

Testimony of Paul Washington, Past President of the Vulcan Society, to the Civil Service and Labor Committee 12/14/09

Good afternoon Mr. Chair and committee members and thank you for this opportunity. I would like to explain to you why I support Intro 1093-A.

To start, I'd like to give some background information on how we have gotten to where we are today with this legislation. In 1993, in the midst of a United States Justice Dept. investigation of FDNY over its hiring practices, a 5 point credit for city residency was established by the city for the firefighter (ff) entrance exam. These 5 points were to be given to anyone who could prove they were also NYC resident on one specifically established day. The length of the residency on subsequent tests was increased from 1 day to 1 year but either way the result was the same. Almost anyone who wanted to get these residency points was able to get them by presenting false evidence. A rent or mortgage receipt along with a phone bill, bank statement etc. could be used as "proof" that the applicant did in fact live within NYC during the required time period. As a result, literally thousands of candidates born and raised outside of NYC who have never lived within the city's borders have become NYC ff's since 1993. Today, 16 years later, the makeup of FDNY, by the Uniformed Firefighters Association's (UFA) own estimate is 50% city residents and 50% non-city residents.

After it became obvious that the residency points were having little impact on increasing either the numbers of city residents on the job or the numbers of people of color, the Vulcan Society (VS) looked into strengthening the criteria. After many meetings, discussions with high ranking FDNY officials and reviewing of statistics, the VS found that the 5 points residency credits could never have any teeth for several reasons including the high cost of investigating

thousands of prospective candidates addresses. We then began to look at the possibility of using a NYC HS diploma to give extra points. The VS brought this idea to FDNY Commissioner Scoppetta, DCAS Commissioner Hurst and Mayor Bloomberg at various times during the course of 2006. All three expressed generally positive and/or non-committal comments toward the idea not only initially but also when asked about it subsequently. After being unable to get a commitment to enact this idea from the above named, we approached the City Council late in 2006. Council member Joseph Addabbo who then chaired the Civil Service and Labor Committee, thought it was an excellent idea and introduced it to the Council, but it was tabled while the "DC 37 bill" was thrashed out. After the passage of the DC 37 bill and the departure of Council member Addabbo, the VS brought the issue back to the attention of Council member Leroy Comrie, who had been an enthusiastic supporter of the idea, and he re-introduced it this past October. Since then, the proposal has been widely met with enthusiastic support from both Council members (in approximately 2 months it already has 16 co-sponsors) and the general public.

One particular supporter is former UFA President and former FDNY Commissioner Thomas Von Essen. In a deposition taken on October 8 of last year for the VS's recently won court decision against the City of New York, Commissioner Von Essen spoke very forthrightly on the issue:

Q. But wasn't the idea of the city residency to push people who were real city residents five points above people who were not real city residents? Wasn't that the intent?

A. Yes and it showed that it wasn't a perfect solution. A perfect solution would have been that a person had to graduate from a city high school and live in New York City. But that wasn't the rule.

Then a little later in his testimony he said the following:

Q. What about the civil service system, in your view, should be changed?

A. In New York City you are talking about?

Q. Yes.

A. Well, It is only my personal view, now being out of the Department, I would have a residency that took people who went to a New York City high school and gave them a considerable amount of extra points. And I think that that would make a big difference. And give people, military people considerable amount of extra points because I think there is a big percentage of minorities in the military. And those would be two changes I would make if I had the ability to just do it, but I never did.

Q. When you say "considerable amount," do you mean more than five bonus points?

A. Yes.

Q. What would you recommend?

A. Does it matter what I recommend? I don't know what a doable number would be, but I think it should be considerable.

Later in his testimony he also agreed that the union felt threatened by any alternative methods of getting people into the department that were minorities and that the UFA had no interest in hiring more blacks into the department. This from a man who served FDNY for 31 years and came up through the ranks as a firefighter, UFA President, and finally Fire Commissioner.

There are many up sides to the passage of this bill.

One major one will be to increase diversity within the ranks of FDNY. Since its inception 144 years ago, FDNY has never come close to properly representing its population. New York City's

Fire Department is by far the least diverse Fire Department in the country among major cities. No other big city even comes close. Nor does any other major agency within NYC. Today, FDNY is less than 10% people of color with no significant change in sight. This is an embarrassment all reasonable people agree must change. The world's greatest city should have a Fire Department that reflects one of its greatest strengths – its diversity. All groups of NYC taxpayers should be fairly represented in its Fire Dept. This will begin to happen with the passage of this bill. Almost all of the people of color who apply for the ff entrance exam grew up in NYC and as such will receive these points. That advantage will only increase as FDNY improves its recruitment efforts, which are done almost exclusively within NYC. Passage of this bill will have a very positive impact on what is certainly one of NYC's most important civil service issues and one of its most glaring problems.

Another upside to the passage of this bill will be that it rewards those city residents who have chosen to not only remain in NYC but to have their children educated here as well. All of us are aware of the supposed advantages to life outside of NYC including access to better education. Those who choose not to leave the city but to stay instead, help make NYC stronger and better. Whether they help support the city financially by sending their children to private schools or help NYC public schools by putting good students into an improving system they should be rewarded for working for the common good of all New York City residents. They should be given a "leg up" on those who have not helped the city in any appreciable way.

A final upside to the passage of this bill will be that it will work as an incentive to help convince parents to educate their children here. This will increasingly become the case as FDNY recruitment continues to improve and knowledge of the benefits of being a NYC firefighter expand. Just as we've seen that new technology and computers in our schools can make parents once again believe in our school system, extra points to help their children obtain a great career can have the same effect.

I urge the Chair and committee members after hearing all sides of this issue to not only approve this legislation but to strongly push for its passage through the council. Thank you.

From: Jeanne Arnold <jeanne33@rochester.rr.com>

To: twash582@aol.com

Subject: Letter of Support (Int 1093-2009)

Date: Sun, Dec 13, 2009 10:04 pm

Attachments: Int_1093.docx (13K)

Attached and included below (in case you can't open the attachment) is a letter sent on behalf of Jimmy Boyle. This letter was also e-mailed directly to the City Council Thanks.

Christine C. Quinn, Speaker
The New York City Council
City Hall
New York, New York 10007

Dear Speaker Quinn:

As former President of the Uniformed Firefighters Association (UFA) of Greater New York, I write in strong support of a Local Law to amend the administrative code of the City of New York in relation to firefighter applicants who have completed high school in the city (Int 1093-2009). This bill would allow any firefighter candidate who possesses a high school diploma or a General Educational Development (GED) degree from a school or testing center located within the city of New York to be eligible for additional credits on the open competitive firefighter examination.

This bill should be passed as it supports our local men and promotes the City. New York City firefighters must know New York and a large part of that includes being educated in New York. As someone who was educated in New York City and who worked with firefighters educated both in and outside of the city, I saw firsthand the value of such a local education.

Please feel free to contact me at (516) 972-2948 or jboyle001@rochester.rr.com if you require anything further. Thank for your consideration.

Sincerely,

James J. Boyle
President Uniformed Firefighters Association
Retired

**Council meeting notes**

Monday, December 14, 2009 10:45 AM

From: "Regina Wilson" <firefighterdiva1@yahoo.com>**To:** firefighterdiva1@yahoo.com

Good Morning,

My name is Regina Wilson and I am the President of the United Women Firefighters Organization otherwise known as the UWF. The United Women Firefighter is a fraternal organization representing active and retired women firefighters of the FDNY. The object of this association unite in sisterhood, promotes the interests and welfare of female firefighters and female fire officers of the City of New York.

Our purposes are charitable and educational including, without limitation: to perform community service in educating and training the public in fire safety and fire safety issues, and in educating the public concerning the demonstrated abilities of female firefighters and female fire officers; to aid the New York City Fire Department recruitment office in their efforts to recruit, hire, train and retain female firefighters and female fire officers; to promote firefighting as a career for women; to promote the welfare of female firefighters and female fire officers employed by the City of New York; to coordinate with other groups, both civilian and firefighter, to achieve the purposes for which the Corporation is formed. With this purpose in mind, the UWF has found the additional percentage for NYC High school and GED graduates to be beneficial.

Currently our total number of females firefighters, officers and marshals is 32 out of over 11,000 members total in fire suppression. Since the early 80's when the first women join the department are numbers have decrease. We feel that this extra advantage given to women that live in this city will not only allow women to get hired at a quicker rate, but will be a great incentive when recruiting for female candidates in the future. A great number of female firefighter have obtained their high school diploma from the city and this amendment would have benefited them during there hiring process for this job. Although we feel that this is not the total solution to the problem of our small numbers on the FDNY, our biggest problem being the age requirement. It is with my belief that we the UWF must make every effort to assure that our numbers increase and that we research all ways to encourage women to sign up for the greatest job in the world.





**INT. NO. 1093-A: FIREFIGHTER APPLICANTS WHO HAVE COMPLETED
HIGH SCHOOL IN NEW YORK CITY**

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

**TESTIMONY BY ILENE LEES
GENERAL COUNSEL
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
DECEMBER 14, 2009**

Good afternoon Chair Nelson and members of the Civil Service & Labor Committee. I am Ilene Lees, General Counsel for the New York City Department of Citywide Administrative Services ("DCAS"). I am joined today by my colleagues James Hein, Deputy Commissioner for Citywide Personnel Services and Mitchell Paluszek, Deputy General Counsel for Personnel. On behalf of Commissioner Martha K. Hirst, I would like to thank you for this opportunity to discuss Int. No. 1093-A, in relation to firefighter applicants who have completed high school in New York City. Based upon the legal reasoning discussed in detail below, DCAS opposes Int. No. 1093-A.

REASON FOR OPPOSITION

The New York State Civil Service Law governs the employment of all individuals in public service in the State of New York. According to the Civil Service Law, the local administration of civil service laws is entrusted to local commissions, termed municipal civil service commissions.

The Charter of the City of New York, in turn, provides that the Commissioner of DCAS shall have the powers and duties of a municipal civil service commission under the Civil Service Law. Among these powers and duties is the responsibility to determine the relative merit and fitness of candidates vying for competitive class positions. Specifically, subsection (1) of Section 50 of the Civil Service Law provides that "the merit and fitness of applicants for positions which are classified in the competitive class shall be ascertained by such examinations as may be prescribed by ...the municipal commission having jurisdiction." It is, therefore, the statutory responsibility of DCAS – as municipal civil service commission – to determine how to evaluate the relative merit and fitness of candidates.

That these responsibilities properly lie within the jurisdiction of a locality's municipal civil service commission is well-settled by the courts. Eighty years ago, in the case entitled Matter of Kilcoyne v. Lohr, 252 N.Y. 526 (1929), affirming, 226 A.D. 218 (4th Dep't), the highest court of this State affirmed a holding by the Appellate

Division that a local legislative body does not, for example, have the power to classify civil service positions and that such power rests with the municipal civil service commission of a locality.

It is, perhaps, important at this juncture to note two fundamental concepts. First, it is incorrect to consider the written test component of any examination to be the entire examination itself. The examination is, in fact, the entire evaluation process whereby DCAS determines a candidate's relative merit and fitness. This includes not only the written test, but any practical or physical test, as well as the incorporation of scores or points for seniority and awards, where applicable. The incorporation of these components does not occur *after* the examination or evaluation process; it is very much a part of that process.

Second, in addition to determining whether an individual is qualified for a position, it is the statutory responsibility of DCAS, as the municipal commission, to determine relative merit and fitness. Consequently, the evaluation process for competitive class titles cannot result in simply a list of passers and failers; we are constitutionally obligated to produce a rank-ordered eligible list which reflects the relative merit and fitness of all candidates. It is from this eligible list which appointments must be made in rank order.

If we put these two fundamental concepts together, the necessary conclusion is that every factor considered in the examination process that affects an individual's place on an eligible list must, in order to comport with the constitutional mandate, be reflective of the individual's merit and fitness as compared against his or her fellow candidates. And this is true with respect to the examinations developed and administered by DCAS for competitive class titles.

One exception to this mandate bears noting and actually illustrates the overarching significance of this mandate. Our examinations include a credit for veterans and disabled veterans. These credits appear on our examinations not because a determination has been made by DCAS or by anyone that an individual's status as either a veteran or disabled veteran is related to that individual's relative merit or fitness; rather, these credits appear on our examinations because they are required by the New York State Constitution. In other words, any argument that these credits violate the constitutional mandate that appointments be based upon merit and fitness is quieted by the fact that these credits are, in fact, provided for in the Constitution and are, therefore, constitutional. These credits regarding veterans and disabled veterans are constitutionally-permitted exceptions to the mandate requiring merit and fitness. But this reflects precisely how strong the public policy is that appointments be based upon merit and fitness: The only way to provide a well-intentioned credit not

based upon merit and fitness – in this case, the veterans and disabled veterans credit – was to actually change the New York State Constitution.

DCAS EXPERTISE

Now that I have discussed how relative merit and fitness must be ascertained according to the law and that DCAS, as the municipal civil service commission for the City of New York, is charged with this responsibility according to the Charter, I will expand upon DCAS's expertise in civil service exam administration. To the layperson, the development of an evaluation process to determine the relative merit and fitness of candidates may seem easy. Many, in fact, may think, "How hard can it possibly be to put a test together?" It is, in fact, a very deliberative process that requires a high degree of expertise in the very specialized field of testing.

Ultimately, it is the responsibility of DCAS testing experts to ensure that the evaluation process is valid, a concept with a very specific meaning in the field of testing. It means much more than developing an evaluation process which simply sounds reasonable. Ensuring test validity requires DCAS to consider, among other things, what abilities need to be examined, how and to what degree to evaluate those abilities, and what other qualifications or credentials need to be included in the evaluation process. As mentioned above, an ability cannot be tested and a credit cannot be included merely because it sounds good or even to advance an honorable or worthy public policy. In order to retain test validity, only those things can be evaluated or incorporated into the exam process which have been found to be job-related after a thorough job analysis. An exam, for example, cannot test for typing speed if a job analysis does not indicate that typing is needed for a position, no matter how much someone might think that having typing skills is advantageous. Our decisions at DCAS are driven not by notions that an ability is important or that a qualification is desirable; our decisions are the result of rigorous analyses which support or reject the inclusion of an item in the evaluation process.

CONCLUSION

Understand that our strong opposition to this proposal is based upon a strict legal argument, and does not include an analysis of the proposal. While the test developers at DCAS are, indeed, the trained and experienced testing experts, we would never close our doors to thoughtful discussions on how to evaluate relative merit and fitness, including discussions regarding graduation from a New York City high school.

But, we need to conclude by stating in the strongest possible terms that the passage of this legislation would be contrary to the provisions of the New York State Constitution, New York State Civil Service Law and the New York City Charter, all of which recognize that the responsibilities of a municipal civil service

commission must rest with the experts; in this case, DCAS. For these reasons, we strongly oppose Int. No. 1093-A. We are available to answer any questions you may have.

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LESTER LAYNE
Fire Marshal Representative

Submitted Testimony in Opposition to Intro 1093-A

By Stephen J. Cassidy, President

NYC Council Committee – Committee on Civil Service and Labor
Michael Nelson, Acting Chairperson
December 14th, 2009

Good afternoon Chairman Nelson, Council Member Comrie and members of the committee. I apologize that I can not be there to speak before you in person today. My name is Stephen Cassidy and I represent more than 9000 Firefighters and Fire Marshals here in New York City. The citizens of New York City deserve the very best firefighters that can be hired. We have testified on this subject before and have offered many suggestions on how best to accomplish this goal. Most of them have been ignored by this Administration. As the President of the UFA, I have done something no other UFA official has done before, by speaking at High Schools with a predominantly minority population about becoming a member of New York's Bravest. In addition we have advocated recruiting directly from the military and high school athletic teams.

We must oppose the granting of additional credit for an applicant that attends a NYC High School or obtains a GED certificate from a NYC institution on numerous grounds. We already have a five point city residency credit in place. Better verification of eligibility for this credit would be more prudent than granting a credit for anyone that attends a NYC High School.

There are many private High Schools in NYC that a large percentage of the student population comes from outside of the five boroughs. Some of those schools are as high as 50%. This credit would benefit applicants that do not live in NYC but were fortunate enough to attend a High School in NYC. In addition there are other schools that are outside of NYC that NYC residents attend. These students would be at a disadvantage for attending a school outside NYC even though they live within the five boroughs. While Intro 1093-a may be well intentioned to increase diversity in the FDNY, it could not be applied fairly. There are other ways to accomplish these goals and as we have testified in the past, the UFA would be in full support of them.

Lt. George Diaz – President - Hispanic Society – New York City Fire Department

Much discussion has been made on the diversity of the New York City Fire Department. I myself would love to see the department greater reflect the community it serves and protects. I along with the members of the Hispanic Society of the New York City Fire Department have worked diligently over the years to increase the Hispanic representation among our ranks. But this issue today is more of an economic issue than a diversity one.

In the my 20 plus years with the NYC Fire Department I have noticed a large portion of our members live outside of the city. I would estimate the percentage to be a 60-40 percentage with 60% living in the city and 40% living outside the city. This means a great deal of money made here in the city is spent outside of the city. Our brothers & sisters find it necessary for several reasons to move outside of the city after becoming city workers, mainly affordable housing. But many leave believing the suburban school system is better than the NYC Public School system. Most who already come from the suburbs will remain in the suburbs. Some move into the city temporarily just to take the test and when appointed return to the suburbs.

This leads us to my reasons for the consideration of preference points for applicants taking the entrance exam to become New York City Firefighters.

Many public school facilities are impressive while others are mediocre. The same is true of suburban schools. In the city public school system, the twin engines of political support and economic revenue base are critical. Some suburban K-12 schools have facilities and amenities which surpass those found at many colleges and universities. Some offer academic and sports programs which make full use of all those resources. It is hard to find comparable facilities in the public sector. They are few and far between.

On class size suburban schools win out on this issue. Why? Most suburban schools have small class sizes. One of the key points of suburban education is individual attention. You need student to teacher ratios of 15:1 or better to achieve that goal of individual attention. School size is typically related to the population density of the local area. On the other hand a City Public School system has to take almost anyone who lives within its boundaries. In city schools you will generally find much larger class sizes, sometimes exceeding 30-40 students in some city schools. At that point teaching rapidly degenerates into babysitting.

Low starting salaries and small annual salary increases along with the stress of these large class sizes result in low teacher retention in many public school districts.

Both city and suburban schools require their teachers to be credentialed. This usually means a degree and a teaching certificate. Suburban schools tend to hire teachers with advanced degrees in their subject over teachers who have an education degree. Put another way, a suburban school hiring a Spanish teacher will want that teacher to have a degree in Spanish language and literature as opposed to an education degree with a minor in Spanish.

The bigger the bureaucracy, the harder it is to get decisions made at all, much less get them made quickly. The City Public Education system is notorious for having antiquated work rules and bloated bureaucracies. This is as a result of union contracts and host of political considerations. The point is that the system was broken for a long time. Great improvements have been accomplished but the real results of those improvements are in the future graduates of our city.

I believe applicants, regardless of gender or race, choosing to take the entrance exam to become NYC Firefighters, who previously choose to remain in the city, be educated in the city and graduate from a New York City High School, will tend to remain in the city. Remain to live, raise their families and keep the income generated and earned here in this great city. This is an economic benefit to the City of New York. We are all concerned with two major factors. The disservice that was and has been given to some of our inner city school children with a previously inadequate school system and the economic difficulties the city faces now and in the future. This is a good step in rectifying a little of those two major hurts.

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I represent: Local 375, DC37, AFSCME

Address: SAME

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Name: Saringa Srisakul

Address: 41-07 Gleane St #10 Elmhurst, NY

I represent: United Women Firefighters (UWF)

Address: _____

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Name: Doery A Smith

Address: 464 Warren Street

I represent: Vulcan Society

Address: 738 East Parkway

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Name: GEORGE RICCO DIAZ

Address: 1940 AUGHT AVE B4, NY 10461

I represent: NYC FIRE DEPT HISPANIC SOCIETY

Address: _____

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Name: REGINA Wilson

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I represent: United Women Firefighter (UWF)

Address: _____

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Name: MICHAEL MARSHALL

Address: _____

I represent: VULCAN SOCIETY

Address: _____

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Name: PAUL WASHINGTON

Address: _____

I represent: VULCAN SOCIETY

Address: _____

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Name: DEBRA MARTINEZ

Address: P.O. BOX 192 N.Y. 10009-0636

I represent: GRAND COUNCIL OF HISPANIC

Address: SOCIETIES IN PUBLIC SERVICE

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(PLEASE PRINT)

Name: JAMES N. TEMPRD

Address: 580 MACON ST.

I represent: VULCAN SOCIETY, INC. FDNY.

Address: 580 MACON ST. BROOKLYN NY 11233

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Name: ANJANA SAMANT

Address: CENTER FOR CONSTITUTIONAL RIGHTS, 666 Broadway 7th Fl, 10012

I represent: CENTER FOR CONSTITUTIONAL RIGHTS

Address: _____

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Address: DCAS

I represent: _____

Address: _____

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