the areas where it matters most. While the court is dismayed by the City's apparent duplicity and lack of good faith, it is not entirely surprised. This is simply the latest episode in the City's long campaign to avoid responsibility for discrimination in its Fire Department, whatever the cost. Should this conduct continue, the court will be forced to consider whether litigation sanctions are appropriate. [2]

1 Plaintiffs-Intervenors have effectively documented the considerable effort that the parties and the court have invested to accommodate the City's asserted hiring needs. (See Docket Entry # 567.)

2 The court could [*6] impose such sanctions either pursuant to *Federal Rule of Civil Procedure 11* or the court's inherent power. See *Chambers v. NASCO, Inc., 501 U.S. 32, 43-46, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991).*

In this order, the court permanently enjoins the City from hiring firefighters based on the results of Exam 6019, except under one of the interim approaches already endorsed by the court (the "Hiring Options.") (See Docket Entry # 527.) Plaintiff and Plaintiffs-Intervenors (collectively, "Plaintiffs") initially sought such relief (Docket Entry # 558), but now indicate that, because the City "has chosen to defer hiring," it is no longer necessary (Docket Entry # 566 at 1). The court disagrees with Plaintiffs' characterization of the City's position and the need for further injunctive relief. [3] The City itself does not raise any objection to injunctive relief, except insofar as it disagrees with its predicate, the court's conclusions regarding the validity of Exam 6019.

3 The City did oppose Plaintiffs' request for certain "ancillary" reporting and recordkeeping requirements. (See Docket Entry # 561 at 6.) The court addresses this request below. See infra Part III.

I. BACKGROUND

A. Litigation Generally

The court's previous orders [*7] have chronicled the factual and procedural background of this case. (See, e.g., Docket Entry # 505 ("6019 Validity Order"); Docket Entry # 385 ("Disparate Treatment Opinion"); Docket Entry # 294 ("Disparate Impact Opinion").) [4] Accordingly, the court provides only some general context below.

4 These opinions are reported at *681 F. Supp. 2d 274 (E.D.N.Y. 2010)*; *683 F. Supp. 2d 225 (E.D.N.Y. 2010)*; *637 F. Supp 2d 77 (E.D.N.Y. 2009)*. The court refers to the pagination in the original orders issued by the court.

1. The Composition of the Fire Department

The Fire Department's use of discriminatory testing procedures is a decades-old problem. Indeed, this litigation is not even the first time that the City has been brought to federal court to defend its entry-level firefighter examination against charges of racial discrimination. In 1973, Judge Edward Weinfeld in the Southern District of New York held that the City's written and physical examinations for entry-level firefighters violated the *Equal Protection Clause* because of their discriminatory impact on black and Hispanic applicants. See *Vulcan Soc'y of New York City Fire Dep't, Inc. v. Civil Serv. Comm'n, 360 F. Supp. 1265, 1269*, affirmed [*8] in relevant part by *490 F.2d 387 (2d Cir. 1973)*. Judge Weinfeld imposed hiring quotas and ordered the creation of a new test. Unfortunately, the gains of that litigation were limited, in both their magnitude and duration.

According to the most recent census data, black residents make up 25.6% of New York City's population and Hispanic residents make up 27% of New York City's population. [5] When the United States filed this case in 2007, black and Hispanic firefighters comprised just 3.4% and 6.7%, respectively, of all firefighters in New York City. [6] More concretely, in a city of over eight million people, and out of a force of 8,998 firefighters, there were only 303 black firefighters and 605 Hispanic firefighters. These numbers stand in stark contrast to other large cities in this country, where minority firefighters are represented in significantly higher percentages. [7] The Fire Department is also significantly less diverse than the City's other uniformed services. For example in 2001, the proportional representation of blacks was over four times greater in the Police Department, over six times greater in the Sanitation Department, and over sixteen times greater in the Department [*9] of Correctional Services. (See Disparate Treatment Opinion at 18.)

5 See U.S. Census Bureau, State & County QuickFacts ("Census Data"), available at http://quickfacts.census.gov/qfd/index.html

6 See Declaration of Sharon Seeley dated January 21, 2009 (Docket Entry # 253) app. C.

7 See Declaration of Richard A. Levy dated February 2, 2009 (Docket Entry # 264) Ex. D; Census Data; Disparate Impact Opinion at 16-17.

2. The Court's Findings

Plaintiffs seek to enforce the right of black and Hispanic candidates to be treated fairly in Fire Department hiring. They challenged the City's use of two written examinations, Exam 7029 and Exam 2043, which the City used between 1999 and 2008 to screen and select applicants for entry-level firefighter positions.

In July 2009, this court held that the City's use of Exams 7029 and 2043 constituted disparate-impact discrimination in violation of Title VII of the Civil Rights Act of 1964. The court found that the City had improperly constructed its entry-level exams and that the exams did not screen for either the abilities that they purported to test, or for abilities that were important to the job of firefighter. (Disparate Impact Opinion at 35-89.) Moreover, [*10] the City failed to show that an applicant's success on the exams corresponded to future job performance. (Id. at 89-91.)

In January 2010, this court held that the City's hiring practices constituted intentional discrimination in violation of Title VII and the *Fourteenth Amendment*. At the time, the court noted the compelling evidence that intentional discrimination was the City's "standard operating procedure." (Disparate Treatment Opinion at 25 (quoting *Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 366, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977)).*) The court also noted that, although Judge Weinfeld's 1973 ruling "informed the City that what it was doing with respect to firefighter hiring was not merely bad policy or a disfavored business practice," but "illegal conduct," (id. at 52-53) the City's top officials "exhibited an attitude of deliberate indifference to the discriminatory effects of the hiring policies that they were charged with overseeing" (id. at 57).

On January 21, 2010, the court issued a preliminary relief order that directed the parties to take certain actions to begin remedying the City's violations. The court established a framework to provide compensation to identified, past victims of discrimination, [*11] and to ensure compliance with Title VII going forward. It also ordered the parties to develop a new test and notified the parties that it would, as soon as possible, hold a hearing to consider the validity of Exam 6019, and to "decide whether and how the City may use that examination on an interim basis." (Initial Remedial Order at 3.) The court noted that there was evidence that Exam 6019 might be just as flawed as its predecessors (id. at 33-35) and warned the parties that, if this turned out to be the case, the court would need to devise interim hiring procedures that did not rely on the results of Exam 6019 (id. at 43.).

3. Exam 6019

Under the able supervision of Magistrate Judge

Roanne Mann and Special Master Mary Jo White, the parties engaged in discovery in preparation for the Exam 6019 validity hearing. Although the court will not address that process in detail, it notes that certain events called the City's diligence and good faith into question. For example, on April 26, 2010, a mere four days before the United States' expert report on Exam 6019 was due, the City produced several thousand documents related to the creation of Exam 6019, including documents created by the City's [*12] relief-phase expert, Dr. Catherine Cline. (See Docket Entry ## 425, 426.)

Those documents would likely have been useful to Plaintiffs in deposing Dr. Cline. Moreover, the City's failure to produce them was contrary both to a March 2008 discovery order (Docket Entry # 82) and to the City's unequivocal representations to Judge Mann on March 20 that it had produced all such documents. (Docket Entry # 96 at 2.) According to the City, the documents had been sitting in boxes in the office of a former Department of Citywide Administrative Services lawyer for over a year and a half. (Transcript of Sanctions Hearing at 23.) Moreover, on May 3, 2010, at a hearing regarding those documents, the City alerted the court that it had additional documents related to the creation of Exam 6019 that it had failed to disclose. (Id.)

Shortly thereafter, on June 29, 2010, the City informed the court that it intended to initiate a class of 300 firefighters in either the last week of August 2010 or the first week of September 2010. (Docket Entry # 456.) The City promised the court that, the following day, it would "address the City's immediate hiring needs and how to best and most expeditiously present this [*13] matter to the court for further proceedings." (Id. (emphasis added).) Based on the City's asserted need to hire new firefighters, the court accelerated the schedule for addressing the validity of Exam 6019.

On June 30, 2010, Special Master Mary Jo White instructed the parties to file pre-hearing briefs that set forth, inter alia, "the remedy or remedies sought in the event [Exam 6019] is found to be invalid" for further hiring purposes. (Docket Entry # 457.) The City filed its brief on July 16, 2010. (Docket Entry # 491.) It claimed that its "need to immediately hire approximately 300 new firefighters constitutes [a] compelling necessity." (Id. at 16.) The City stated that 225 firefighter candidates had been fully processed, and that another 92 candidates were in the "latter stages of processing." (Id. at 15) The City asserted that any court order compelling it to hire applicants who had not yet entered processing would delay the initiation of the class by three to six months (id.) and "would impair public safety in the City of New York" (id. at 16).

The City suggested two possible interim hiring approaches that could be used if the court found Exam 6019 to be invalid. (Id. at 17-18.) [*14] The first option -- which the City characterized as an "applicant flow" procedure -- involved the creation of a pool of top-ranking candidates "in proportion to the rates at which those ethnicities took the examination." (Id. at 17.) The City proposed that random selections be made from this pool. (Id.) According to the City, this proposal had two main advantages: (1) "it would ensure that only the top candidates are selected for Firefighter" and (2) "it would also ensure that the selection of minorities would be based on the rate at which the minority group took the exam and not on any set quota." (Id. (emphasis added).)

Plaintiffs presciently cautioned the court not to "uncritically accept the City's assertion that any delay, however brief, in hiring the class the City proposes to begin on August 30 would result in a risk to public safety." (Docket Entry # 499 at 1.) They pointed out that delaying hiring could simply mean that the City's approximately 9,000 existing firefighters would need to perform an extra hour or two of overtime a week. (Id.)

On July 20 and 21, 2010, the court held a hearing regarding the validity of Exam 6019. On August 4, 2010, the court found that the City's use [*15] of Exam 6019 disparately impacted black and Hispanic applicants for the position of entry-level firefighter and failed to test for relevant job skills, in violation of Title VII. As the court explained, "[i]n the words of the Second Circuit Court of Appeals, the examination 'satisfies a felt need for objectivity, but it does not necessarily select better job performers.'" (6019 Validity Order at 2 (quoting *Guardians Ass'n of New York City Police Dep't, Inc. v. Civil Service Comm'n, 630 F.2d 79, 100 (2d Cir. 1980)* .) Indeed, the City "ignored comments from firefighters and fire lieutenants who reviewed the examination before it was administered and overwhelmingly agreed that large portions of the exam should not be used." (Id.) The court enjoined the City from taking any steps to initiate an academy class using the Exam 6019 eligibility list until October 1, 2010. (Id. at 37.)

At a status conference on August 11, 2010, the court suggested, and the parties agreed, that it would be worthwhile for the parties to meet with Special Master Mary Jo White to discuss whether they could agree on a lawful interim hiring proposal. The court also explained that "[u]nless the City is willing to pursue [*16] an interim hiring solution that does not rely on the 6019 eligibility list, it must demonstrate that the City's need for a new firefighter class is so compelling that this Court should overlook a Title VII violation in order to meet that need." (Transcript of August 11, 2010 Conference at 6-7.) The Special Master held intensive discussions with the parties over the course of six days to

explore interim hiring options. [8] (See Docket Entry # 521 at 1-2.)

> 8 The court again thanks the Special Master for her tireless efforts in this regard.

Additionally, in order to ensure that this litigation did not interfere with any genuinely urgent hiring needs, the court held a hearing on August 19, 2010. The court heard testimony from Stephen Rush, the FDNY's Assistant Commissioner for Finance and Budget; Donay Queenan, the FDNY's Assistant Commissioner for Human Resources; and Chief Robert Sweeney, the FDNY's Chief of Operations. The hearing testimony demonstrated that the City's reasons for seeking to hire a class were largely financial. (See 6019 Validity Order at 14-16.) Despite the City's previous representations, there was no evidence that a delay in hiring of several months would have any impact [*17] on public safety. [9] (Id. at 16.)

> 9 Indeed, the City now asserts that "[t]he evidence presented at that hearing to assess the hiring needs of the City confirmed that the hiring needs are primarily financial." (Docket Entry # 561 at 5.)

On September 4, 2010, the Special Master filed a report detailing seven proposals that the parties had discussed, as well as the parties' positions regarding the legality and desirability of each proposal. (Docket Entry ## 521, 522.) On September 13, 2010, this court issued an order addressing those proposals. The court rejected certain of the proposals discussed by the parties. For example, the court found that selection from the entire Exam 6019 applicant pool was inappropriate because the lowest scorers likely either "abandoned the exam midway or [were] functionally illiterate, and either way [were] not fit to be a firefighter." (Id. at 10.) The court also rejected a procedure that would "re-score" Exam 6019 by eliminating certain questions based only on the relative performance of racial groups. (Id. at 21.)

Ultimately, the court offered the City five Hiring Options that balanced "the court's duty to eradicate illegal discrimination with the need to safeguard [*18] New York's citizens and firefighters." (Id. at 1-2.) The court first noted that all of "[t]he acceptable proposals are necessarily imperfect, since each relies in some way on the results of an invalid examination." (Id. at 9.) The court nonetheless discussed, at length, the advantages of "Proposal # 2" -- which was essentially the same hiring procedure that the City proposed in July. (See id. at 10-20.) The court also explained the basis for its conclusion that "race-conscious" interim hiring measures were lawful in this case. (Id. at 13-14.) It noted that certain of the other Hiring Options "strongly resemble racial hiring quotas" -- which it characterized as a "blunt tool for accomplishing a delicate task" (id. at 25) -- but opted to give the City flexibility to choose the Hiring Option that best fit its financial and operational interests. The court asked the City to inform the court of its chosen course of action by September 17, 2010.

4. The City's Decision

On September 17, 2010 -- after more than ten weeks of asserting that it urgently needed additional firefighters -- the City notified the court that it "decline[d]" to select any of the five Hiring Options. (Docket Entry # 532 at 1.) [*19] It asserted that each option involved "some form of race-based quota" and that each was contrary to the public policy interests of the City and to the law. [10] (Id.) The City's letter was signed by Michael A. Cardozo, the City's Corporation Counsel. So far as the court is aware, this is the only submission that Mr. Cardozo has personally signed.

> 10 Mr. Cardozo did not cite any authority in support of the City's surprising claims regarding the illegality of the proposed hiring methods.

By order dated September 21, 2010, the court explained that, "[b]ecause the City is unwilling to adopt any of the proposals identified by the court and has not come forward with any other lawful and equitable way to hire using Exam 6019, the court must now consider whether it is appropriate to permanently enjoin the City from using Exam 6019 to select entry-level firefighters." (Docket Entry # 554 at 3.) The court noted that the City's position was difficult to reconcile with its previous claims about the urgency of its hiring needs. (Id. at 2-3.) The court extended the temporary injunction imposed in the 6019 Validity Order to October 31, 2010 to permit the parties to submit briefing regarding the need for [*20] permanent injunctive relief. (Id. at 3.)

The basis for, and scope of, appropriate injunctive relief is discussed in Part II below. Here, the court addresses several claims that the City made in an October 8, 2010 letter. (Docket Entry # 561.) Although that letter is styled as a "response" to Plaintiffs' application for permanent injunctive relief, it fails to address the merits of that application, except insofar as it opposes Plaintiffs' request that ancillary reporting and recordkeeping requirements accompany future hiring. The City's letter nonetheless exposes several of the contradictory and unsupported claims that the City has made in recent weeks.

First, the City's letter correctly highlights the court's reluctance to impose quotas in this litigation. [11] (Id. at 1-2.) It then asserts that all of the Hiring

Options "involve quotas" and therefore represent "bad public policy." (Id. at 3.) Perhaps in response to the court's admonition that assertions about the law be accompanied by citation to legal authority, the City provides a laundry-list of cases involving quotas and other "race conscious" remedies. (Id. at 4.) But not one of these cases offers any support for the City's assertion [*21] that the Hiring Options are "illegal." Even the City no longer appears to press that claim, asserting instead that the cases it cites establish that quotas are "disfavored and can only be used when no other method is available." (Id.) Indeed ? in words capturing the very premise of the court's efforts to offer it interim hiring options -- the City states: "The use of quotas pending the development of a new, nondiscriminatory hiring procedure can be justified when it is 'a compromise between two unacceptable alternatives: an outright ban on hiring or promotions or continued use of a discriminatory hiring procedure.'" (Id. at 5 (quoting *Local 28 of Sheet Metal Workers Int'l Ass'n v. EEOC, 478 U.S. 421, 450-51, 106 S. Ct. 3019, 92 L. Ed. 2d 344 (1986).*) In sum, the City has again changed its position and now implicitly accepts that the court has the authority to order quotas in appropriate circumstances.

> 11 The court expressed its misgivings about quotas in its September 13, 2010 order, but also stated "[i]f the City truly believes that public safety and the municipal fisc require the immediate appointment of a firefighter class, then the court will set aside its reservations." (Docket Entry # 526 at 26.)

Moreover, as the [*22] court has already pointed out, one of the Hiring Options -- "Proposal 2" -- is essentially identical to the City's own July 16, 2010 proposal. And the City previously stated that proposal was not a quota. Finally, the City -- despite ample opportunity to do so -- has not subsequently suggested any other interim hiring method that it believes would comply with Title VII. Instead of proposing actual solutions, the City apparently prefers to forego hiring from Exam 6019 altogether.

Tellingly, for the first time, the City now concedes that its hiring needs "are financially driven as opposed to a safety issue." (Id. at 5.) It further asserts that pursuing any of the Hiring Options "at this point" -- i.e., late in the fiscal year -- would "fail to make much, if any, impact on the City's financial situation." (Id.) This claim is peculiar because the City has always represented that hiring new firefighters resulted in short-term costs and long-term savings. (See Docket Entry # 527 at 18.) It is unclear why those long-term savings have dissipated in a matter of weeks. In any event, to the extent that the City's claim is accurate, it is a situation entirely of the City's making. In a desire to preserve [*23] short-term savings, the City has not hired firefighters since July 2008. It has also been on notice of possible problems with Exam 6019 since -- - at the very latest -- January 2010 and has in no way adjusted its processing of applicants.

II. LEGAL BASIS FOR INJUNCTIVE RELIEF

At the moment, the City is temporarily enjoined from using Exam 6019 to initiate a fire academy class. As set forth below, the court now concludes that it is appropriate to permanently enjoin the City from using Exam 6019 to hire firefighters until such time as the City selects one of the Hiring Options approved by the court. Plaintiffs initially sought such an injunction, as well as ancillary reporting and recordkeeping requirements. (Docket Entry # 558.)

Then, after receiving the City's response, Plaintiffs asserted that the court should "defer" consideration of an injunction because the City had decided not to hire. (Docket Entry # 566 at 1.) The court does not agree with Plaintiffs' interpretation of the City's position. The City has been clear that it disagrees with the court's conclusions regarding Exam 6019. The City's recent decision to forego hiring is best understood in the context of its objections -- however [*24] meritless -- to the Hiring Options, and the City's newfound inability to support any solution that is consistent with the court's conclusions regarding Exam 6019. Without any injunction in place, there would be nothing to prevent the City from hiring in any manner it saw fit, even if it was fundamentally inconsistent with the court's conclusions regarding Exam 6019's invalidity. [12] There is no reason to believe that the City would not pursue such a course.

> 12 Moreover, Plaintiffs' request that the Court "direct the City to inform [it], no later than ninety (90) days prior to the planned beginning date of a firefighter academy class, if the City decides that it wishes to hire firefighters" (Docket Entry # 566 at 1) is, in substance, equivalent to a request for injunctive relief. The practical effect of such an order would be continued control by the court over the City's hiring, with "serious consequences" for the City. See *Commodity Futures Trading Comm'n v. Walsh, Nos. 09-3742-cv, 09-3787-cv, 618 F.3d 218, 2010 U.S. App. LEXIS 16909, 2010 WL 3191456, at *4 (2d Cir. Aug. 13, 2010).*

Nonetheless, in the current posture of the case, the City's latest position -- i.e., that it does not wish to hire in a manner that is consistent with [*25] the court's conclusions regarding Exam 6019 -- is quite helpful. It is compelling evidence that enjoining the City from

hiring off that test, except according to one of the Hiring Options, would not unduly burden the City and -- in the City's own characterization -- is a "fair, sensible, prudent interim resolution" at this juncture. (Docket Entry # 561 at 5.)

A. Title VII

Congress enacted Title VII of the Civil Rights Act of 1964 "to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens." *McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)*. In order to meet this sweeping mandate, "Congress deliberately gave the district courts broad authority under Title VII to fashion the most complete relief possible." *Local 28 of Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421, 465, 106 S. Ct. 3019, 92 L. Ed. 2d 344 (1986)*. Consequently, Title VII directly authorizes district courts to choose from a wide spectrum of remedies for illegal discrimination, ranging from compensatory relief such as back pay to "affirmative relief such as the imposition of hiring quotas. See *42 U.S.C. § 2000e-5(g)*; [*26] *Local 28 of Sheet Metal Workers' Int'l Ass'n, 478 U.S. at 464-65*; *Berkman v. City of New York, 705 F.2d 584, 595-96 (2d Cir. 1983)*.

Once liability for racial discrimination has been established, a district court "has not merely the power but the duty" to "bar like discrimination in the future." *Albemarle Paper Co. v. Moody, 422 U.S. 405, 418, 95 S. Ct. 2362, 45 L. Ed. 2d 280 (1975)* (quoting *Louisiana v. United States, 380 U.S. 145, 154, 85 S. Ct. 817, 13 L. Ed. 2d 709 (1965))*. This so-called "compliance relief" is designed to assure future compliance with Title VII. *Berkman, 705 F.2d at 595*. In the context of discriminatory testing regimes, such relief involves "restricting the use of an invalid exam, specifying procedures and standards for a new valid selection procedure, and authorizing interim hiring that does not have a disparate racial impact." *Guardians, 630 F.2d at 108*. According to the Second Circuit, where a court determines that the use of a written examination violates Title VII, it is "obviously appropriate to bar its continued use, except on an interim basis with adjustments that eliminate its disparate racial impact and thereby avoid its unlawful effect." *Id. at 91*.

This court has already concluded that the City engaged in a pattern or [*27] practice of discrimination with respect to Exam 7029 and Exam 2043. It has also found that the City's prior use of Exam 6019 is inconsistent with Title VII. Accordingly, injunctive relief preventing the City from continuing to use Exam 6019 in a discriminatory way is justified under Title VII. The City has not cited any case law to the contrary.

B. General Equitable Principles

The equitable powers that courts use to remedy Title VII violations flow from Congress's grant of authority in *§ 2000e-5(g)*, rather than from the general equitable authority that all district courts possess. See *Albemarle Paper Co., 422 U.S. at 418*. See, e.g., *id. at 422* (finding of unlawful discrimination triggers backpay award); *Rios v. Enterprise Assoc. Steamfitters Local 638, 501 F.2d 622, 629 (2d Cir. 1974)* ("Once a violation of Title VII is established, the district court possesses broad power as a court of equity to remedy the vestiges of past discriminatory practices."); *Guardians, 630 F.2d at 109* ("Once an exam has been adjudicated to be in violation of Title VII, it is a reasonable remedy to require that any subsequent exam or other selection device receive court approval prior to use."); *Berkman, 705 F.2d at 595* [*28] (compliance relief, including interim hiring orders, are "appropriate whenever a Title VII violation has been found"); *EEOC v. Ilona of Hungary, Inc., 108 F.3d 1569, 1578 (7th Cir. 1997)* ("Once employment discrimination has been shown . . . district judges have broad discretion to issue injunctions addressed to the proven conduct."). Nonetheless, as it has previously indicated (see Docket Entry # 527 at 8), the court believes it is also prudent and appropriate to consider traditional equitable principles in fashioning permanent injunctive relief.

As a matter of general equity law, a court may only grant permanent injunctive relief if four factors are satisfied. The court must find: "(1) that [the plaintiff] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006)*. [13] Here, these factors strongly support permanent injunctive relief preventing [*29] the City from using Exam 6019 in a way that disparately impacts black and Hispanic firefighters.

> 13 As the eBay Court implicitly recognized, however, Congress may abrogate or reduce these requirements when authorizing equitable remedies for statutory violations.

First, with respect to "irreparable injury," courts have repeatedly held that Title VII serves the twin purposes of "making whole" victims of discrimination and ensuring that unlawful employment practices do

not occur in the future. See *Teamsters, 431 U.S. at 364*; *Franks, 424 U.S. at 764*; *Albemarle Paper Co., 422 US. at 417-18*. When the United States brings suit under Title VII, it acts not only to obtain relief for individual victims, but also to vindicate the public interest in preventing employment discrimination. See, e.g., *EEOC v. Waffle House, Inc., 534 U.S. 279, 296, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002)*. That public interest is particularly strong here, given the prominence of the Fire Department and the esteem in which it is rightfully held. This court has already identified the "uniquely disabling" effects of the City's past discriminatory conduct. Allowing further discrimination would irreparably compound those injuries.

Second, the threatened injuries [*30] cannot be adequately remedied by an award of monetary damages. Monetary damages would benefit individual victims -- blacks and Hispanics who would have been hired as firefighters but for the discriminatory impact of Exam 6019 -- but would not vindicate the public interest in ensuring that those who wish to serve in the Fire Department have an equal opportunity to do so regardless of race. Nor would damages eradicate the harm to the public that would be caused by further aggravating the underrepresentation of black and Hispanic firefighters.

Third, the balance of hardships between Plaintiffs and the City favors injunctive relief. The court, Plaintiffs, and the Special Master have all endeavored to minimize the hardship that any injunction would impose on the City. Although the City is clearly unhappy with the Hiring Options, it has not come forward with any other hiring method that is consistent with Title VII. The City has also had ample opportunity to demonstrate that an injunction would cause it to suffer financial hardship or would place public safety at risk. It has not done so. Indeed, earlier this year, the Mayor proposed closing 20 firehouses and reducing staffing on 60 engine [*31] companies to save money. (See Docket Entry # 517 at 15.) As recently as October 14, 2010, a newspaper article reported that the Fire Department "is on the verge of permanently slashing manpower at dozens of the city's busiest fire companies." [14] The City itself no longer argues that hiring would produce any significant safety or financial gains.

> 14 See Jonathan Lemire, "Firefighters see red on schedule, staffing changes," New York Daily News, Oct. 14, 2010, at 20.

Moreover, if the City continued to hire from Exam 6019 in the same manner as it has in the past, there would almost certainly be another Title VII lawsuit based on Exam 6019, followed by another costly compensatory remedy. From the perspective of the City and its taxpayers, the long-term benefit of an injunctive remedy that eradicates Exam 6019's discriminatory effects outweighs the costs. The Hiring Options approved by the court would also permit hiring in the near future, should the City's needs change. Finally, to the extent that the City continues to believe that Exam 6019 tests relevant attributes for the position of firefighter, the Hiring Options would also allow the City to select from among top-ranked candidates on [*32] that exam. [15]

> 15 It is worth noting, however, that performance on the written examination was never the primary basis for determining who the City ultimately hired. "Bonus points" based on residency, legacy, and veteran's status often bump candidates well ahead of others with significantly higher test scores. See Docket Entry # 567 at 2.

Fourth, and finally, because both the United States and the City are governmental entities, the analysis of the balance of hardships greatly overlaps with the question of whether an injunction would serve the public interest. The Hiring Options approved by the court minimize hardship to the City as much as is possible without authorizing a wholesale violation of Title VII.

III. ANCILLARY RELIEF

Plaintiffs also ask the court to impose reporting and recordkeeping requirements to ensure that black and Hispanic candidates are not subject to "harsher treatment in the implementation of one of the permitted hiring methods." (Docket Entry # 558 at 6.) Plaintiffs-Intervenors seek the imposition of additional procedural protections. (See Docket Entry # 559.)

The City has made it clear that it does not currently intend to hire firefighters under any of the Hiring Options. [*33] In this order, the court permanently enjoins the City from hiring from Exam 6019 in any other manner. Accordingly, there is no need to address Plaintiffs' requests for ancillary relief at this time. If, and when, the City notifies the court that it intends to initiate a fire academy class -- whether under one of Hiring Options or with a new test -- the court will evaluate the need for such measures.

IV. CONCLUSION

For the reasons set forth above, as well as the findings of fact and conclusions of law in its previous opinions, the court finds that it is appropriate to permanently enjoin the City from hiring using the Exam 6019 applicant list, except in accordance with the Hiring Options identified in the court's September

13, 2010 order. Should the City decide that it wishes to hire under one of those options, it should notify the court sufficiently far in advance of the time it intends to commence processing applicants, but no less than 90 days beforehand, so that the court can consider whether additional reporting or recordkeeping requirements are appropriate.

Additionally, the court is compelled to take action to promote coherence in the City's future positions. To that end, Michael A. [*34] Cardozo, the City's Corporation Counsel, shall personally sign all further submissions by the City in this matter. Any submissions that do not comply with this requirement will be struck. Moreover, the City is advised that while it should not strive for consistency at the expense of reality, it must acknowledge when it changes position and endeavor to explain why it has done so.

SO ORDERED.

Dated: Brooklyn, New York

October 19, 2010

/s/ Nicholas G. Garaufis

NICHOLAS G. GARAUFIS

United States District Judge

2,4,5,6,7

2 of 10 DOCUMENTS

UNITED STATES OF AMERICA, Plaintiff, -and- THE VULCAN SOCIETY, INC., MARCUS HAYWOOD, CANDIDO NUÑEZ, and ROGER GREGG, Plaintiff-Intervenors, -against- THE CITY OF NEW YORK, Defendant.

07-cv-2067 (NGG) (RLM)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

2010 U.S. Dist. LEXIS 95083

September 13, 2010, Decided
September 13, 2010, Filed

SUBSEQUENT HISTORY: Injunction granted at *United States v. City of New York, 2010 U.S. Dist. LEXIS 111064 (E.D.N.Y., Oct. 19, 2010)*

PRIOR HISTORY: *United States v. City of New York, 2010 U.S. Dist. LEXIS 92877 (E.D.N.Y., Sept. 7, 2010)*

COUNSEL: [*1] For Mary Jo White, Special Master: Mary Jo White, Debevoise & Plimpton, New York, NY.

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JUDGES: NICHOLAS G. GARAUFIS, United States District Judge.

OPINION BY: NICHOLAS G. GARAUFIS

OPINION

MEMORANDUM AND ORDER

NICHOLAS G. GARAUFIS, United States District Judge.

On August 4, 2010, this court found that New York City's use of its current written examination, Exam 6019, has discriminatory effects on minority applicants for the position of entry-level firefighter and fails to test for relevant job skills, in violation of Title VII of the Civil Rights Act of 1964. As a result, the court temporarily enjoined the City from using Exam 6019 to appoint entry-level firefighters and directed the parties to begin devising an appropriate, non-discriminatory interim hiring procedure.

Under the supervision of Special Master Mary Jo White, the parties held multiple meetings to discuss possible hiring measures. Special Master White has submitted a detailed report outlining seven hiring procedures that the parties have proposed. Based on its review of these proposals, the court finds that four of these procedures, as well as one that the court has crafted itself, are lawful, equitable compliance measures that adequately balance the court's duty to eradicate illegal discrimination with [*4] the need to safeguard New York's citizens and firefighters. Three of these proposals would require the City to process additional candidates before appointing its next class. (See Proposals 2, 4, and 5 below.) Two would permit the City to appoint a class immediately (Proposals 6 and 7), and one those two proposals would permit the City to immediately appoint all of the candidates that it has processed and found qualified, provided it offsets the disparate impact in a subsequent class (Proposal 7). Because each of these five proposals is a lawful remedy, and because the City is in the best position to weigh its financial and operational interests, as well as the interests of the applicants who took Exam 6019, the court will allow the City to choose which of the five hiring procedures the court will order.

I. BACKGROUND

A. Factual and Procedural History

The court assumes familiarity with the factual and procedural background of this case, as set forth in its August 4, 2010 Memorandum and Order (Docket Entry # 505 ("6019 Validity Order").) The court offers only a brief summary below.

Between 1999 and 2008, the City used two competitive examination processes, Exam 7029 and Exam 2043, to screen [*5] and select applicants for entry-level firefighter positions. In July 2009, this court held that the City's use of Exams 7029 and 2043 as pass/fail and rank-ordering devices constituted disparate-impact discrimination in violation of Title VII of the Civil Rights Act of 1964. See *United States v. City of New York, 637 F. Supp. 2d 77 (E.D.N.Y. 2009)*. In January 2010, this court held that the City's actions constituted intentional discrimination in violation of Title VII and the *Fourteenth Amendment. United States v. City of New York, 683 F. Supp. 2d 225 (E.D.N.Y. 2010)*.

The disparate-impact and intentional discrimination decisions obligated this court to consider, as an exercise of its remedial jurisdiction, whether the City could continue to use its current entry-level firefighter examination, Exam 6019. See *United States v. City of New York, 681 F. Supp. 2d 274, 295 (E.D.N.Y. 2010)* ("Initial Remedial Order"); see generally *Albemarle Paper Co. v. Moody, 422 U.S. 405, 418, 95 S. Ct. 2362, 45 L. Ed. 2d 280 (1975)*; *Guardians Assoc. of New York City Police Dept., Inc. v. Civil Service Comm'n, 630 F.2d 79, 108, 109 (2d Cir. 1980)* ("Guardians"). On June 29, 2010, the City informed the court that it intended to use the Exam [*6] 6019 eligibility list to hire a new class of approximately 300 firefighters in late August or early September 2010. (Docket Entry # 456.) Accordingly, on July 20 and 21, 2010, the court held a hearing (the "Validity Hearing") at which it took evidence and heard testimony regarding the validity of Exam 6019. On August 4, 2010, the court found that the City's use of Exam 6019 as a rank-order and pass/fail device with a cutoff score of 70 was inconsistent with Title VII because it had a disparate impact on black and Latino applicants and was not job-related. (See 6019 Validity Order.) Based on this finding, the court temporarily enjoined the City from taking any further steps to initiate or finalize a fire academy class using the Exam 6019 eligibility list until October 1, 2010. (Id. 37.)

To assist the court in reaching a permanent equitable solution to the question of interim hiring, the court held a hearing on August 19, 2010 (the "Hiring Hearing"), at which it received testimony and evidence regarding the City's need for a new firefighter class and the means by which a new class could be hired. The court heard testimony from Stephen Rush, the FDNY's Assistant Commissioner for Finance [*7] and Budget; Donay Queenan, the FDNY's Assistant Commissioner for Human Resources; and Chief Robert Sweeney, the FDNY's Chief of Operations.

Additionally, at a status conference on August 11, 2010, the court suggested, and the parties agreed, that it would be beneficial for the parties to meet with Special

Master Mary Jo White to discuss whether (or to what extent) they could agree on an interim hiring proposal. Accordingly, the Special Master held intensive discussions with the parties over the course of six days to explore lawful hiring options. [1] (See Special Master's Report on Potential Interim Hiring Procedures (Docket Entry # 521) ("Hiring Report") 1-2.) On September 4, 2010, the Special Master filed a Hiring Report describing seven proposals that the parties had discussed, as well as the parties' positions regarding the legality and desirability of each proposal. [2] (Id.) The parties each filed a response to the Hiring Report on September 9, 2010. (See Docket Entry ## 524-26.

1 The court thanks the Special Master for her tireless efforts in this regard.

2 In authorizing the Special Master to facilitate discussion among the parties, the court specified that the Special Master would [*8] not have the authority to bind the parties to a particular hiring proposal or to decide any disputed questions of law or fact relating to interim hiring, and that any agreement reached among the parties would ultimately have to be ratified by the court. (See Docket Entry # 511.) The court did not authorize the Special Master to recommend or approve any particular proposal or course of remedial action. Accordingly, the Hiring Report is restricted to describing and explaining the parties' proposals and positions.

B. Exam 6019 and the City's Current Hiring Procedure

Approximately 21,983 candidates took Exam 6019, and 21,235 candidates passed by scoring at least 70. (6019 Validity Order 4.) Candidates who failed the exam were excluded from further consideration for the job. The City calculated each passing candidate's "Adjusted Final Average" by adding any applicable residency, veteran, and legacy bonus points to the candidate's exam score. [3] (Pl. Proposed Findings of Fact (Docket Entry # 483) ("Pl. PFF") ¶ 15.) The City then assigned each candidate a list number (or rank) based on the candidate's Adjusted Final Average, with the lowest list numbers (i.e., the highest ranks) assigned to [*9] the candidates with the highest Adjusted Final Averages. Candidates with the same Adjusted Final Average were ranked based upon their Social Security numbers. (Id. ¶ 17.)

3 In contrast to the scoring process for Exams 7029 and 2043, the City did not consider any measure of candidates' physical abilities when calculating the Adjusted Final Average on Exam 6019. (Pl. PFF ¶ 18.)

Candidates' exam scores and resulting list ranking determine the order in which they are processed for hiring. Candidates are invited to take the Candidate Physical Ability Test ("CPAT") based on their rank on the Exam 6019 eligibility list. (Id. ¶ 21.) To be appointed, candidates passing the CPAT also have to appear on a certification list, meet all requirements for appointment set forth in the Exam 6019 notice of examination, and pass a medical and psychological examination. (Id.) Because the City hires firefighters in classes -- typically between 150 and 300 hires at a time -- it processes candidates off of the eligibility list in large groups, as many as 1,000 at a time. (6019 Validity Hearing Tr. ("VH Tr.") 227-30.) Because candidates can be eliminated for many reasons, the City typically needs to process between [*10] four and five times as many candidates as it plans to appoint. (Id. 228; Hiring Report 7.) The candidates who are found to be qualified are hired in rank-order off of the eligibility list, meaning that a candidate who has completed all steps in the selection process may still not be hired if the City fills its academy class before the candidate's list number is reached. (Pl. PFF ¶ 26.)

After establishing the Exam 6019 eligibility list in June 2008, the City hired one academy class from it in July 2008. According to the Special Master's Hiring Report, the City now wishes to hire two classes of approximately 312 candidates each, one as soon as possible and one in January 2011. (Hiring Report 2 n.1.) As of August 4, 2010, the City had processed approximately 2,000 candidates from the 6019 eligibility list, including the candidates that it processed to select the July 2008 class. (Id. 2.) The City has identified approximately 316 candidates who are currently qualified for immediate appointment to the next academy class, provided they pass the CPAT (hereinafter, the "Qualified Candidates"). The Qualified Candidates have not received notice of their current status and have not yet been called [*11] in to take the CPAT. (Id. 3.)

II. THE COURT'S EQUITABLE POWERS

As described in more detail below, the City has not agreed to depart from its plan to hire a new class of firefighters in the ordinary manner. Therefore, any remedial hiring procedure that the court orders -- including giving the City a choice of options -- will take the form of an injunction, and must meet the appropriate standard for equitable Title VII remedies.

As a matter of general equity law, the court may only grant permanent injunctive relief if four factors are present. The court must find: "(1) that [the plaintiff] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a

remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006)*. As the eBay Court implicitly recognized, however, Congress may abrogate or reduce these requirements when authorizing equitable remedies for statutory violations. See id.

Congress enacted Title VII "to assure [*12] equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens." *McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)*. In order to meet this sweeping mandate, "Congress deliberately gave the district courts broad authority under Title VII to fashion the most complete relief possible." *Local 28 of Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421, 465, 106 S. Ct. 3019, 92 L. Ed. 2d 344 (1986)*. Title VII directly authorizes district courts to choose from a wide spectrum of remedies for illegal discrimination, ranging from compensatory relief such as back pay to "affirmative relief" such as the imposition of hiring quotas. See *42 U.S.C. § 2000e-5(g)*; *Local 28 of Sheet Metal Workers' Int'l Ass'n, 478 U.S. at 464-65*; *Berkman v. City of New York, 705 F.2d 584, 595-96 (2d Cir. 1983)*. In particular, once liability for racial discrimination has been established, the district court "has not merely the power but the duty" to "bar like discrimination in the future." *Albemarle Paper Co. v. Moody, 422 U.S. 405, 418, 95 S. Ct. 2362, 45 L. Ed. 2d 280 (1975)* (quoting *Louisiana v. United States, 380 U.S. 145, 154, 85 S. Ct. 817, 13 L. Ed. 2d 709 (1965))*. This [*13] so-called "compliance relief" is designed to assure future compliance with Title VII. *Berkman, 705 F.2d at 595*. In the context of discriminatory testing regimes, such relief involves "restricting the use of an invalid exam, specifying procedures and standards for a new valid selection procedure, and authorizing interim hiring that does not have a disparate racial impact." *Guardians, 630 F.2d at 108*.

As the above Supreme Court and Second Circuit decisions make clear, the equitable powers that courts use to remedy Title VII violations flow from Congress's grant of authority in *§ 2000e-5(g)* rather than from the general equitable authority that all district courts possess. See *Albemarle Paper Co., 422 U.S. at 418*. Consistent with the statutory language and congressional intent, those powers are activated as soon as a Title VII violation is established, rather than upon a further showing of injury or a weighing of hardships and the public interest. See, e.g., *id. at 422* (finding of unlawful discrimination triggers backpay award); *Rios v. Enterprise Assoc. Steamfitters Local 638, 501 F.2d 622, 629 (2d Cir. 1974)* ("Once a violation of Title VII is established, the district court possesses [*14] broad power as a court of equity to remedy the vestiges of past discriminatory practices."); *Guardians, 630 F.2d at 109* ("Once an exam has been adjudicated to be in violation of Title VII, it is a reasonable remedy to require that any subsequent exam or other selection device receive court approval prior to use."); *Berkman, 705 F.2d at 595* (compliance relief, including interim hiring orders, are "appropriate whenever a Title VII violation has been found"); *EEOC v. Ilona of Hungary, Inc., 108 F.3d 1569, 1578 (7th Cir. 1997)* ("Once employment discrimination has been shown . . . district judges have broad discretion to issue injunctions addressed to the proven conduct."). Therefore, this court has the authority to order compliance relief based solely on its prior determination that the City's use of Exams 7029 and 2043 violated Title VII, without reference to the traditional injunction standard recited in *eBay*.

Nonetheless, this court believes it is prudent and appropriate to consider traditional equitable principles when selecting an interim hiring remedy. In particular, the court is sensitive to the potential public safety issues implicated in any firefighter personnel-hiring decision. [*15] The court will also consider any genuine budgetary problems that might be occasioned by a lengthy hiring delay. By accounting for these consequences, the court can address the public-interest and hardship-balancing prongs of the *eBay* standard and, it is hoped, arrive at a genuinely equitable solution.

III. EVALUATING THE PARTIES' PROPOSALS

The Hiring Report sets forth seven proposals for how the City could conduct interim firefighter hiring in a manner consistent with Title VII. The parties disagree strongly about the feasibility and desirability of these proposals, and the City has not agreed to voluntarily undertake any of the proposals. Nonetheless, the parties agree on several points:

> 1. All parties agree that randomly selecting candidates for processing from the entire applicant pool for Exam 6019 would be race-neutral and, therefore, a lawful hiring procedure under Title VII.
>
> 2. All parties agree that random selection for processing from a representative subgroup of the applicant pool also would be a lawful procedure under Title VII, provided that the subgroup's racial demographics reflect the racial demographics of the entire applicant pool (hereinafter, a "Representative Pool"). [*16] [4]

> 3. The United States and the Intervenors agree that the City may make use of the results of Exam 6019 for interim hiring so long as the resulting pool from which a random selection would be made is a Representative Pool.

(Hiring Report 4.)

> 4 As described below, the parties disagree over whether particular methods of creating or selecting a Representative Pool are lawful.

The hiring proposals fall into two general categories: random selection procedures and "applicant flow" procedures. The acceptable proposals are necessarily imperfect, since each relies in some way on the results of an invalid examination. The court's duty, however, is to balance the competing principles and interests at stake in order to arrive at a practical, equitable remedy. At this point, the court is more interested in achieving a swift and fair resolution to this matter than engaging in an academic exercise. Accordingly, the court will evaluate each proposal in turn.

A. Random Selection Procedures

1. Proposal # 1: Random Selection From the Entire Applicant Pool

Under this procedure, "the City would randomly select candidates for processing from the entire Exam 6019 applicant pool." (Hiring Order 6.) This procedure [*17] has the benefit of being formally consistent with the court's finding that Exam 6019 is invalid. Because the City failed to demonstrate that the Exam 6019 results convey any meaningful information about candidates' fitness for the job of entry-level firefighter, it necessarily failed to demonstrate that any use of the exam results to distinguish among candidates would be reasonable. And because random selection would necessarily be race-neutral, the court agrees with the parties that this method would be lawful under Title VII.

Nonetheless, a completely random selection procedure has at least one fatal drawback: it would permit candidates who received extremely low scores to potentially be selected for an academy class. (See Docket Entry # 299 (Exam 6019 testing data) (sealed).) Exam 6019 may be invalid, but that does not mean that every candidate score is equal. There is no functional difference between a candidate who scored 95 and a candidate who scored 98, but a candidate who scored in the 20s, for example, probably abandoned the exam midway or is functionally illiterate, and either way is not fit to be a firefighter. Because of the fire department's role in maintaining public safety, [*18] formal equal treatment must be tempered by practical considerations. Accordingly, random selection from the entire applicant pool is not a viable interim hiring measure.

One obvious solution to the problem of unfit candidates would be to cut out the very lowest-scoring applicants and select randomly from the remaining pool. The Special Master reports, however, that the parties were unable to identify a cutoff score above the lowest scores that would yield a Representative Pool of higher-scoring candidates -- that is, the parties could not identify a cutoff score that did not have a racially disparate impact. (Hiring Order 8-9.) Therefore, random hiring from an unadjusted subset of the rank-ordered Exam 6019 eligibility list is also not a viable option. See *Guardians, 630 F.2d at 109* (court's duty when ordering interim hiring relief is "to avoid a disparate racial impact").

2. Proposal # 2: Random Selection From a Rank-Adjusted Pool

As previously noted, the City wants to hire two classes of approximately 312 firefighters each, one now and one in January 2011. Given the estimated rate of drop-outs and disqualifications while candidates are being processed, the City recommends that any Representative [*19] Pool should contain at least 2,500 members in order to produce two classes of 312 qualified candidates. (Hiring Order 7.)

The Special Master reports that the parties discussed a procedure whereby "the rankings of candidates on the current eligibility list would be adjusted so that the top 2,500 candidates would constitute a Representative Pool. The adjustment would be accomplished by replacing the lowest-ranked white candidates with the highest-ranked minority candidates listed below 2,500 on the current eligibility list." (Id.) The City would then randomly select applicants from this pool for processing or, if the randomly selected applicant was one of the 316 Qualified Candidates who have already been found immediately qualified, immediate appointment to the next academy class. [5] The court clarifies that the Representative Pool of the top 2,500 candidates would not include candidates who have already been hired or candidates who have already been processed and permanently disqualified because, for example, they were found to have committed a felony or are too old. [6] The court also clarifies that "minority candidates" would only include black and Hispanic candidates.

> 5 The court and [*20] the parties would need to discuss how to mechanically implement this procedure. For example, the candidates in the Representative Pool could be randomly assigned a ranking from 1 to 2,500, and the rankings then re-

scaled to a 100-point scale to approximate an exam "score." The City could then add bonus points to each "score," re-rank the candidates according to their adjusted score, and process them in the ordinary fashion. (See, e.g., 6019 Validity Order 5-6.) It is possible, however, that the parties have discussed or agreed upon a separate "scoring" and ranking procedure, and the court will consider such a procedure if it is brought to the court's attention. It is also possible that the City's usual appointment method will need to be adjusted to ensure, for example, that the Qualified Candidates don't simply move straight into the first academy class because they have already been processed and the other candidates in the Representative Pool have not. (See Hiring Hearing Tr. 123-24.)

The court also observes that the rank-adjustment procedure is not perfectly addressed to the City's discriminatory practices, since the procedure uses the existing Exam 6019 eligibility list (which incorporates [*21] bonus points), rather than candidates' raw exam scores, to create a Representative Pool. But the City has repeatedly represented that the use of bonus points actually helps minority candidates' rankings relative to white candidates. Therefore, the rank-adjustment procedure should not result in minorities being less well represented than they would be under a completely neutral random-selection procedure. The court also finds that the added value of a procedure that permits the City to hire the pre-processed Qualified Candidates offsets any concerns about using the eligibility list rather than raw exam scores.

6 If the City were to choose the rank-adjustment procedure, the court would take submissions from the parties before deciding which qualifications could result in "permanent disqualification" for purposes of this order.

This rank-adjustment proposal has numerous benefits. First, as the Special Master notes, using this smaller pool as opposed to the entire applicant pool would increase the probability that the Qualified Candidates would be selected for appointment. According to the Special Master, "the City believes that it is indeed likely that all or substantially all of the [Qualified [*22] Candidates] would be in this pool." (Hiring Report 7.) Because the Qualified Candidates have already been processed, the City would not need to process as many candidates as it ordinarily would in order to appoint its first class. Therefore, the City would be able to convene a class quickly, and would incur lower processing costs than it would by randomly selecting from a larger applicant pool. Second, because the rank-adjustment proposal ensures that a high percentage of the Qualified Candidates will be appointed to one of the next two firefighter classes, it is less likely to upset the expectations of the Qualified Candidates, white and minority alike. Third, the use of a small pool of high-scoring candidates would eliminate the possibility that candidates with extremely low scores would be appointed as firefighters. In fact, the proposal permits the City to restrict appointments to only the highest-scoring candidates, as it has desired to do all along. Finally, by creating a truly Representative Pool, the rank-adjustment proposal comes as close as is practically feasible to eliminating the disparate impact of the City's discriminatory scoring practices. [7]

7 The Plaintiffs make several [*23] arguments against other random-selection procedures that apply with equal force to the rank-adjustment procedure. With respect to random selection from the entire pool, Plaintiffs argue that such a procedure is "suboptimal" because "it does not assure proportional hiring based on race, only that the pool from which selections are made for processing will be proportional." (Hiring Report 6.) In a similar vein, the Intervenors argue that the rescoring procedure described below in Section III.A.3, which is also intended to create a Representative Pool, is undesirable because "[t]here is a chance that from the proportional pool . . ., a disproportionately larger number of whites, blacks or Hispanics will be randomly selected for hire or will succeed in the candidate processing steps." (Int. Ltr. Response (Docket Entry # 524) 2.) These arguments, which apply equally to the rank-adjustment procedure under discussion here, misconceive the court's role and the scope of the City's misconduct. If the City's use of Exam 6019 did not violate Title VII -- that is, if the City's pass/fail and rank-order policies did not have a disparate impact -- the racial composition of the Exam 6019 eligibility [*24] list would reflect the racial composition of the entire pool of test-takers, with whites and minorities distributed evenly across the rankings. In order to become firefighters, those candidates would still have to be processed, take the CPAT, and complete the many intermediate steps that all candidates must complete to be appointed to an academy class. Over the course of that process, it is entirely possible that a disproportionately larger number of white, black, or Hispanic candidates would be disqualified, and that the racial composition of the resulting academy class would no longer match the racial composition of the entire applicant pool. But that consequence would not alter the fact that the City's pass/fail and rank-order

uses of Exam 6019 complied with Title VII. In other words, eliminating the City's discriminatory test-scoring practices would only guarantee that the pool of candidates that enter the subsequent qualification process would be representatively apportioned and ranked; it would not guarantee that the City's eventual firefighter class would also be representative of original applicant pool. It may be, as the Intervenors allege, that aspects of the City's candidate [*25] processing practices are unfair or work to the detriment of black and Hispanic candidates, and the court will consider such matters at an appropriate juncture as an exercise of its remedial authority. But such concerns are not an adequate ground for arguing that a particular proposal for correcting the City's discriminatory use of Exam 6019 is inappropriate.

There is no question that the rank-adjustment proposal is a race-conscious compliance measure. The court is satisfied, however, that this proposal is lawful. [8] An unbroken string of Supreme Court and Second Circuit case law confirms that race-conscious remedial compliance measures are permissible under Title VII. See, e.g., *Local 28 of Sheet Metal Workers' Int'l Ass'n, 478 U.S. at 450-51, 464* (holding that Title VII permits courts to award "affirmative race-conscious relief" and stating that "a district court may find it necessary to order interim hiring or promotional goals pending the development of nondiscriminatory hiring or promotion procedures. In these cases, the use of numerical goals provides a compromise between two unacceptable alternatives: an outright ban on hiring or promotions, or continued use of a discriminatory [*26] selection procedure."); *United States v. Paradise, 480 U.S. 149, 166, 107 S. Ct. 1053, 94 L. Ed. 2d 203 (1987)* ("It is now well established that government bodies, including courts, may constitutionally employ racial classifications essential to remedy unlawful treatment of racial or ethnic groups subject to discrimination."); *Guardians, 630 F.2d at 109* ("[O]ne appropriate way to assure Title VII compliance on an interim basis is to avoid a disparate racial impact. This means selecting from among adequately qualified applicants either on a random basis, or according to some appropriately noncompensatory ratio, normally reflecting the minority ratio of the applicant pool or the relevant work force.") (internal citations omitted). Most recently, in Ricci, the Supreme Court held that an employer may engage in race-conscious action for the asserted purpose of avoiding or remedying an unintentional disparate impact if the employer has a strong basis in evidence to believe that a disparate-impact violation would otherwise result. *129 S. Ct. at 2677*. Here, the relevant actor is not an employer attempting to avoid a prospective, unintentional disparate impact, but a federal court attempting to remedy identified intentional [*27] discrimination. The detailed findings in the 6019 Validity Order provide much more than a "strong basis in evidence" to believe that the City's use of Exam 6019 violates Title VII. The court therefore has little trouble concluding that the rank-adjustment proposal is acceptable as a matter of Title VII law.

8 The City believes that the rank-adjustment procedure is unlawful. (See Supplement to Special Master's Report (Docket Entry # 522).)

Because the rank-adjustment procedure would require the City to begin processing candidates from a new pool of candidates, the procedure would entail at least a several-month delay before a new class could be appointed. At the 6019 Validity Hearing and the 6019 Hiring Hearing, the court heard testimony and took evidence about the cause, length, and consequences of that delay. Based on that testimony and evidence, the court believes that the imposition of a non-discriminatory interim hiring procedure that requires the City to temporarily delay the appointment of the next firefighter class will not be unduly burdensome to the City or contrary to the public interest.

The court's primary concern with respect to delaying firefighter hiring is the safety of [*28] the city's citizens and of its firefighters. There is little question that an indefinite hiring freeze would have deleterious effects on the city and on the FDNY. Chief Robert Sweeney, the FDNY's Chief of Operations, testified that understaffing requires firefighters to work more overtime, and that as firefighters are lost through attrition, the additional overtime necessary to fill tours can "stress the system." (6019 Hiring Hearing Tr. ("HH Tr.") 152.) But Chief Sweeney also testified that "[o]n a short-term basis I think we can adequately staff, I think we can minimize the risk . . . ." (Id.) According to Chief Sweeney, the "tipping point" at which a hiring freeze would impact safety would occur "months and maybe years" into the future. (Id.) Specifically, Chief Sweeney testified that a six-month hiring delay "would not create an initial safety impact" in the absence of a terrorist attack and if medical leave remained at its current low levels. (Id. 159.) Assistant Commissioner for Finance and Budget Stephen Rush also testified that the number of structural fires in the city has been falling over the past several years, and that firefighter response times have been improving, despite [*29] decreasing manpower. (Id. 62.)

The City presented evidence that the FDNY's head count is currently 261 below the budgeted maximum. (Id. 26.) Commissioner Rush's testimony makes clear, however, that decisions regarding head counts and firefighter hiring are driven primarily by cost-management concerns. The City's Office of Management and Budget ("OMB") establishes the yearly maximum head count for

the FDNY and decides whether or not the FDNY is permitted to hire a new class. (Id. 28.) Whether the FDNY is at "full manpower" or below is defined by the budgeted head count, not by the city's actual need for more or fewer people to fight fires. (See id. 30.) Earlier this year, the Mayor proposed closing 20 fire houses to save money, and is currently proposing to reduce staffing on 60 engine companies. (Id. 20, 22.) According to Commissioner Rush, because rookie firefighters make $35 per hour less than senior firefighters, the OMB in previous years has authorized the FDNY to hire above the authorized head count -- in other words, to flood the department with rookie firefighters -- in order to avoid paying overtime to senior firefighters, even though the senior firefighters are presumably more [*30] adept and practiced at actually fighting fires. (Id. 14, 17.) The prevailing sentiment was accurately captured in the following exchange regarding the City's hiring needs for fiscal year 2010:

> COMMISSIONER RUSH: [W]e laid out our hiring plans which were modest for fiscal year '10 and we laid out a need for 200 to 250 firefighters over two classes.
>
> MR. LEMONEDES: Okay. Ultimately that proposal -- is that called a personnel action request?
>
> COMMISSIONER RUSH: Yeah, it's called a PAR, we call it a PAR. The PAR has to go over to OMB requesting approval to hire and we then give them the background analysis. We work closely with OMB so we both try to understand.
>
> MR. LEMONEDES: Okay. Now, let me take you to --
>
> THE COURT: Can I just ask a question about that. In terms of what you provide to OMB, does that include a discussion of why you have the need beyond the numbers; in other words, are there other considerations such as the potential for creating a more dangerous working condition or putting the public at risk in not hiring or is this strictly, pardon the expression, a numbers crunching exercise?
>
> COMMISSIONER RUSH: It is a numbers crunch exercise.

(HH Tr. 30-31.) The court therefore is not swayed [*31] by the bare fact that the FDNY is currently 261 firefighters below the budgeted headcount. What truly matters is the safety of the city and its firefighters, and there is no evidence that delaying the next two classes by a number of months each would pose a grave and immediate danger to either.

The court is also persuaded that the City could expedite candidate processing in order to mitigate safety and budgetary concerns. Assistant Commissioner Donay Queenan testified at both hearings that it would take approximately six months to process enough candidates to create a class of 312 qualified academy appointees. (VH Tr. 253; HH Tr. 113.) The court has no reason to doubt that it would ordinarily take six months to process a class, but it is clear from the City's representations and Commissioner Queenan's testimony that the processing period could be shortened. First, the City currently has one class of 316 candidates qualified for immediate appointment to the next academy class. [9] The City has not processed any more candidates since the court temporarily enjoined the City from taking any further steps to initiate or finalize a fire academy class on August 4, 2010. During the discussions [*32] with the Special Master in late August 2010, the City represented that it intended to hire another academy class in January 2011. (Hiring Report 2 n.1.) What this means is that the City believes it can process and appoint an entire class of candidates in approximately four months -- fewer, if the City's calculations accounted for any delays occasioned by this lawsuit. Second, it is clear that the City could take a number of steps to expedite candidate processing. Commissioner Queenan's testimony established that the City generally solicits, rather than pursues, the background information that it needs to process candidates. This approach makes perfect financial sense under ordinary circumstances. But the court is confident that, should the need arise, the City could locate the resources and personnel to permit the FDNY's Bureau of Personnel Services to actively investigate candidates' backgrounds. For example, Commissioner Queenan testified that the most time-consuming aspect of processing is the employment and educational background check, because the City sends out letters to the employers and institutions and then must wait for letter responses. (VH Tr. 239.) As Commissioner Queenan [*33] admitted, however, the City could expedite this process simply by picking up the phone and making immediate, direct inquiries to the employers and schools, rather than passively waiting for letters. [10] (See HH Tr. 139-41.) Similarly, instead of waiting for the candidate to retrieve criminal background information, the City could require candidates to sign releases, and then pursue information from the relevant law enforcement agency itself. (Id. 142-43.) Currently, the City also permits candidates to take 12 weeks to get in shape before taking the CPAT, a period that Commissioner Queenan admitted could be shortened. (Id. 143.)

9 At the time of the 6019 Validity Hearing on July 20, 2010, the City had only identified approximately 260 qualified candidates. (VH Tr. 251.)

10 With respect to candidates' education, Commissioner Queenan testified that information concerning the basic requirements -- a high school diploma and 15 college credits -- could be readily ascertained by looking at transcripts and a diploma, without complex background checks. (VH Tr. 144-45.)

The City also presented evidence that delaying the next firefighter class by several months could eventually cost the City millions [*34] or even tens of millions of dollars in overtime pay. (Def. HH Exs. B-5, B-6.) These calculations exaggerate the overall impact of a delay; for example, they do not account for the possibility that the City could offset overtime costs by hiring larger classes, see HH Tr. 55-56, and it is unclear whether they account for the fact that the City is contractually obligated to pay firefighters 100 hours of overtime per year, see id. 13. Nonetheless, the court accepts the City's basic contention that hiring delays will impose serious financial costs on the City. This problem, however, is largely of the City's own making. After hiring the first class off the Exam 6019 eligibility list in July 2008, the City could have hired another class in December 2008 and another in April 2009, before this court's July 2009 disparate-impact ruling. [11] (See HH Tr. 59-60.) Had the City done so, it would not now be facing a hiring shortfall and increased overtime outlays -- indeed, it would not need to hire at all. (Id. 60, 162.) The City did not hire new classes in 2008 and 2009 or petition this court to hire a new class earlier in 2010 because it wanted to save money over the short term. (See id. 60-61, 162.) [*35] The ineluctable consequence of that decision was that the FDNY would lose firefighters through attrition and overtime costs would increase. Until August 4, 2010, there was no external force stopping the City from hiring firefighters, and yet the FDNY was 261 members below its budgeted head count. This court is not responsible for ameliorating the negative effects of budgetary decisions that the City made years ago with full knowledge of their consequences, and it certainly will not compromise its responsibility to eradicate the City's racial discrimination in order to relieve those consequences. If the City is worried about the cost of a delay, it should expedite candidate processing to reduce that delay.

11 Because academy training takes 18 weeks, and because the academy only has room for one class at a time, the City can only appoint one class every 18 weeks.

More importantly, the court notes that racial discrimination is not costless for the victims, who stand to lose valuable job opportunities, and remedying racial discrimination is never costless for the discriminatory employer. According to the City's FY 2011 budget, the City of New York plans to spend over $6.3 billion this year, [*36] or 63,000 million dollars. [12] A non-discriminatory hiring measure that runs into the tens of millions of dollars over the course of the next three years will not undermine the City's operating budget. Moreover, the alternative to an immediate interim solution in this litigation is almost surely another Title VII lawsuit based on Exam 6019, followed by another costly compensatory remedy. From the perspective of the City and its taxpayers, the long-term benefit of an injunctive remedy that eradicates Exam 6019's discriminatory effects outweighs the short-terms cost of delayed hiring. In this case, to paraphrase Chief Justice Roberts, the best way to stop paying for discrimination on the basis of race is to stop discriminating on the basis of race. Cf. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 748, 127 S. Ct. 2738, 168 L. Ed. 2d 508 (2007).*

12 See New York City Office of Management and Budget, July 2010 New York City Five-Year Financial Plan Revenues and Expenditures (July 13, 2010), available at http://www.nyc.gov/html/omb/downloads/pdf/fp07_10.pdf (last visited Sept. 12, 2010).

Because the rank-adjustment procedure will move some white candidates further down the eligibility list, the court [*37] must balance "the remedial interests of discriminatees" against "the legitimate expectations of other employees innocent of any wrong doing." *Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 372, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977).* The court is satisfied that the rank-adjustment method does not unduly infringe the interests of white candidates. As a general matter, any hiring procedure that does not follow the City's current, invalid procedure will upset the settled expectations of the candidates on the 6019 eligibility list. For example, randomly selecting from the entire applicant pool, or even a subset of the applicant pool, would deprive the top scorers -- the majority of whom are white -- of the benefit of their high scores. Yet the City agreed that such a procedure would be lawful under Title VII. It is true that by shifting the lowest-scoring white candidates out of the Representative Pool, the court would be extinguishing, rather than merely diminishing, those candidates' chances of being hired in the next two classes. But the City does not have a fixed hiring schedule that would create a genuine expectation that a candidate ranked at or near 3,000 on the eligibility list would be reached for appointment [*38] during the four-year life span of the list. [13] Prior to the City's announcement in June 2010 that

it intended to hire a new class, the City had hired just one class of 312 candidates in two years. Moreover, assuming that the City's estimates of dropout and disqualification rates are accurate, the lower-ranking white candidates who would be shifted out of the hiring pool would be at or near the top of the eligibility list should the City decide to hire an additional class. These mitigating circumstances support the court's judgment that the legitimate interests of the white candidates who would be affected by the rank-adjustment procedure do not outweigh the need to ensure that the City's interim selection procedure does not have a racially disparate impact.

> 13 The court conservatively estimates that the lowest-ranked candidates in a pool of 2,500 would be ranked at or near 3,000 on the eligibility list, given that the City has already hired 312 candidates and permanently disqualified several hundred others. (See Def. Hiring Hearing Ex. A-3, A-4.)

Accordingly, the court finds that the rank-adjustment procedure, as described in the Hiring Report and with the clarifications announced herein, [*39] is an equitable interim hiring measure that complies with Title VII.

3. Proposal # 3: Random Selection After Re-Scoring the Exam

The Special Master reports that another procedure that the parties considered "would create a Representative Pool by re-scoring the exam after eliminating primarily those questions as to which the average score of white candidates was more than 0.05 higher than that of black candidates." (Hiring Report 7-8.) According to the Special Master,

> [T]he City had its expert determine and eliminate such questions, then re-scored the exams and produced the results to the other parties. The parties have agreed that if the questions identified by the City's expert were eliminated and the exam re-scored and bonus points awarded, the top 2,500 candidates would constitute a Representative Pool -- thus, yielding a method all parties agree would be lawful. The parties have also confirmed that the pool would remain a Representative Pool if those candidates already hired from the current eligibility list and those already determined through post-exam processing to be permanently disqualified were excluded from consideration. The advantages of this proposal are similar to those [*40] of adjusting rankings to create a Representative Pool as described above . . . . The City reports that a significant portion of the [Qualified] Candidates, 239 of the 316, would be included in the pool.

(Id. 8 (emphasis added).)

As the United States points out, this selection method does not comply with Title VII, because it does not eliminate the discriminatory effects of the City's test-scoring practices. (See USA Response (Docket Entry # 526) 5-8.) As described fully in footnote 7 above, the court's remedial duty is to ensure that the manner in which the City uses candidates' Exam 6019 test scores does not disparately impact candidates on the basis of race. The racial composition of the pool of candidates that emerges after the application of any remedial "scoring" system that the City uses -- whether that system involves random selection or rescoring a subset of the exam questions -- must reflect the racial composition of the entire applicant pool, prior to the application of bonus points. The United States' submissions demonstrate, however, that rescoring the exam in the manner that the parties discussed will have a statistically significant disparate impact on black and Hispanic [*41] candidates. (See id. 5-8 & Att. B.) The rescoring procedure relies on the addition of bonus points to candidates' scores to create a Representative Pool, and therefore does not eliminate the disparate impact of the exam itself. Therefore, the rescoring procedure is not an adequate interim hiring measure.

B. "Applicant Flow" Procedures

The Special Master reports that, "[u]nder an applicant flow procedure, suggested by Plaintiff and Plaintiffs-Intervenors, the City would hire (using any criteria desired by the City) a class with racial demographics that reflect those of the applicant pool. Accordingly, the City would be required to hire in proportion to the racial and ethnic representation of the applicant pool for Exam 6019." (Hiring Report 9.) The plaintiffs offered several illustrations of how such a procedure might work.

1. Proposal # 4: Class of 300 Candidates

With respect to the first applicant flow proposal, the Special Master reports as follows:

> Under the first illustration, the City would hire an academy class of 300, comprising 279 candidates from the 6019 eligibility list and 21 candidates who took

> the EMT promotional exam or who are on a special military eligibility list. In this [*42] scenario, the 279 candidates from the 6019 eligibility list would be 60.5% white, 17.6% black, 18.6% Hispanic, 2.2% Asian, and 1% unknown. (The entire 6019 applicant pool was 60.7% white, 17.4% black, 18.4% Hispanic, 2.1% Asian, 0.2% Native American, and 1.2% unknown.) These 279 candidates would include 169 of approximately 231 white [Qualified] Candidates and all of approximately 60 nonwhite [Qualified] Candidates (22 black, 33 Hispanic and 5 Asian). The remaining 50 spots in the class of 300 would be filled by 50 additional nonwhite candidates (27 black, 19 Hispanic, 1 Asian, and 3 other). Plaintiffs estimate (based on assumed drop-out rates) that in order to identify these additional candidates, the City would need to: (*i*) complete processing for 37 black candidates, 46 Hispanic candidates, and 3 Asian candidates whom the City has already begun to process, and (*ii*) process as many as 42 additional black candidates and 10 additional candidates in the "other" category.

(Id. 9 n.3.) The court modifies this proposal as follows: the City would be under no obligation to ensure that Asian, Native American, or "other" candidates are represented in any particular proportion in the academy [*43] class. [14] The City's only obligation would be to ensure that black and Hispanic candidates are represented in proportion to the racial composition of the entire applicant pool. The court also clarifies that, for the proposed second (January 2011) class, the City could either appoint candidates in proportion to the racial composition of the applicant pool or use the rank-adjustment procedure described in Section III.A.2 to create, and randomly select from, a Representative Pool of the top 1,250 remaining candidates.

> 14 This court's decisions regarding Exam 7029 and 2043 during the liability phase, and its findings with respect to Exam 6019 during the remedial phase, have been limited to the effects of the City's policies on black and Hispanic candidates only. The court has not considered or ruled on any evidence regarding other minority candidates. Because compliance relief should be tailored to the City's identified misconduct, the court declines to enforce any particular hiring measures with regard to Asian, Native American, or "other" minority candidates.

2. Proposal # 5: Class of 221 Candidates

With respect to the second applicant flow proposal, the Special Master reports as follows:

> Under [*44] the second scenario, the City would hire an academy class of 221 firefighters, comprising 200 candidates from the 6019 eligibility list and 21 candidates who took the EMT promotional exam or who are on a special military eligibility list. In this scenario, the 200 candidates from the 6019 eligibility list would be 61% white, 17.5% black, 18.5% Hispanic, 2% Asian, and 1% unknown. These 200 candidates would include 122 white [Qualified] Candidates and 59 nonwhite [Qualified] Candidates (22 black, 33 Hispanic and 4 Asian). In addition, the City would need to continue processing black and Hispanic candidates for whom processing is pending until it identifies an additional 13 black candidates and 4 Hispanic candidates for hiring. Finally, the City would have to process an additional 6 candidates whose race/ethnicity is "other" to identify 2 such candidates for appointment.

(Id.) The court modifies this proposal as follows: the City would be under no obligation to ensure that Asian, Native American, or "other" candidates are represented in any particular proportion in the academy class. The City's only obligation would be to ensure that black and Hispanic candidates are represented in proportion [*45] to the racial composition of the entire applicant pool. The court also clarifies that, for the proposed second (January 2011) class, the City could either appoint candidates in proportion to the racial composition of the applicant pool or use the rank-adjustment procedure described in Section III.A.2 to create, and randomly select from, a Representative Pool of the top 1,250 remaining candidates.

3. Proposal # 6: Proportional Hiring Across the Next Two Classes

Another applicant-flow procedure, which the parties did not discuss but the court now posits as an option, would require the City to ensure that the entire pool of candidates hired over the course of the next two classes is racially representative. Under this procedure, the City could immediately appoint the 316 Qualified Candidates

to the next academy class. The City would then be required to process and appoint black and Hispanic candidates to the subsequent class in a manner that guarantees that the racial composition of the two classes combined reflects the racial composition of the entire applicant pool. Under this proposal, the City would be obligated to hire a second class of at least 300 candidates from the Exam 6019 eligibility [*46] list within one week after the completion of the next academy class, unless otherwise directed by the court.

4. Proposal # 7: "Hybrid" Applicant-Flow Hiring

Under this proposal, "the City would hire immediately a small class of firefighters that is a representative subgroup of the applicant pool from among the [Qualified] Candidates. Approximately 117 such candidates could thus likely be immediately hired while maintaining the same racial proportionality as the entire pool taking the exam. The City would then select remaining candidates for processing at random from either the entire applicant pool or a Representative Pool." (Hiring Report 11.) Additionally, "[t]he City could supplement this class with the 13 emergency medical technicians who have passed the required promotional exam and have been fully processed and determined to be qualified for hiring." (Id.)

The court clarifies that the City would be under no obligation to ensure that Asian, Native American, or "other" candidates are represented in any particular proportion in the academy class. The City's only obligation would be to ensure that black and Hispanic candidates are represented in proportion to the racial composition [*47] of the entire applicant pool. Moreover, for the reasons stated in Section III.A.1, above, the court does not believe that random selection from the entire applicant pool is an appropriate selection method. The court therefore clarifies that, with respect to any subsequent hiring, the City could either appoint candidates in proportion to the racial composition of the applicant pool or use the rank-adjustment procedure described in Section III.A.2 to create, and randomly select from, a Representative Pool of the top remaining candidates.

The applicant-flow proposals have a number of drawbacks. First and foremost, these proposals strongly resemble racial hiring quotas. As explained above in Section III.A.2, the court has the legal authority to implement race-conscious interim hiring requirements as an exercise of its remedial authority. See *Local 28 of Sheet Metal Workers' Int'l Ass'n, 478 U.S. at 450-51, 464*; *Paradise, 480 U.S. at 166*; *Guardians, 630 F.2d at 109*. That does not mean that the court believes that such measures are optimal or generally appropriate. This court has repeatedly stated that it will not impose hiring quotas on the City in the absence of an overwhelming need or [*48] justification. Racial quotas are a blunt tool for accomplishing a delicate task, and the court would prefer to use them only as a last resort. Second, as a means of interim compliance, the applicant-flow proposals go beyond the court's goal of correcting the effects of the City's pass/fail and rank-order uses of Exam 6019. Eliminating the discriminatory effects of Exam 6019 would guarantee that minority candidates enter the subsequent qualification procedures on an equal footing with white candidates, but it would not guarantee that they would be hired in proportion. (See n. 7, above.) Yet the applicant-flow procedures would require the City to hire in proportion to the racial composition of the applicant pool.

Nonetheless, this court cannot ignore the genuine needs of the City, the FDNY, and the citizens of New York. Based on the testimony and evidence presented, the court is satisfied that a temporary hiring delay will not imperil the safety of the city's residents or its firefighters. (See Section III.A.2, above.) But the City may have access to different or more complete information that was not presented to the court. The City's current fiscal condition may also be such that it [*49] cannot reasonably bear the costs of further firefighter hiring delays.

One undeniable benefit of the applicant-flow procedures is that they would permit the City to appoint its next firefighter class either immediately or in the very near future. Under the two-class procedure suggested above, for example, the City could immediately appoint all 316 of the Qualified Candidates to an academy class. The City could satisfy its desire to hire from among the top scorers on Exam 6019, could hire all of the candidates it has already processed, and would not disappoint any of the candidates who have already been processed. The City could appoint this class in a matter of weeks, thereby avoiding the eight-figure cost overruns projected by Commissioner Rush. Most importantly, the City of New York would have 300 more firefighters on the streets by late winter of 2011, and another 300 by the summer. If the City truly believes that public safety and the municipal fisc require the immediate appointment of a firefighter class, then the court will set aside its reservations and order applicant-flow hiring.

Accordingly, the court will permit the City to choose one of the applicant-flow procedures as an [*50] interim hiring measure.

IV. CONCLUSION

Having reviewed the interim hiring proposals in the Special Master's Hiring Report, the court concludes that Proposals (2), (4), (5), (6), and (7), as described in Sections III.A.2 and III.B of this Memorandum and Order, are lawful and equitable remedial compliance measures.

Because the City is in the best position to assess its own needs and requirements, the court will permit the City to choose which proposal it would prefer the court to implement. Accordingly, based on the findings in the 6019 Validity Order and in Section III.A.2, above, the court hereby continues the temporary injunction announced in the 6019 Validity Order and directs the City to inform this court of its choice not later than 12:00 noon on Friday, September 17, 2010. The court will then so-order the chosen injunctive remedy with appropriate instructions.

SO ORDERED.

Dated: Brooklyn, New York

September 13, 2010

/s/ Nicholas G. Garaufis

NICHOLAS G. GARAUFIS

United States District Judge

The City University of New York

Testimony of Senior Vice Chancellor for Budget, Finance and Fiscal Policy
Marc Shaw
The City University of New York
New York City Council Finance and Higher Education Committees
Mid-year Budget Reductions
December 13, 2010

Good afternoon, Chairpersons Recchia and Rodriguez, and members of the Finance and Higher Education Committees. I am Senior Vice Chancellor for Budget, Finance and Fiscal Policy Marc Shaw. I am joined by Associate Vice Chancellor for Budget and Finance Matthew Sapienza. We are pleased to have the opportunity to offer testimony regarding the city's PEG Reduction Plan and its impact on CUNY's community colleges.

The University is very grateful for the New York City Council's longtime support of CUNY's operating and capital needs. All of us at CUNY look forward to continuing to work in partnership with the council on behalf of CUNY's growing student body.

In fact, the University and its community colleges are experiencing record enrollment growth. The number of students enrolled in credit-bearing courses at our community colleges this fall is almost 91,000, an increase of more than 33 percent over the last eight years. Our adult and continuing education enrollments are also at record highs.

This unprecedented growth reflects the economic challenges currently facing our country and our state, as increasing numbers of students look to gain advanced skills and reshape careers in order to compete successfully in a changing economic environment. At the same time, the enrollment increases are a measure of New Yorkers' increased confidence in CUNY, where students know they can find the high-quality, affordable education that is the hallmark of public universities. As a partner in CUNY's advancement, the council shares credit for the University's resurgence.

Maintaining the quality of its academic programs remains the University's highest priority. However, record enrollment growth poses significant challenges. The demand for faculty, programs, class sections, academic and student services, and classroom and laboratory space is also at record levels. The surge in students has taxed the University's resources and infrastructure at every level.

Our community colleges are funded through three major sources: the state, the city, and tuition and fee revenue. With regard to state funding, operating dollars are provided on a per-FTE basis.

The base rate per FTE is currently $2,260, and has been reduced by $415 over the last two fiscal years. This has resulted in a loss of approximately $29 million in state aid to our community colleges. The state funding component of the community college budget also includes $33 million in federal stimulus funds that are due to expire at the end of this year.

On the city side, we have serious concerns regarding the recently announced PEG Reduction program, in which city support for the community colleges in the current year is lowered by almost $11.8 million. For fiscal year 2012, this reduction grows to $16.3 million. The targets translate into reductions equal to 5.4% of the city-funded budget in FY2011 and 8% in FY2012 for the University. The mayor's commitment to public education resulted in these targets being halved for the Department of Education. We feel strongly that this same relief should be provided to the City University. CUNY's six community colleges are a critical resource for New York City, and its students deserve a similar commitment to that provided K-12.

These proposed reductions will affect all academic and support operations at the campuses and will be felt by students at every level. The reduction in instructional staff would result in fewer sections being offered, resulting in growth in the class size of the remaining sections and increased time to degree. Another likely outcome would be a decline in enrollment as students are unable to enroll in the courses that they require. A fall-off in enrollment could result in further funding reductions from lower tuition collections and a potential decrease in enrollment-related state support. Library hours—particularly in the evenings and on weekends—will also need to be reduced in order to meet this PEG target. Critical student services, such as tutoring and counseling, will also be cut if funds are not restored.

Based on the reduction proposals submitted by our colleges as part of the city's PEG initiative, cuts of this magnitude would have a deep, harmful, and direct impact on our students. Allow me to cite just a few examples:

- At BMCC, our largest institution in terms of full-time equivalent enrollment, the college would eliminate no less than 260 instructional sections. Given the average adjunct workload, this would translate into roughly a loss of 100 adjunct positions. Several key

positions in counseling and maintenance and operations would also have to be eliminated.

- At Bronx Community College, approximately 100 class sections would be eliminated, decreasing the availability of classes by 2,700 seats, and requiring an increase in average class size from 27 to at least 30.
- At Hostos Community College, approximately 70 class sections per semester would be lost. Library hours in the evening and the weekend would be eliminated. The Hostos Academic Learning Center would be severely impacted, minimally resulting in the loss of almost four full weeks of tutoring and weekend tutoring services.
- At Kingsborough Community College, counseling and tutorial services would be reduced, and facility maintenance expenditures would have to be curtailed.
- At LaGuardia Community College, over $1.0 million in personnel costs for direct instructional positions would be eliminated, thereby constricting students' access to the courses needed to successfully complete their academic programs.
- At Queensborough Community College, a reduction of this magnitude will jeopardize the college's ability to provide access, as well as to provide key support services necessary to ensure student success and thereby degree attainment. In addition, important maintenance operations projects will be curtailed and/or deferred, resulting in further risk to the physical plant and infrastructure.

Given the series of budget reductions the University has recently sustained, which totals almost a quarter of a billion dollars in reduced state and city support over the last three years, our Board of Trustees approved a 5% tuition increase to begin in the spring 2011 semester. This equates to a $75 per semester increase for community college students. Such a decision is not made lightly, as we are well aware of our students' financial challenges, particularly those students at the community colleges.

Our first concern is to protect any students whose matriculation could be at risk because of a tuition increase. I should note that students most in need—those receiving full Tuition Assistance Program (TAP) and Pell Grant awards—will not be affected by a tuition increase since their existing financial aid support will not be jeopardized and recent Pell increases raise their support

to a level above the new tuition levels. We will continue to work, as we have successfully in the past, to advocate for continued Pell increases at the federal level and for the restoration of the state-mandated TAP cuts.

As our community colleges continue to serve a growing and more diverse student population, it is critical that an appropriate level of support is maintained. These institutions provide invaluable contributions to the economic well-being of the city by producing a highly skilled workforce, partnering with the business community to enhance employees' skills, and preparing students for further educational advancement.

Chairmen Recchia and Rodriquez, and members of the committees, we know that it is your strong support of CUNY's community colleges that has enabled their advancement, and we are deeply grateful for it. In partnership with the council, we look forward to continuing to serve the thousands of New Yorkers who rely on these outstanding institutions. Thank you.

FOR THE RECORD

TESTIMOMY
Lillian Roberts, Executive Director, District Council 37, AFSCME
and member of CUNY's Murphy Institute for Worker Education

New York City Council Hearing, December 13, 2010
Committee on Higher Education and the Committee on Finance

ORGANIZED LABOR SUPPORTS CUNY: NO MORE CUTS

The leaders and members of District Council 37 are deeply concerned about the devastating impact that budget cuts to the City University of New York will have on the vitality of the City and those who reside within its borders. DC 37 represent more than 121,000 workers and more than 50,000 retirees and it is hard to imagine a member who has not been effected by the University. Some of our members are employed by CUNY, others are currently enrolled in its degree programs, many have earned their degrees from CUNY, and others have sent – or plan to send -- their children to a CUNY college in the future. With CUNY enrolling more than a quarter of a million students in degree programs each year and an equal number of students in continuing education and certificate programs, it is no wonder that CUNY is a household name in this City – one that is synonymous with the word opportunity.

Yet this already-starved bastion of hope and opportunity is now facing another round of cuts to its Community Colleges. These cuts will disproportionately affect low-income residents, working families, people of color, immigrants and other underrepresented groups. This is the worst possible time for the University to endure a reduction of resources. It is precisely during economic downturns that workers and their families need more – not less – in the way of opportunity. It is during economic downturns that our City needs an educated workforce that will meet the challenges of a global economy.

The City University of New York has a long record of accomplishment serving the higher educational needs of our City's most disadvantaged families. For many of these families, CUNY's community colleges offer the only opportunity available to pursue a college degree, develop a career, and achieve a middle class lifestyle. But access is not enough: working families need quality higher education – and quality higher education in turn requires adequate resources.

District Council 37 urges the City Council to maintain the current level of funding for CUNY's community colleges. Do not cut this budget any further.

READ INTO RECORD

TESTIMOMY before the New York City Council
Committee on Higher Education and the Committee on Finance
December 13, 2010

ORGANIZED LABOR SUPPORTS CUNY: NO MORE CUTS

Submitted by the Labor Advisory Board,
Murphy Institute for Worker Education and Labor Studies
City University of New York
Arthur Cheliotes, chair of the Board

Jack Ahern, President, New York City Central Labor Council, AFL-CIO
George Boncoraglio, President, Region 2, Civil Service Employees Association
Barbara Bowen, President, Professional Staff Congress
Kuba Brown, President, Local 94, International Union of Operating Engineers
Pat Baker, Vice President, Public Employees Federation
Arthur Cheliotes, President, Local 1180, CWA
Mike Fishman, President, Local 32BJ, SEIU
Gregory Floyd, President, Local 237, International Brotherhood of Teamsters
George Gresham, President, 1199 United Healthcare Workers East
Gerald Hudson, Executive Vice President, SEIU
Julie Kushner, Director, Region 9A, United Auto Workers
Joe McDermott, Executive Director, Consortium for Worker Education
Faye Moore, President, Local 271, Social Service employees Union
Michael Mulgrew, President, United Federation of Teachers
Lillian Roberts, Executive Director, District Council 37, AFSCME
Eddie Rodriguez, President, Local 1549, DC 37, ASCME
Edgar Romney, Executive Vice President, Workers United, SEIU
Lowell Peterson, Executive Director, Writers Guild of America, East
John Samuelson, President, Transport Workers Union

The Murphy Institute's Labor Advisory is deeply concerned about the devastating impact that budget cuts to the City University of New York will have for more than 500,000 students throughout the five boroughs. These cuts will disproportionately affect low-income students, working families, people of color, immigrants and other underrepresented groups pursuing the opportunities for education, professional advancement, and upward mobility that CUNY offers.

As leaders of unions representing more than one million workers throughout the City of New York, we urge you to protect the promise of higher education in New York and stop these cuts.

The founding of the City University of New York represents one of the most important moments in the history of our nation's democracy. Education ceased to be the privilege of the few, becoming instead the right of all. Today, as the largest publically funded urban university in the

nation, CUNY preserves this right for the people who live and work in the nation's largest, most vibrant city.

True to its origin as an institution serving workers and immigrants, CUNY remains one of the most diverse universities in the country. More than half the student body is black or Latino; 15 percent are Asian; and 60 percent are women. There is no better example of equality or diversity available anywhere in the world.

Nor is there any better example of success. CUNY has provided opportunities for skills development, intellectual growth, and career advancement to millions of New Yorkers. CUNY has not educated some of our most prominent leaders of government and industry, but of the labor movement as well.

CUNY's diverse students, believing in the promise of the American dream, invigorate our city with their hard work, their dedication, and their hope. We fail to uphold that promise when we no longer provide them with a quality education.

CUNY has already endured budget cuts and reductions in service. The proposal now before the City Council to reduce the budgets to the Community Colleges will inflict further harm on an institution that has contributed so much to the economic vitality of this City. A mid-year budget cut threatens CUNY's mission and the welfare of the City it serves.

CUNY's Community Colleges are often the only way hard-working students from underserved communities can pursue higher education. In an unstable economy that requires new skills and widespread innovation, offering a range of educational opportunities to new constituencies is needed more than ever.

Workers, students, unions have a deep appreciation for the role CUNY plays in the life of the City and the individuals who inhabit it. When $250,000 in funding was cut from the Murphy Institute budget this year, more than 70 national and local labor leaders wrote to Mayor Bloomberg. So did over 100 faculty and more than 1,2000 students! And more continue to do so every day. This is indicative of how valuable CUNY is to working people and to the organizations that represent them.

After so many years of academic improvement, growing enrollment, and expanding opportunities for students, we cannot stand by as the most important resource available to the working people of New York City endures crippling budget cuts. Organized labor is deeply committed to the "people's university"—and will always remain so.

On behalf of more than one million working people in New York City, we urge you to stop the cuts to the City University of New York.

Public Hearing Testimony
New York City Council Committee on Higher Education
December 13, 2010

Submitted by: Maureen Lane and Dillonna C. Lewis , Co-Executive Directors
Welfare Rights Initiative
Hunter College 695 Park Avenue, room TH115
NY NY 10065
212-650-3569
www.wri-ny.org

We are Maureen Lane and Dillonna C. Lewis, Co-Executive Director of Welfare Rights Initiative (WRI). On behalf of the staff and student leaders at Welfare Rights Initiative, we applaud the committee for this hearing on the proposed cuts to CUNY.

We believe that all of us must understand how increased tuition, reductions of services and resources can impact NYC's poor and low-income families. Public funding of higher education must expand not contract at this time. On the federal level, in addition to expanded PELL amounts, we need to raise the ceiling on earnings to qualify. In addition, NYS TAP must be expanded in amount and qualifying income, too. We at WRI know the impact to families, communities and cities when families are able to move out of poverty through the hard work of education. The city budget must have education from ABE to Higher Ed as an unquestionable priority.

First, let us introduce Welfare Rights Initiative (WRI). WRI is a grassroots, student activist and community leadership training organization located at Hunter College. WRI trains and supports students who have firsthand experience of poverty to effectively promote access to higher education. Since its inception 15 years ago, WRI has assisted over *4000 CUNY students receiving public assistance* to continue their pursuit of education and graduate from college.

Numerous studies have documented the impact of higher education on labor force participation, earnings and long term economic independence. We know, for example:

- 88% of people on welfare who attain Bachelor's degrees are able to move permanently off welfare.
- 75% of welfare claimants move from welfare within 2 yrs of entering college.
- In the past ten years over 20,000 students at CUNY have been forced to abandon their studies to participate in workfare.
- There remain about 6,000, extremely hard-working students at CUNY who receive public assistance and who attend college full time in spite of poverty and in spite of obstacles put in their way by the welfare system
- 57% of all NYC people receiving welfare have not attained a high school diploma or its equivalent.

We know that historically, those with the least education have always been the hardest hit during economic downturns. Given the diversity of CUNY and its affordability to the poor, low-income and middle class, we advocate for greater public policy support for public higher education on not only the city and state levels but the federal level as well.

We at WRI are not alone in our belief that there are things that government can do to improve economic outcomes for families. In the last few years, the Mayor's task force on Poverty "agreed that government must use more of its resources to foster conditions that allow people to enter the workforce and stay in it."

Recent Data on Poverty and Incomes are a call to Broaden Income Security Policy Focus

According to Legal Momentum's report in September 2009, the Census Bureau indicates that the national poverty rate rose to 13.2 percent in 2008, the highest rate since 1997. The people who need financial aid and CUNY is growing.

Education represents an investment that yields significant financial gains. It also promotes personal growth (e.g., self esteem, confidence, overcoming various problems) and societal returns (e.g., increased civic engagement, asset development, well being in retirement, and reduced public spending). CUNY has led the country in aiding students to advance in income security.

A report in May of 2006 from the Institute for Women's Policy Research (IWPR) confirms that despite the challenging circumstances for low-income students to undertake a college education, higher education "provides the best opportunity--especially for women--to acquire **good jobs, with good wages and good benefits.**" The most striking finding is the **ripple effect** that higher education creates "beyond the individual sitting in the classroom..." Children of college-educated parents show improved grades and study habits, and 80 percent of degree holders indicate increased involvement in their communities.

From fifteen years of mind-numbing policy experience, WRI has come to see that policy-making processes must include people with first-hand experience of welfare in addition to other stakeholders.

WRI believes dialogue as process can be designed to develop meaningful policy changes and emerge a shared vision for policy by the dialogue participants: policy-makers, children aging out of foster care and in need of welfare, homeless youth (including gay, lesbian and bi-sexual), state legislators, agency officials, religious leaders, advocates, educators, service providers, philanthropists and people from the community as well as those individuals with firsthand experience of policy impact. We are convinced that dialogue with a mix of stakeholders is key to the opening of minds and hearts to a mutually beneficial policy, which we define as an expansive vision for the future.

WRI students, staff and alums stand ready to work with the committee to initiate meaningful policy dialogues on the many intersecting federal, state and city policies that impact the fiscal decisions facing CUNY.

Thank You.

CUNY 2 of 2

THE COUNCIL
THE CITY OF NEW YORK

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I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 12/13/10

(PLEASE PRINT)

Name: Matthew Sapienza, Assoc. Vice Chancellor

Address: budget, Finance & Fiscal Policy

I represent: CUNY

Address: _____

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CUNY Panel 1 of 2

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Date: 12/13/10

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Name: Marc Shaw, Sr. Vice Chancellor budgets

Address: CUNY Finance & Fiscal Policy

I represent: _____

Address: _____

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Date: ________

(PLEASE PRINT)

Name: Iris DeLutro

Address: 61-55 98 ST. #12H

I represent: PSC - Vice President Chair HEO Chapter

Address: 61 Broadway

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Name: Patrick Krug

Address: 9 Murray St.

I represent: NYPIRG

Address: 9 Murray St.

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☐ in favor ☒ in opposition

Date: 12/13/10

(PLEASE PRINT)

Name: Kumar Navaratne

Address: 92 St. Mark's Place, APT 2A Staten Island NY 10301

I represent: Adjunct BMCC

Address: Chambers St.

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Appearance Card

I intend to appear and speak on Int. No. CUNY Res. No. Budget Cuts

☐ in favor ☒ in opposition

Date: 12/13/10

(PLEASE PRINT)

Name: Thomas Burgess

Address: 34 Seaman

I represent: Adjunct Liason to BMCC

Address:

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☐ in favor ☒ in opposition

Date: 12/13/2010

(PLEASE PRINT)

Name: Joyce Moorman

Address: 104 Saint Marks Place #1E Brooklyn, N.Y.

I represent: BMCC-CUNY

Address:

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THE CITY OF NEW YORK

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☐ in favor ☐ in opposition

Date: 12-13-10

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Name: Steve Cassidy

Address: 204 E. 23 Street

I represent: UFA

Address:

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Date: _____

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Name: Patrick J Baharen

Address: FDNY EMS Union

I represent: _____

Address: _____

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☐ in favor ☐ in opposition

Date: _____

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Name: Capt. Al Magnon

Address: _____

I represent: Uniformed Fire Officers Association

Address: Budget Hearing.

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THE CITY OF NEW YORK

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☐ in favor ☐ in opposition

Panel for Professional Staff Congress, union for CUNY

Date: December 13, 2010

(PLEASE PRINT)

Name: Steve London First Vice President, PSC

Address: Joyce Moorman, BMCC, PSC

I represent: Linda Alexander Wallace, Hostos Community College, PSC

Address: _____

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Date: _____

(PLEASE PRINT)

Name: Christopher N. Sui

Address: 103-21 116 St

I represent: John Jay College Student Council

445 West 59 St

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THE CITY OF NEW YORK

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☐ in favor ☐ in opposition

Date: 12/13

(PLEASE PRINT)

Name: Arthur Chelios

Address: 6 Harrison St

I represent: Murphy Institute Board

Address: 6 Harrison St

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☐ in favor ☐ in opposition

Date: 12/13/10

(PLEASE PRINT)

Name: Hannah Wahl

Address: 1016 Union St Apt 1A Brooklyn NY

I represent: Brooklyn Young Mothers' Collective

Address: 388 atlantic ave Brooklyn NY 11217

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Date: 12/13/10

(PLEASE PRINT)

Name: Doug Singsen

Address: 822 Ocean Ave #1C, Bklyn 11226

I represent: CUNY student/adjunct

Address:

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Daniel Shacknai

Address:

I represent: FDNY/ First Deputy Commissioner

Address:

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Chief Edward Kilduff

Address:

I represent: Chief of Department FDNY

Address:

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Salvatore Cassano

Address: Commissioner

I represent: FDNY

Address:

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Steve Rush

Address: FDNY Assistant

I represent: Commissioner Budget

Address:

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