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# **TENSIONS, TRENDS AND TRADE-OFFS:**

**Recommendations Toward an  
Equitable, Efficient, and Effective  
New York City Civil Service System**

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**A REPORT FOR CITIZENS UNION**

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# **EXECUTIVE SUMMARY**

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# EXECUTIVE SUMMARY

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## PROJECT PURPOSE

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In January 2011, New York City Mayor Bloomberg released the “Report and Recommendations” of the Mayor’s Workforce Reform Task Force (hereafter referred to as the WRTF Report), which listed a number of recommended changes to the City’s civil service system around Governance, Hiring Flexibility, and Organizational Excellence. Soon after, the Municipal Labor Committee comprised of public sector unions fired back with a detailed analysis of the potentially detrimental effects of the changes (hereafter referred to as the MLC Response).

With an interest in identifying common-ground solutions that could overcome these polarized politics, Citizens Union engaged the Wagner Capstone Team to study the civil service system. Citizens Union was founded to advance good government. Civil service reform was one of the first issues it became involved in at the start of the 20<sup>th</sup> century. In 1976, the organization released a report that made recommendations about how to improve the civil service system. However, many of the problems cited by the report remain today and are still causing tension between stakeholders in the system. The goal of this report is to help contextualize the civil service system as it stands today and provide feasible, well-informed recommendations for how the system could be improved.

The title of this report, “Tensions, Trends, and Trade-Offs,” reflects the current state of the reform project. These critical factors must be considered while advancing reform of the City’s Civil Service system.

- **Tensions:** While all working toward the goal of a functioning City government, the current stakeholders in the system have diverse values, preferences, and theories for how to achieve this goal. Relationships are further complicated by governance structures that are often conflicting and confusing.
- **Trends:** There are a number of resources on which to draw when considering civil service reform. The history of the system, civil service practice in other jurisdictions, private sector practice, and policy research all have lessons that can inform changes in New York City’s system.
- **Trade-Offs:** Change is stalled in the current system because of the ongoing tensions between stakeholders and disagreements about the value of various trends as they may be implemented in the City. For many pressing issues, decisions must be made that place three distinct values at odds: *Equity*, *Efficiency*, and *Effectiveness*. Understanding the trade-offs between these values provides a lens for identifying and analyzing the potential for recommendations to move forward.

## METHODOLOGY

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To accomplish the goal of providing feasible, well-informed recommendations for how the system could be improved, this report uses information collected from interviews, pertinent legal and City documents, and secondary-source research. Our research examined best practices from other jurisdictions and the federal government in addition to academic public administration and human resources management journals, news coverage, labor union publications, materials from advocacy groups, and City manuals and policies.

Stakeholder and expert interviews also informed this report by providing perspectives on the successes and challenges of the current civil service system. Recently proposed reform recommendations and, to a varying extent, some of this report's recommendations were presented to stakeholders for their response. Because political feasibility was an important criterion for this report, a particular emphasis was placed on having a well-rounded representation of all key stakeholders.

In total, we interviewed 26 individuals about their personal experiences with or academic perspectives regarding this civil service system, or systems and reform projects in other jurisdictions. These interviewees ranged from union representatives to City managers, administrators, and employees; teachers and principals; experts in New York's civil service system and budget; and experts on national civil service trends. In addition, our team attended three community events addressing the diverse topics related to our inquiry, from teacher retention to labor movement trends.

From this exhaustive review, we have been able to identify key problems and concerns plaguing New York City's civil service system, weigh the diverse perspectives on each issue, and develop recommendations for reform that promote the shared goals of **equity, city effectiveness, and civil service system efficiency**. Through our inquiry and analysis, we emphasized feasibility and the need for buy-in from a broad spectrum of major stakeholders to ensure that these recommendations are viable next steps toward more efficient, effective and equitable city functioning.

## **AREAS OF INQUIRY**

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A summary of the current most relevant rules and regulations related to civil service can be found in Appendix I. After reviewing problems identified by the WRTF Report along with other prior studies of reform in New York City, we categorized some of the most common concerns into four major areas. We also determined that given the uniqueness and controversy around the subject of teachers, these issues should be drawn out in a special Teachers section. These concerns are detailed by section below.

### **Governance**

The civil service system is a complicated patchwork of players and laws, with checks and balances embedded that ensure no single interest ever prevails completely. As a result, reform efforts are often stalled by complicated politics. While the State of New York grants many powers to New York City, the State has retained oversight over the civil service system. According to City representatives and affiliate public authorities, this oversight is cumbersome at best and unproductive at worst.

In addition to this game of politics, there is an equal game of resources. The Department of Citywide Administrative Services is charged with carrying out the tenets of civil service laws. Making changes in the system will require dedicated resources toward new pilot programs, employee development, and managerial training. However, the current budget situation is bleak.

A final common governance problem arises in the form of clashes between unions and the City. These clashes tend to revolve around an equity/efficiency trade-off, where developing fair practices can require a sacrifice of some form of operating efficiency. While the City technically has authority to make changes, unions can exert significant power to stall and derail attempts of certain kinds of reforms. Conversation and cooperation is the only way to break through the stalemate and reach common-ground solutions.

## **Hiring & Exams**

Exams are the pathway into civil service competitive positions. The goal of this process is to accurately assess a candidate's potential job performance in a fair and competitive manner. The main issues pertaining to this section are whether exams accurately measure a candidate's skills/aptitudes, the potential disparate impact of exams on people of different races or demographic backgrounds, and if the process for challenging the exam content is effective.

The efficiency of the exam process is another issue; exams are not given frequently enough, take a long time to develop, and incur significant delays between an individual taking the test to the point of hire. The last key issue we explore in this section is the scoring of exams. Exam scoring determines a position's ranked list, which has implications for who is considered for the position, the size of the hiring pool, and who ends up being hired. This section is broken up into the various stages of the examination process: development, administration, and exam scoring & challenging.

## **Job Classifications**

Our research pinpointed the areas pertaining to managers, job titles, provisional employees and temporary and outsourced employees, as having the most critical issues. Currently, managers do not have needed clarity about the policies that govern their authority to manage those they supervise. Additionally, there are currently over 1,000 job titles in the system, which makes it very difficult to administer exams. Infrequent exams can reduce a City department's ability to hire top talent in a flexible manner.

The next crucial issue within Job Classifications is provisional employees are in the system for years in jobs that could potentially be for City employees and are not afforded the opportunity to receive union rights. The last concern we address within Job Classification is the outsourcing of employees for certain projects, which becomes a long-term dilemma due to the overuse of temporary or contractual employees.

## **Workforce Management**

### **Probationary Periods, Performance Evaluations & Promotions**

The City's performance evaluations are completely ineffective, and are only linked to disciplinary measures and not to professional development or any other rewards. In its current state, performance evaluations are an inefficient use of City resources as they are unevenly implemented, not accurately or consistently completed, and are generally positive unless managers explicitly are preparing to enter the disciplinary process.

The key concern with promotions within the City is that "merit" is determined based on a test and does not take into consideration prior job performance, education or specialized skills. Once an employee has tested into the civil service system and is a permanent employee, he/she has demonstrated "merit and fitness" through on-the-job performance and value to the agency and competitive examination is no longer the most objective standard to advance. Furthermore, the limited number of open competitive exams for mid to senior level managers is a cause for concern as it promotes an insular workforce and potentially hinders innovation among City leadership.

The City's main issue regarding probationary periods is the one-year time period that applies to (almost) all titles in the civil service system, regardless of the differing lengths of time to learn some positions as



opposed to others. While longer probationary periods could be beneficial for the City to ensure a high quality workforce, many of the workforce quality issues generally arise after the probationary period has ended. Lengthening the probationary period will not ensure a higher quality workforce nor improve more effective service delivery.

### **Discipline, Due Process, and Downsizing**

The City's discipline process is inconsistently understood and applied, and may be overly onerous for managers. In addition, arbitrations are ripe for reform, as both unions and the City stand to benefit from a swifter and less costly process.

When downsizing for budgetary reasons, City effectiveness may be challenged when seniority-based layoffs dismiss well-performing employees but keep those who are performing poorly. An often-overlooked concern is the aftermath of layoffs, in which employees with seniority can end up replacing newer, laid off workers' roles, causing ill fits and productivity loss.

### **Teacher Performance Evaluation and Layoffs**

In our special section that details teacher layoff, discipline and performance evaluation, we evaluate the considerable public debate that has attracted much attention to the tensions between seniority, performance, and equity. While performance-linked downsizing would come with a host of its own woes, the current seniority-based layoffs tend to disproportionately affect lower-income schools, and have been show in other jurisdictions to let highly effective teachers go. An often-ignored link between retention of new teachers and the job insecurity of these same teachers due to layoff policy drew our attention, and elicited recommendations for reform.

## **RECOMMENDATIONS**

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Although there are many competing interests, especially between the City and unions, at stake in civil service reform, there is common ground for all parties to collaborate and make the appropriate changes for the betterment of the system. Our recommendations highlight these collaborative opportunities by addressing the areas that have potential for the greatest impact.

Please see the chart below for a complete mapping of the recommendations, including information on the key concerns, type of change, and stakeholder viewpoints.

## RECOMMENDATIONS By Topic

		TRADE-OFFS			PAGE LINK	RECOMMENDATION	TYPE OF CHANGE		SUPPORT	
		EQUITY	EFFICIENCY	EFFECTIVENESS			TYPE OF CHANGE	PARTNERS	CITY	UNIONS
GOVERNANCE	The State is not as responsive as the City would like for their desire to make regular changes as a 21st century workforce. However, State oversight helps provide checks on the potential for patronage.		√	√	43	Explore options for improving the civil service oversight system. A. <i>Option 1:</i> Work with the State on or advocate for the improvement of administrative capacity to address City issues. B. <i>Option 2:</i> Develop a system in which the State must be notified of and may overrule changes, but is not required to give approval C. <i>Option 3:</i> Advocate for the movement of the State oversight function to a new, independent City Civil Service Commission that is shielded from control by elected officials	Law - State Civil Service Law <b>OVR</b>	State Govt, City	Partially- City wants complete control	Partially- Unions want to ensure against patronage
	The New York City Transit Authority and Triborough Bridge & Tunnel Authority both agree with the City that they should be removed from the City's civil service system.	√	√		46	Allow the Metropolitan Transportation Authority to administer exams on behalf of the New York City Transit Authority and the Triborough Bridge and Tunnel Authority	Law - State Civil Service Law <b>OVR</b>	State Govt, Authorities, (Unions)	Yes	No- Unions concerned about workers losing rights
	Department of Citywide Administrative Services does not have adequate resources to serve as an effective support system for alleviating the strains of civil service requirements.		√	√	48	Allocate resources to the following areas: A. DCAS' ability to pilot new ideas (exams, E&E, performance evaluations, promotions, etc) B. Employee development (best practices, reward incentives) C. Managerial training & troubleshooting (esp. around transfers, discipline, performance)	Administrative - Resources/ Political Will <b>RSC</b>	City	N/A (City is attempting to reduce city budget overall)	Yes- Unions believe DCAS needs more resources
	Disagreements between the City and unions stall progress on many issues. Conversation and cooperation is the only way to break through the stalemate and reach common-ground solutions.	√	√	√	51	Establish a series of Labor-Management Committees to include at least one Office of Labor Relations and one union representative on the following topics: A. Job Title Management (in perpetuity) – also add union representation to Provisional Reduction Analysis Team B. Workforce Morale – Stakeholder Surveys (temp. working group) C. Restructuring Test Validation (temp. working group) D. Arbitration Efficiency (temp. working group)	Administrative - Resources/ Political Will <b>LMC</b>	City, Unions	N/A (Unclear whether City would support)	Yes- Unions want more input

## RECOMMENDATIONS By Topic

KEY ISSUE		TRADE-OFFS			PAGE LINK	RECOMMENDATION	TYPE OF CHANGE		SUPPORT	
		EQUITY	EFFICIENCY	EFFECTIVENESS			TYPE OF CHANGE	PARTNERS	CITY	UNIONS
Exams	There are ongoing questions about whether exams accurately measure a candidate's skills/ aptitudes, the potential disparate impact of exams, and if the process for challenging the exam content is effective.	√	√		61	Establish a Labor-Management Committee to revisit the Test Validation Board process	Law - State Civil Service Law LMC	State Govt, City, Unions	Yes	Yes- Unions are willing to talk about alternatives
		√	√	√	56	Devote more resources and training to help DCAS increase their capacity for exam development	Administrative - Resources/ Political Will RSC	City	N/A (City is attempting to reduce city budget overall)	Yes- Unions believe DCAS is under-resourced
	Exams are not given frequently enough, take a long time to develop, and there are significant delays between an individual taking the test to the point of hire.		√		55	Consider purchasing exams through a private company with caution	Administrative - Resources NOC	City	Yes- City wants to explore	No- Unions want answers published
			√		58	Increase the implementation of technology to facilitate easier access and administration of exams (e.g. test centers, walk-in exams, online exams)	Administrative - Resources INF	City	Yes	Yes
			√		59	Pilot a program focused on continual recruitment/ongoing testing	Administrative -Resources PIL	City	Yes	Yes
	Different methods of analyzing and selecting candidates for a job could lead to better hires.	√	√	√	57	Continue with the implementation of Education & Experience exams (expansion should be met with caution) and increase the use of Selective Certification	Administrative - Political Will NOC	City	Yes	No- E&E Yes- Case-by-case selective certification
	The methods for scoring exams have implications for who is considered for the position, who ends up being hired, the size of the hiring pool, and how the exam list is created and maintained.	√		√	60	Implement band scoring	Administrative - Political Will ADM	City, (Unions)	Yes	No- Unions believe unfair

## RECOMMENDATIONS By Topic

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		EQUITY	EFFICIENCY	EFFECTIVENESS			TYPE OF CHANGE	PARTNERS	CITY	UNIONS
Job Classifications	The City spends a large amount of money paying overtime to employees with managerial duties who are not classified as managers.	√		√	63	Develop new criteria regarding overtime pay for “unofficial” managers to reduce expenses; present criteria to unions during collective bargaining discussions	Administrative - Political Will; Collective Bargaining <b>ADM</b>	City, Unions	No- City wants to re-classify managers	No- Unions support overtime pay
			√	√	64	Increase the amount of training provided to managers and supervisors	Administrative - Resources <b>RSC</b>	City	Yes	Yes
	There are currently over 1,000 job titles in the system, which makes it very difficult to administer exams.	√	√		67	Establish a Labor-Management Committee to address broadbanding and consolidation of titles	Administrative - Resources/ Political Will <b>LMC</b>	City, Unions	No- City would like to control	Yes- Unions want involvement
	Provisionals are in the system for years in jobs that could potentially be for City employees and are not afforded the opportunity to receive union rights.	√	√	√	69	Develop education and experience exam for all provisional employees and train managers to encourage provisional employees to take exams	Administrative - Resources/ Political Will <b>ADM</b>	City, (Unions)	No- City did not support E&E exam	Yes- Unions support getting provisionals into system
	Outsourcing of employees for certain projects becomes more than just a necessary temporary request but instead a long-term dilemma.	√	√	√	70	Impose more rigid rules for outsourcing employees and temporary appointments, particularly in regards to the enforcement and strict monitoring of timeline deviations	Law- Personnel Rules <b>OVR</b>	City	No- Prefer flexibility	Yes- Unions support stricter requirements

## RECOMMENDATIONS By Topic

		TRADE-OFFS			PAGE LINK	RECOMMENDATION	TYPE OF CHANGE		SUPPORT	
		EQUITY	EFFICIENCY	EFFECTIVENESS			TYPE OF CHANGE	PARTNERS	CITY	UNIONS
Workforce Management: Probationary Periods, Performance Evaluations, and Promotions	Not all positions are created equal: it might take much longer to learn some positions.	√		√	73	Collectively bargain longer probationary periods (if the City is able to make a compelling case)	Law Personnel Rules, Collective Bargaining NOC	City, Unions	No- City wants across-the-board change	Yes- Unions are ok with making changes if they are bargained
	Performance evaluations are completely ineffective - they are only linked to discipline and not to professional development.	√		√	76	Engage in a series of steps to change the culture around evaluations to make them more meaningful: A. Conduct an independent survey administered to all managerial and nonmanagerial employees, which will enable DCAS to understand and identify current problems with the system and to reframe the central message B. Increase employee involvement with developing the “tasks and standards” portion of each agency-specific performance evaluation C. Make employee appraisals geared toward “development” where there is goal setting with the manager and employee D. Improve managerial training with respect to performance evaluations to make them more evenly implemented across agencies	Administrative - Resources/ Political Will ADM	City, Employees, Unions	Yes- City wants to fix performance evaluation system	Yes- Although, unions want fair and objective criteria and involvement in survey
	Current pay system rewards employees based on longevity rather than on efficient and effective performance.	√	√	√	80	Consider pay-for-performance only with due diligence	Administrative - Resources/ Political Will NOC	City, Employees, Unions	Yes- City wants to explore	No
	Promotions do not take past job performance or education/ specialized skill (unless explicitly recognized on the job description) into consideration because of test requirement.	√		√	82	Use Assessment Centers for promotions to managerial positions	Administrative - Resources/ Political Will INF	City	N/A (although City had assessment centers in the past)	N/A (although unions might support as long as they were proved to be objective)

## RECOMMENDATIONS By Topic

KEY ISSUE		TRADE-OFFS			PAGE LINK	RECOMMENDATION	TYPE OF CHANGE		SUPPORT	
		EQUITY	EFFICIENCY	EFFECTIVENESS			TYPE OF CHANGE	PARTNERS	CITY	UNIONS
	Once an employee has already tested into the civil service system, competitive examination is no longer the most objective standard to advance in one's career.	√		√	82	Establish objective standards for promotions with the unions. Ideas of such objective promotional benchmarks include: A. Time in a certain position B. Education requirements C. Benchmarks attained for advancing agency-wide goals.	Administrative - Political Will; Collective Bargaining <b>INF</b>	City, Unions	No- City would like managers to have more discretion	Yes - Unions are willing to work with the City
	Many upper level titles are only open to promotional exams as opposed to open competitive exams – thereby making these positions only available for those who are already in the civil service system.	√		√	83	Increase the number open competitive exams to be administered for mid- to higher-level managerial positions.	Administrative - Resources/ Political Will <b>ADM</b>	City, Unions	No	No
Workforce Mgmt: Discipline, Due Process, Dismissal	Discipline process is inconsistently understood and applied, and may be overly onerous for managers.	√	√	√	85	Establish a pool of informal discipline procedures in which managers can be trained	Administrative - Political Will; Collective Bargaining <b>INF</b>	City, Unions	Yes- City managers already use on ad hoc basis	Yes- Unions will support if collectively bargained
	Arbitrations can take a long time and are costly.	√	√		88	Establish a Labor-Management Committee to address streamlining of arbitrations	Administrative - Resources/ Political Will <b>LMC</b>	City, Unions	Yes- City wants to streamline	Yes- Unions are willing to discuss
	Seniority-based layoffs may dismiss well-performing employees but keep those who are performing poorly.	√		√	89	Add additional layoff subdivisions (consistently across all agencies and well in advance of pending layoffs) to ease concerns of employee targeting	Law - Personnel Rules <b>ADM</b>	City	Yes	No- Believe it will result in targeting
	Also, employees with seniority can end up replacing newer, laid off workers' roles, causing ill fits and productivity loss.	√		√	90	Pilot "mutual matching" for displaced workers to new positions based on managers' and workers' choices.	Administrative - Political Will <b>PIL</b>	City	N/A (but addresses WRTF Report concern with new approach)	N/A (but challenged by teachers' union in Oakland, CA)

## RECOMMENDATIONS By Topic

KEY ISSUE		TRADE-OFFS			PAGE LINK	RECOMMENDATION	TYPE OF CHANGE		SUPPORT	
		EQUITY	EFFICIENCY	EFFECTIVENESS			TYPE OF CHANGE	PARTNERS	CITY	UNIONS
Teacher Evaluations and Layoffs	Evaluation systems currently do not provide feedback that helps teachers grow to their capacity and do not look at different stages in the teaching career.	√		√	94	Reduce the weight of the student performance portion of performance evaluations until researchers develop more accurate assessment methodology	Law- State Regulations of the Education Commissioner <b>ADM</b>	City, Unions, Principals,	No- City advocates for using tests scores for assessment	Yes- Unions are opposed to using test scores for assessment
		√		√	95	Incorporate peer review teams or independent objective educators into the evaluation process.	Administrative - Political Will <b>PIL</b>	City, Unions, Principals	No	Yes-Eliminates subjective assessments
	Seniority-based layoffs tend to disproportionately affect lower-income schools, and have been show in other jurisdictions to let highly effective teachers go. School-level layoffs, closures, and threats plague 1st and 2nd-year teachers. These both indicate general retention problems.	√		√	98	Increase focus on retention within the layoff debate by conducting a study of the relationship between retention, morale, job security and current pink slip procedures.	Administrative - Political Will <b>PIL</b>	City, Retention Experts	N/A (but will ensure systems complement one another)	N/A (but likely to advance union goals by supporting morale)
		√		√	98	Emulate recent policies of the Los Angeles and San Francisco Unified School Districts to shield low-income schools from layoffs.	Administrative - Political Will <b>PIL</b>	City, Teachers' Unions	Yes- City willing to discuss. (WRTF addresses performance, not equity.)	N/A (Unions have opposed in San Francisco, but may support a pilot)

### **Type of Change Key:**

LMC = Labor-Management Committees  
 ADM = Changes to Administration  
 PIL = Pilot Programs  
 RSC = Resource Allocation  
 INF = Build Infrastructure  
 OVR = Changes to Oversight  
 NOC = Notes of Caution



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# INTRODUCTION

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**OVERVIEW OF CIVIL SERVICE REFORM**

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**POLITICS OF CIVIL SERVICE REFORM**

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# INTRODUCTION

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In January 2011, New York City Mayor Bloomberg released the “Report and Recommendations” of the Mayor’s Workforce Reform Task Force (hereafter referred to as the WRTF Report), which listed a number of recommended changes to the City’s civil service system around Governance, Hiring Flexibility, and Organizational Excellence. Soon after, the Municipal Labor Committee comprised of public sector unions fired back with a detailed analysis of the potentially detrimental effects of the changes (hereafter referred to as the MLC Response).

With an interest in identifying common-ground solutions that could overcome these polarized politics, Citizens Union engaged the Wagner Capstone Team to study the civil service system. Citizens Union was founded to advance good government. Civil service reform was one of the first issues it became involved in at the start of the 20<sup>th</sup> century. In 1976, the organization released a report that made recommendations about how to improve the civil service system. However, many of the problems cited by the report remain today and are still causing tension between stakeholders in the system. The goal of this report is to help contextualize the civil service system as it stands today and provide feasible recommendations for how the system could be improved based on interviews with experts and stakeholders along with policy and best practice research from the field.

The title of this report, “Tensions, Trends, and Trade-Offs,” reflects the current state of the reform project. These critical factors must be considered while advancing reform of the City’s civil service system.

**Tensions:** While all working toward the goal of a functioning City government, the current stakeholders in the system have diverse value sets, preferences, and theories for how to achieve this goal. Relationships are further complicated by governance structures that are often conflicting and confusing.

- **Trends:** There are a number of resources on which to draw in considering civil service reform. The history of the system, civil service practice in other jurisdictions, private sector practice, and policy research all have lessons that can inform changes in New York City’s system.
- **Trade-Offs:** Change is stalled in the current system because of the ongoing tensions between stakeholders and disagreements about the value of various trends as they may be implemented in the City. For many pressing issues, decisions must be made that place three distinct values at odds: *Equity*, *Efficiency*, and *Effectiveness*. Understanding the trade-offs between these values provided a lens for identifying and analyzing the potential for various recommendations to move forward.

This report includes multiple sections. The first provides an overview of civil service reform, an analysis of the politics of reform efforts, a history of New York City’s civil service, and the history of the labor movement’s rise in becoming a power player. Following these history sections, this report explores the current system, stakeholder perspectives, and proposes reform recommendations for the following topics: 1) Governance, 2) Exams, 3) Job Classifications, and 4) Workforce Management (split into two sections). A special section discusses teacher layoff, discipline, and performance evaluation. The paper concludes with a wrap-up of key themes and considerations.

## OVERVIEW OF CIVIL SERVICE REFORM

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Civil service reform became a major and ongoing issue in the United States beginning in the Progressive Era of the late 19<sup>th</sup> Century and remains an issue today. Governments at all levels are still continuously evaluating, revising, and updating both periphery and core elements of their civil service practices. For many places across the country, these reforms are necessary for survival; as the population across the country ages, many public workforces are seeing retirees leave with few people interested and qualified to replace them. While government work has traditionally involved a certain level of stability and benefits, the impact of budgetary slashes on compensation and benefits coupled with rising private sector wages has resulted in high turnover and low interest in public work.

In addition, the state of the labor movement nationally has an impact in the public sector. Due mostly to decline of union representation in the private sector, there is now higher density of unionized employees in the public sector than with private companies. For this reason, and in response to growing anti-government sentiment and the spotlight on public spending, the labor movement has begun to focus more attention on defending public sector workers.

One common scapegoat for the unattractiveness of public sector work is the bureaucracy involved in entering and moving through the system. With the unprecedented mobility of today's workforce, the notion of a "career in public service" where a worker begins at entry-level and works their way up through the ranks has become antiquated. Managers want to be able to hire good people, and one City representative has cited in particular the importance of attracting young workers with fresh perspectives.

Fortunately, New York City is not yet suffering severe shortages of potential workers in the way smaller cities and towns across the country are. However, that does not mean that all is well. According to one civil service expert, New York City has either the least or the most sophisticated civil service system, depending on the perspective. The rules governing the system have changed little over the years, and in a system with heavy union involvement, protections for employees have only grown—and grown more complicated at that. In general, the system is sophisticated in that it offers safeguards of merit/tests of competence and equity principles at every step of an employee's career. The system is unsophisticated in that its sheer complexity is often unwieldy and leaves little flexibility for managers or opportunity for innovation.

Despite this complexity, New York City's commitment to the fundamental core of its civil service system—merit and fitness—is strong. A review of Human Resources Practices in State Government found that there are three primary functions of civil service reform: reducing size, scope, and automatic entitlements; creating new flexibilities while retaining core merit principles; or abolishing civil service entirely.<sup>1</sup> States like Florida and Georgia have in the last couple of decades largely or completely abolished their systems, but New York City is very unlike these places in many ways. Support for civil service is a part of New York City's culture, and it is doubtful there would be support from many for abolishing the system, or even limiting it drastically. As a result, efforts toward reform will have different goals in New York City than in other jurisdictions.

As one City representative said, "No one is looking to erase civil service...other places have made much more radical changes than what the City proposes;" however, the same person went on to pose a basic question "it is important to guard merit and fitness, but at what cost?" Despite the value of civil service,

the cost is important to continually reconsider. As this report will show, there are numerous opportunities for the City to improve its system on equity, efficiency and effectiveness grounds that can move it from a 20<sup>th</sup> or even 19<sup>th</sup> century system into the 21<sup>st</sup> century.

## **POLITICS OF CIVIL SERVICE REFORM**

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The New York City civil service system has been in a state of flux since its inception and yet very little of the core of the “merit and fitness” system has changed over the last century. At its base is the notion that employees should enter and be advanced through the government based on demonstrated competence. The alternative to a merit system is a patronage system, which New York City maintained for many years prior to the implementation of civil service.

The basics of these two systems and their ramifications are described below by political scientist David K. Hamilton:

“Two basic systems for staffing the public service are the patronage and the merit models with their various permutations and combinations. The emphasis of the patronage model is employee responsiveness and loyalty to the political party, political leader, or ideology. The merit model emphasizes neutral efficiency and employment on the basis of ability and competence. These models have been criticized and defended; they have been taken to extremes resulting in corruption and incompetent employees at one extreme to bureaucratically rigid rules and procedures that create inefficiencies at the other extreme.”<sup>2</sup>

The notion of corruption is central to debates around civil service. While subjectivity in and of itself is not patronage in the political sense, any openings for subjectivity in a system have the potential to encourage political favoritism. New York City unions cite Tammanyism as a constantly looming specter, ready to infiltrate the civil service system at the slightest crack in the merit-and-fitness principles. Indeed, these fears may not be entirely unwarranted. While cronyism seems like a beast of the 19<sup>th</sup> and early 20<sup>th</sup> century, there are still places where it either overtly or covertly continues.

The City of Chicago, often compared to New York City on many historical and contemporary measures, is still struggling to remove patronage from its ranks. Both the City and the County have been under a court-monitored staffing system, since 1983 and 1994 respectively, and yet, as recently as 2010, allegations of patronage continue. Hamilton cautions strongly that these practices should not be ignored by other jurisdictions: “if determined politicians and their political appointees can corrupt an antipatronage staffing system, this writer argues that it would be much easier for determined politicians and their political appointees to abuse an at-will system that has few or no patronage prohibitions.”<sup>3</sup>

At the same time, Hamilton also argues that patronage might have a bad reputation. In his view, patronage is potentially more responsive to the public, without the “rigid, stifling, bureaucratic rules” of civil service.<sup>4</sup> However, this ignores an important aspect of public sector work that separates it from the private sector.

Management and governance in the public sector is inherently different from the private sector. In addition to private sector principles of effectiveness and efficiency, the public sector must reflect the core values of its society; in this case, principles of democracy and equity. Unfortunately, as New York City researcher Blanche Blank states, “New York’s civil service is expected to be both productive and

democratic, and therein lies the essential paradox that accounts for much of the public's displeasure. Each goal is necessary and proper, yet they are often incongruent."<sup>5</sup>

A further conflict arises when considering the government's constituent taxpayers. Generally, taxpayers are interested in two things: 1) the fiscal/budgetary implications of both current inefficiencies and future changes; and 2) the effectiveness and quality of City services, relative to the cost of these services. In the current economic climate, there has been a large backlash against government bureaucracy that is inefficient in spending "taxpayers' dollars." With the days of visible corrupt political machines mostly gone, equity concerns have usually taken a backseat to those of fiscal austerity.

In imagining revisions to the current civil service system, the tensions between equity, efficiency, and effectiveness form the core of analytic inquiry. This report will focus on these tensions with the following questions in mind:

<b>Equity/Fairness:</b>	Does the system consider all applicants/employees with objective measures?
<b>City Effectiveness:</b>	Can the City employ the best people to the best of their abilities?
<b>System Efficiency:</b>	Do the rules in place cause significant time lags or resource challenges that inhibit the ability of the City to function?

A variety of players have large stakes in these ideals. Moreover, many people have multiple roles in the City that cause them to place different levels of value on the ideals depending on which hat they are wearing. An employee may be concerned about equity in regards to his or her own job, while simultaneously benefitting from City services such as the public schools system and being concerned as a taxpayer that money is being wasted on excessive employees. That same employee may vote for a politician who must be concerned with representing both that employee's interests and that of other constituents, who also have an interest in the level of service being provided by the City.

### **Challenges and Opportunities of Reform**

There are three major interrelated challenges for reform in New York City that arose from research and targeted interviews. The first, as multiple City representatives pointed out, is that it is very difficult for the public to understand civil service reform issues. Without direct experience with the system, most citizens will be largely oblivious to the system's complexity, nuances, and values. The system's size and complexity is itself a large problem, as even small changes have the potential to affect a large portion of the approximately 300,000 civil servants in the City. Finally, when the citizens are not knowledgeable enough to push for reforms themselves, it requires a certain amount of political capital.

Unfortunately, this political capital is often caught up in more pressing items. For example, when most people think of civil service issues, they think of pension reform, which has been a long and bloody battle in New York State and government entities across the nation. One City representative pointed out that while Governor Christie of New Jersey had managed both civil service and pension reform, it was unlikely to happen in New York. However, he did suggest that there might be trade-offs between concessions with pension reform and civil service reform.

However, civil service reform is nowhere near the scope of pension reform, which has up to \$8 billion at stake. In the scope of the budget as a whole, most of the recommendations do not require significant investments of resources. In many cases, the recommendations are not adding costs as often as they are replacing or removing them.

That being said, New York City researchers Savas and Ginsberg point out a couple of reasons why elected officials may be wary of making too many changes to the civil service system. If changes demoralize workers, it may result in poorer performance and delivery of services, which would harm the reputation of the politician. Furthermore, the employees themselves constitute a large voting block and may choose to take it out on the politician.<sup>6</sup>

Civil service experts Battaglio and Condrey have found that politically-motivated reform efforts may be met with resistance, whereas administratively-oriented reforms that are more strategic and incremental have more potential to encourage the support of key constituencies.<sup>7</sup> Unfortunately, the political life of an administrator may also only last 2-4 years, which might not be enough time for implementation. In the State of Wisconsin, it took the legislature three legislative sessions to change the way they determine who can be hired after taking an exam.<sup>8</sup>

The key, then, to passing civil service reform likely lies in timing and leadership. In a review of civil service reform from around the country, civil service expert Steven W. Hays came to the conclusion that reform successes came when “Policy champions—political and managerial—emerged to marshal the necessary forces and give shape to the reform agenda.”<sup>9</sup>

In the case of New York City today, the timing may be right. Recent (as of February 2012) efforts at the State level to reform certain aspects of civil service may result in a more conducive climate to making changes at the City level. Potential policy champions would do well to be prepared if and when this opportunity presents itself.



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# **HISTORY OF THE CIVIL SERVICE SYSTEM**

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# HISTORY: Civil Service

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**Please see Appendix II for a complete timeline of the history of the civil service system, organized by phases and themes.**

Merit and fitness-based civil service systems have been the gold standard of good government practice for over a century. New York City has been a leader in developing a merit-based civil service, and yet throughout this history there has typically been a disconnect between the ideal and the practice. Exploring the history of this system not only highlights this disconnect, but also provides greater context for the strengths and weaknesses found in today's civil service system.

## **PHASE I: TAMMANY HALL - THE EARLY YEARS**

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### **1786-LATE 1800S**

For over 100 years, Tammany Hall was an influential political machine in New York City government and politics. Established in 1789, the Society of St. Tammany was initially a patriotic, non-political organization. This changed in 1798 when Aaron Burr utilized the organization to draw support for anti-Federalist campaigns, and over time it evolved into a powerful and ill-regarded political network characterized by corruption.

The bad reputation of Tammany Hall was not ingrained in the public conscience until William Marcy Tweed's reign (from the late 1860s to early 1870s). Throughout this time, Tweed ultimately stole between \$30- \$200 million from the New York City budget through devices such as padded bills and unnecessary repairs.<sup>10</sup> Tweed was convicted in 1873 of forgery and larceny, but despite the bad image, Tammany Hall continued to influence government and politics through the 1930s.

Extensive corruption and patronage under Tammany's reign emphasized the need for a merit-based civil service system. In addition to the transition of social services to federal oversight and President Franklin Delano Roosevelt's denial of federal patronage to Tammany Hall, the rise of civil service reform efforts contributed powerfully to the downfall of the entrenched political machine. However, the mechanism of civil service also needed to develop to serve the City's best interest, and to ensure the quality of the City's civil servants.

## **PHASE 2: ESTABLISHMENT AND EXPANSION OF "MERIT AND FITNESS"**

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### **LATE 1880S-EARLY 1930S**

The period of Tammany Hall dominance coincided with efforts to establish a civil service system based in merit and fitness. At the Federal level, civil service reform was spurred by Charles J. Guiteau's assassination of President James A. Garfield in 1881. Charles J. Guiteau believed that he was a large part of Garfield's presidential victory and expected a government appointment. Upon Garfield's repeated rejections of the appointment, Guiteau assassinated the 20<sup>th</sup> president, which incited public demand for civil service reform.<sup>11</sup> Vice President Chester A. Arthur succeeded Garfield and officially made the federal government a merit-based system upon signing the Civil Service Act (i.e. The Pendleton Act) on January 16, 1883.<sup>12</sup> Following the Federal Government's lead, New York City established the first municipal civil service system in the nation in 1884.

Unfortunately, the influence of Tammany Hall prevented this system from gaining much traction. The law establishing this system was meant to create "...a personnel system in which comparative merit or achievement governs each individual's selection and progress in the service, and in which the conditions and rewards of performance contribute to the competency and continuity of the service."<sup>13</sup> It was only a decade later (1897) that Citizens Union was founded to fight the corruption of Tammany Hall. Unfortunately, it was not until the 1930s, with the end of Tammany Hall's influences, in which civil service was truly established in New York City.

New York State was also a pioneer in creating civil service laws. In 1885, New York became the first state to adopt a civil service system for its State workers with the passage of a merit-and-fitness provision in the State constitution. This provision (Article V, Section 6) declares:

*Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive. . . . Laws shall be made to provide for the enforcement of this section.*<sup>14</sup>

While the passage of this provision was a step forward in establishing a merit-based civil service system, it took almost fifty years to fully implement this constitutional provision.

As with most new constitutional laws, many details were left to be sorted out. The late 1800s and early 1900s saw some clarification and implementation of Article V, Section 6. Shortly after its passage, the Court of Appeals ruling in *People ex rel. McClelland v. Roberts* established a broad interpretation of this law; the ruling later allowed for greater regulatory reach. While the courts recognized its legitimacy, the Legislature still did nothing to enforce it until 1900.

In 1900, the Legislature delegated the task of implementation and regulation to the State Civil Service Commission. Within that same year, the State Civil Service Commission extended the civil service rules to the counties of New York, Kings, Erie, Richmond and Queens.

Around this time there was also an increase in implementation of civil service rules in New York City. In 1901, Mayor Seth Low was elected on a fusion ticket with the backing of the Republican and Citizens Union parties. During his brief tenure, Mayor Low implemented the merit-based civil service system for the City's employees.

While it was becoming clear which government entities would fall under this provision, there were still unanswered questions about which workers would be included. A series of cases beginning in 1908 further clarified the scope of the law within the administration of the City. The court determined Article V, Section 6 "applies only to those who are engaged exclusively in the public service and does not extend to public officers, who, as to all or a part of their duties are engaged in the services of a superior officer."<sup>15</sup>

## **PHASE 3: BLUEPRINT OF THE MODERN CIVIL SERVICE SYSTEM**

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### **EARLY 1930S-EARLY 1940S**

Between 1934 and 1945, Mayor Fiorello LaGuardia instituted many of the main components of the modern civil service system in New York City, along with a new City Charter in 1938. Citizens Union endorsed Mayor LaGuardia. In fact, Citizens Union's 1933 Voter's Directory provides insight into how



important the issue of establishing a merit-based civil service system was for LaGuardia's campaign: "Those now in control of the City Government strive to maintain it primarily to provide security and luxury for the overseers of the Tammany vineyard. Mr. LaGuardia has no sympathy for that point of view. His hatred of political parasites is deep-seated."

During his tenure, LaGuardia "established a new job classification system, reorganized the Civil Service Commission and reduced the number of noncompetitive positions and jobs exempt from civil service."<sup>16</sup> LaGuardia hired attorney James Finegan to head the Municipal Civil Service Commission and charged Finegan with developing a "systematic personnel policy for appointments and promotions."<sup>17</sup>

The Municipal Civil Service Commission removed subjective essay exams and replaced them with an objective merit-based exam. LaGuardia personally reviewed merit exam questions and hired "outside experts to gauge their fairness and appropriateness."<sup>18</sup> The Municipal Civil Service Commission also "redrew promotion lists that rewarded connections more than competence, and undertook the task of defining criteria for thousands of municipal positions, job classifications, and salary levels." Finally, LaGuardia and Finegan developed career ladders where "promotions followed an orderly pattern," which further weakened the use of patronage when hiring and promoting.

Through the extension of the merit system, the number of applicants for municipal service positions in New York City increased from 6,327 in 1933 to more than 250,000 in 1939, resulting in an increase in the number of jobs that were filled through competitive examination.<sup>19</sup> Additionally, from 1933-1940 the number of civil servants with "unclassified" positions was reduced from 15,000 to 1,500.

Furthermore, these new civil service employees were better equipped for their positions as departments began to develop trainings and professional development courses. LaGuardia established a scholarship at City College for civil servants with the belief that "recruiting college graduates would make City government more honest and efficient."<sup>20</sup> Other agencies began to require certain educational levels, such as a high school diploma, to qualify for some municipal service positions.<sup>21</sup>

Around the same time LaGuardia was making many of his changes, New York State Governor Lehman was also examining civil service procedure. The 1937 case *Palmer v. Board of Education* was the impetus for the State to implement its merit-based system as stipulated in the State constitution. A carpenter named Palmer sued the Board of Education in Westchester County claiming the he had been illegally fired. As Palmer had never taken an exam for this position, the court ruled that the Board of Education "could not make a legal contract with Palmer because he had not been hired through civil service and the 1894 mandate of the State constitution had not been carried out."<sup>22</sup> The ruling stated that even though the Civil Service Commission "had failed to extend its jurisdiction, all employees of all the civil divisions of the State had been subject to the civil service provision of the constitution since 1894, the year in which it was created."<sup>23</sup> This decision effectively caused all public employment contracts made without first taking an exam to be invalid.

In 1939, Lehman established a commission to investigate the issue and to make legislative recommendations for how to implement the civil service system in the State. The commission's proposed legislation was passed as section 11-a of the Civil Service Law.<sup>24</sup> According to the new provision, by July 1, 1942 every county in New York had to choose how to implement the merit-based civil service administration from among three types already in operation in the State. They could: elect to set up their own county civil service commission, choose a county personnel officer or else be under the administration of the State Civil Service Commission. The law was to go into effect in each county

the following year. This groundbreaking new law set the foundation for a well-enforced civil service system by establishing accountability structures that, at least on paper, reached to the State level.

### **Meanwhile... The Unionization of Civil Servants**

While collective bargaining existed prior to the twentieth century, it was not until 1935 and the National Labor Relations Act (commonly called the Wagner Act) that the private sector received governmental protection for the right to engage in collective bargaining and to strike. However, this right was not formally extended to public sector workers for many years to come. In the meantime, beginning in the late 19<sup>th</sup> century, New York City adopted a strategy of choosing to recognize and bargain only with unions who were more friendly to management.<sup>25</sup>

As the rules and regulations surrounding civil service began to be defined and put to use, employees needed new approaches to ensure a position. Throughout the 1930s, New York City municipal employees' interest in unions increased as the national labor movement and the political left's influence grew stronger. By World War II "unions had a foothold in the public welfare, hospital, and sanitation departments, and the boards of transportation and education."<sup>26</sup> Specific federal pro-union legislation also helped the movement develop. In 1932, the Norris-LaGuardia Act "outlawed yellow-dog contracts (pledges by workers not to join a labor union) and further restricted the use of court injunctions in labor disputes against strikes, picketing, and boycotts."<sup>27</sup> Although this law wasn't widely enforced, the act was one of the "first federal labor laws supporting organized labor and it marked a significant victory in labor reform." Its passage "fostered a trend toward more favorable government labor policies."<sup>28</sup>

Mayor LaGuardia permitted employees to join unions but barred them from striking and restricted the City from engaging in collective bargaining. In 1940, the City took over a private transit line that employed unionized workers from the Transport Workers Union. After initially clashing with the union, La Guardia negotiated on wages but refused to allow formal bargaining. In 1947, New York State passed the Condon-Wadlin Act that outlawed strikes by public employees. Any public employee who participated in strikes was automatically discharged.

## **PHASE 4: The Rise of Collective Bargaining & CIVIL SERVICE GROWING PAINS**

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### **LATE 1940S-EARLY 1970S**

Even with LaGuardia's many civil service reforms, New York City Mayors continued to try to fix problems. During the 1940s and '50s, this came in the form of commissions and studies of various civil service challenges. In 1946, Tammany-Hall nominated Mayor William O'Dwyer (1946-1950) created a commission to evaluate civil service workers and management. The commission concluded that civil service employees were "deficient in quantity and quality." Rather than hold one Civil Service Commission responsible for both rulemaking and administration, the commission recommended that one agency deal with the "rule making function" and another agency handle the administration of the civil service.

In 1950, Mayor Vincent R Impellitteri (1950-1953) also conducted a review of the personnel administration. The outside management consultants concluded that the "Municipal Civil Service Commission was underfinanced, understaffed and generally ill equipped to carry out the duties of personnel administration effectively."<sup>29</sup> The consultant recommended new exams and increasing the salary to make municipal positions competitive with the private sector.<sup>30</sup>

## **The Wagner Years**

Despite these extensive reviews, neither O'Dwyer nor Impellitteri made much headway on civil service issues and none of their recommendations were implemented during their terms. It was not until Mayor Robert F. Wagner (1954-1965) came along that the City began to see additional improvements.

Up until Wagner's election in 1954, initial job classification and salary decisions were controlled by the Board of Estimate. Through his 1954 Career and Salary Plan, along with other Executive Orders during his period in office, Wagner implemented some of the recommendations put forth by Mayor O'Dwyer's commission to increase the efficiency of the municipal government, and took away some of the power of the Board of Estimate. The City Department of Personnel replaced the Civil Service Commission's Personnel Department, to be controlled by the Mayor's office. Additionally, Wagner created a Personnel Council to coordinate "personnel information among agencies and to review common personnel management problems."<sup>31</sup> Wagner also created a Labor Department that replaced the Division of Labor Relations. The Labor Department "heard grievances, settled employment disputes, and made recommendations to the mayor's office."<sup>32</sup>

In addition to these governance changes and with his father's legacy in collective bargaining in mind, Wagner also pressed forward the cause of collective bargaining. In the same month as the Career and Salary Plan in 1954, he established employee grievance procedures and granted municipal workers the right to organize without punishment.<sup>33</sup> Furthermore, he appointed a National Labor Relations Board lawyer to evaluate labor relations in the public sector, resulting in a 200 page study in 1955 explaining how collective bargaining for public workers could progress similar to the private sector.<sup>34</sup> Shortly thereafter, New York City government permitted unions to collect dues by withholding from members' paychecks and held its first "union recognition election."<sup>35</sup> In 1958, under pressure from unions to implement some of the promises laid out in 1954, Wagner issued Executive Order 49, dubbed the "Little Wagner Act." This order granted the right to collectively bargain to public sector employees who were represented by labor unions.<sup>36</sup>

During the 1960s, public sector union membership rose as professional workers, clerical workers, police officers, firefighters joined and benevolent associations became collective bargaining agents. However, many of the emerging unions faced ongoing challenges in working with both the City and each other. \*

**\*See pg. 32 for History of Public Sector Unions**

## **The Lindsay Years**

Following the creation of new systems and structures under Mayor Wagner, Mayor John V. Lindsay's administration (1966-1973) implemented controversial reforms that were aimed at circumventing entrenched interests and enhancing representation in civil service. Mayor Lindsay inherited a City that was in the midst of decline, with "rising crime, reckless fiscal policies, racial tension, middle-class flight, [and] growing slums."<sup>37</sup> In light of the City's deterioration and the national social turmoil of the 1960s and 1970s, Lindsay aimed for a "complete overhaul of City government...[to] root out inefficiency, bureaucratic plodding, racial inequality and other urban sins and create a new, progressive City government."<sup>38</sup>

Lindsay's policies impacted the civil service system by decentralizing government functions and expanding the number of provisional employees. In Lindsay's second term, provisional municipal employees tripled, eventually reaching 27,813 in 1973. Additionally, these provisional employees were

“shifted from agency to agency in order to avoid the requirement of taking a civil service examination.”<sup>39</sup> Many of Lindsay’s critics view this drastic increase in provisional employees as a return to patronage.

Furthermore, during Lindsay’s term, the number of “exempt” civil service positions grew from 1,500 to 12,800 and the administration also increased the number of consultants with management background to address gross inefficiencies in City government. From 1965 and 1969, the City’s expenditures on “contracts with outside consulting firms increased from \$8 million to \$70 million.”<sup>40</sup>

With the increasing national focus on race and civil rights, conflicts over race and class heightened between the City administration and the New Yorkers they served, and the civil service became a focal point of the politics of representation. Mayor Lindsay established community boards in underserved communities in response, which necessitated skirting the civil service system and further decentralized City government.

Lindsay’s motivation for creating community boards revolved around the idea that the municipal agencies were not “adequately performing their functions in black and Puerto Rican neighborhoods” because the civil servants who ran those agencies were “outsiders” who “...were more dedicated to the perquisites of their jobs and established bureaucratic routines than serving their clients.”<sup>41</sup> He also cited that the civil service rules and administrative arrangements at the time “made it almost impossible to hold municipal employees accountable for their failure to perform satisfactorily on the job.” Community boards enabled Lindsay to appoint community members who had a greater stake in local programs to take part in and to oversee municipal programs within their communities. Lindsay also attempted to increase the City government’s ties with communities specifically by hiring more minorities for City positions.

Lindsay further dispersed government functions by decentralizing the school system in 1969. Supporters of school decentralization said that it “would improve the quality of education in ghetto schools by making teachers and administrators responsible to the people with the greatest stake in the education of black and Puerto Rican children – the parents.”<sup>42</sup> The effects of school decentralization led to a two month United Federation of Teachers (UFT) strike in the Fall of 1968. The UFT strike was in response to teacher firings in the Ocean Hill-Brownsville community in Brooklyn. The strikes brought about issues of whether the “union or the community school board would be in charge of hiring and firing of teachers.”

From 1966-1969, Lindsay frequently encountered union oppositions. During the mid 1960s, “physicians, nurses, teachers, social workers, and sanitation workers went on strike.”<sup>43</sup> \*

**\*See pg. 32 for History of Public Sector Unions**

## **PHASE 5: RESHUFFLING THE CIVIL SERVICE SYSTEM**

### **1970s**

Due to labor disputes and the racial politics of the time, public scrutiny called for evaluation of the civil service system. A 1963 Brookings Institution study, “Professional Personnel for the City of New York: Report of the Study of Professional, Technical and Managerial Manpower Needs of the City of New York,” and a 1966 special task force on the personnel system resulted in no immediate policy changes, but gave rise to amendments to the City Charter in 1975.<sup>44</sup> The amendments restructured rulemaking

for the civil service system, and transferred oversight from the Civil Service Commission to the Personnel Director.

In following the recommendations of the 1966 task force, hiring-related responsibilities such as recruitment, position definition, training, incentives and performance evaluation were decentralized to operating agencies. The Personnel Director then became responsible for establishing citywide standards as well as supporting and auditing agencies' compliance. The Civil Service Commission became an independent agency, able to appeal actions of the Personnel Director and conduct reviews of the system. Echoes of the Brookings and task force reports were also heard in the charter amendments' new treatment of managers, through a separate personnel system designed to improve work quality and leadership through more effective recruitment, assignment, on-the-job development and reward.

1975 also marked a dark point in City history, with an economic crisis due to years of fiscal mismanagement and a national downturn. The City slashed budgets and laid off 15,000 employees, teetering on the brink of bankruptcy. New York Governor Hugh Carey is widely credited with righting the City with the help and collaboration of many, including United Federation of Teachers President Al Shankar, who committed \$225 million of teacher pension funds to buy crucial bonds.<sup>45</sup> Municipal unions still refer to the "partnership" between unions and the City at that time.<sup>46</sup> Though wage deferrals and changes to the pension formula were enacted during the crisis, the checks were eventually paid and policy changes rescinded.

However, not all impacts of the fiscal crisis were reversed. Notably, women and minority employees had just begun to enter the ranks of the civil service. Due to seniority rules governing the layoffs, cuts hit these employees the hardest. The New York City Commission on Human Rights noted the 1975 layoffs resulted in a 51% reduction in Hispanic workers, 35% reduction in Black workers, and 30% reduction in the Asian Americans and American Indian representation in the government's workforce.<sup>47</sup> Additionally, despite the fact that there were two and a half times as many men in the 1975 workforce than women, women represented 33% of the layoffs.<sup>48</sup> The effects of these layoffs lingered even as the City recovered financially.

## **PHASE 6: FINE-TUNING THE CIVIL SERVICE SYSTEM**

### **1970s-2011**

In comparison to the new rulings and policy contexts of the earlier periods, legal cases in the latter few decades of the century primarily served to shape the civil service system. The exam process was reaffirmed in court rulings as an evaluation of merit and fitness that "may not be blinkered or avoided" (Board of Education of City of NY v. Nyquist, 1973<sup>49</sup>), which marks the beginning of employment (Montero v. Lum, 1986<sup>50</sup>) and overrides performance evaluations.<sup>51</sup> Legal challenges to the exams caused the City to create a Test Validation Board in 1971 to hear disputes over exam results.

As an historical tool to fight City discrimination, legal challenges have also framed the debate around the City's hiring and treatment of minority applicants. While underrepresentation of minorities within the civil service emerged as a major political issue under Mayor Lindsay, it has continued as a tension to the present day, with repeated allegations that the exams and rules implemented to keep the system "fair" have in fact discriminated against New Yorkers along lines of race, class and gender.

Another lawsuit that influenced the direction of New York City politics was the *New York City Board of Estimate v. Morris*, 489 US 688 (1989) that stated the voting structure of the Board of Estimate violated the constitutional law one-person-one-vote.<sup>52</sup> The Board was made up on eight members: five borough presidents, the City Council president, the mayor and the Comptroller, and decided budgetary and land use issues. Each borough president was given one vote despite representing different numbers of constituents.<sup>53</sup> Any attempt to preserve the board would have had “the inadvertent effect of diluting minority-group voting power.”<sup>54</sup>

The result of the lawsuit was the 1989 Charter Revision, one goal of which was to directly address ongoing conflicts over the opportunities for minorities and women. Appointed by Mayor Edward Koch (1978-1989), the Charter Revision Commission dismantled the Board of Estimate, removing their power over land use, contracting, and budgeting and transferring these to City Council and Mayor. The council was expanded from 35 to 51 members to give minorities an opportunity to be elected. Moreover, the City created the Equal Employment Practices Commission and the Office of Labor Services, designed to help increase the numbers and quality of experience of minority and women public service employees.

Knowing that exams can serve as a blunt instrument for evaluating employees, the City had taken steps in the past to increase the referral of women and minority applicants, including the Talent Bank created in the 80's. However, by 1989 the Talent Bank had become corrupted and was used to place candidates with political connections, demonstrating the tension that develops around the impartial evaluation of candidates that is at the heart of New York City's civil service system.

The shifting of political powers also continued, and in 1996, Mayor Rudolph Giuliani (1994-2001) created New York City's Department of Citywide Administrative Services (DCAS), which currently governs the civil service process. The agency, which was established after the merger of the former Department of General Services and Personnel, was created in response to streamline government and make it more responsive. They are responsible for administering exams, maintaining eligible list of potential hires, communicating candidates of their eligibility status, and training all employees.

Most recently, in 2002 a group of firefighters along with the Equal Employment Opportunity Commission filed a federal complaint against the New York City Fire Department, with the goal to prove that the skills measured in the written exam bear no relation to the job, and result in discrimination against Black and Latino applicants. In 2010, a federal judge issued a landmark ruling that the New York Fire Department had indeed knowingly discriminated against minority applicants, and in 2011 the judge ruled that hiring practices must be overseen by the court.<sup>55</sup>

In 2007, the New York Court of Appeals ruled on a grievance filed by the Civil Service Employees Association “that limits the amount of time an individual may serve in what is known as a “provisional” capacity in a competitive class title.”<sup>56</sup> In response to “the Long Beach Decision,” New York City developed a five year plan to reduce provisional employees by conducting more open competitive exams for titles that have a high concentration of provisional employees, implementing more walk in centers to administer exams which will enable the City to administer exams more frequently, and consolidating certain competitive titles.

Finally, in 2011, Mayor Michael Bloomberg (2002-present) contributed yet another study on civil service reform that included 23 recommendations for major changes to the system. The Task Force, composed of various City managers, has been criticized for representing only the management perspective. In a response to the WRTF Report, the Municipal Labor Committee made these concerns clear through a

point-by-point critique of the mayor's recommendations (MLC Response). Behrouz Fath, president of the Civil Service Technical Guild, criticized the mayor for developing this report without any input from the unions that these proposed changes would ultimately impact.<sup>57</sup> The Executive Director of District Council 37 called the WRTF Report "a blatant attack on the civil service system and the merit and fitness protections that guarantee that workers providing City services are qualified to do the job because of what they know, not who they know."<sup>58</sup> This WRTF Report sets the stage for conversation about reform that may be less piecemeal and more revolutionary.



# HISTORY: New York City Public Sector Unions

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The late 19<sup>th</sup> century and early 20<sup>th</sup> century were tumultuous periods in the development of labor unions in the private sector, culminating in a series of national legislation during the Great Depression that ultimately paved the way for the official recognition of public sector unions. Public sector unions were not unheard of prior to the Wagner Act in 1935, but they tended to emerge only in certain sectors. In New York City, the Patrolmen's Benevolent Association, the Uniformed Firefighters Association, and the Teachers Union all served union functions for employees of the City. Later, the Transit Workers Union also helped to establish precedent for a new age of public unions, despite efforts to squash union activity after the public buy-out of the old transportation companies.

In 1936, the roots of the public sector union movement took hold with American Federation of Labor's (AFL) charter of the American Federation of State, County, and Municipal Employees (AFSCME). Through the '30s and '40s, emerging local groups such as District Council 37 (chartered by AFSCME in 1944) and City Employees Union Local 237 (chartered by the International Brotherhood of Teamsters) began to make small but important headway toward collective bargaining. At the same time, they were frustrated by both their own fractured and competitive nature, and the lack of willingness on the part of Mayors to officially recognize their bargaining power.

This competition was easily found at the national level, where the Congress of Industrial Organizations (CIO) chartered the State, County, and Municipal Workers of America (SCMWA) and the United Federal Workers of America to compete with AFSCME in 1937, only to then merge those two groups in 1946 into the United Public Workers of America. This new group lasted until 1950 when, amongst fears of communist leanings, the CIO disbanded it, resulting in its dissolution in 1953.

However, in 1954, everything changed. Mayor Robert F. Wagner, following in his father's labor-friendly footsteps, transformed the paradigm of labor-city relations during his campaign after relying on unions as a powerful part of his political base to get him elected. As a result, one of his first actions upon taking office in 1954 was to issue an Interim Order guaranteeing the right of City employees to organize, have access to grievance procedures, and participate in labor-management relations committees. A series of executive orders then culminated in the 1958 passage of Executive Order #49, or the "Little Wagner Act," thought by many unions to be the *Magna Carta* of collective bargaining.

At the same time, there continued to be tumult on the union front. In 1955, the AFL and the CIO merged, resulting in jostling at the local levels between unions who had formerly been opposed to each other, and exacerbating conflicts with the other major unions. In particular, DC 37 and the Local 237 had a number of conflicts in trying to recruit new classes of workers, with the clerical and hospital workers finally serving as the tipping point in DC 37's favor. Wagner had determined that citywide collective bargaining would not begin until one union represented the majority of City workers, and effectively staved off most collective bargaining efforts through the end of his final term in 1965. Despite his hope that Local 237 would prevail, in the end DC 37 won the major vote, resulting in the ultimate demise of Local 237.<sup>59</sup>



As it turned out, 1965 represented a critical benchmark for labor relations in New York City. At the time, Local 371, a member of DC 37, was facing increasing pressure from a dissident group born out of its own ranks, the Social Service Employees Union (created in 1961, no affiliation to a parent organization). After a rocky attempt by the City to negotiate wages and job conditions with both unions, the SSEU called for a strike. The conflict from this event led to the development of the Tripartite panel, which precipitated Mayor Lindsay's implementation in 1967 of Executive Order 52. This order established the Office of Collective Bargaining, which would include the Board of Collective Bargaining to arbitrate and the Board of Certification.

The Board of Certification, in serving its purpose of certifying official bargaining units, helped to cut down on these conflicting negotiations. The number of bargaining units dropped from over 400 in 1968 to just 114 in 1975.<sup>60</sup> The Collective Bargaining Law also restricted the kinds of issues that could be included in official negotiations. By 1969, the SSEU had reintegrated with Local 371, to become a part of DC 37.

The late 1960s and early 1970s continued to be a difficult time for labor-city relations, resulting in major strikes despite laws preventing such action. Some of the most notable strikes include:

- 1966 – Transit Workers Union
- 1967-68 – United Federation of Teachers
- 1968 – Uniformed Sanitationmen's Association
- 1971 – Patrolmen's Benevolent Association
- 1973 – Unified Firefighters Association

Between the SSEU strike and other public strikes such as those by transit workers, Governor Rockefeller "conceded the failure of the Condon-Wadlin Act,"<sup>61</sup> which had banned strikes by public employees but did not have serious enough consequences to actually stop them. After consideration, this was replaced in 1967 by the Taylor Law, which both codified public sector collective bargaining at the State level and expended grievance procedures, while continuing to ban public strikes but now with more grave consequences.

Furthermore, the Office of Collective Bargaining began their tenure with a number of agreements with unions that guaranteed incremental wage increases as a part of a "Career and Salary Plan." Following negotiations in 1969-1970, this was finally eliminated through negotiation. As a result, the negotiation for collective bargaining agreements became much more meaningful for both the union and the City.

These strikes and increasingly intense negotiations stirred conflict in the City trying to gain its foothold right as the recession kicked in. However, the various concessions and pushback by the City have helped to further define the scope of collective bargaining and the available actions for employee redress. In particular, the strikes strengthened official processes for filing grievances.

Perhaps the largest example of union-city cooperation was during the Fiscal Crisis of 1975. Intense negotiations resulted in: 1) a graduated wage increase deferral schedule for most workers; 2) emergency legislation, the New York State Financial Emergency Act for the City of New York, which established the Emergency Financial Control Board ("EFCB") with the power to impose a wage freeze on workers of New York City and other covered public entities; and 3) the use of pension funds to purchase substantial amounts of bonds issued by a State entity, the Municipal Assistance Corporation ("MAC"), to allow the City to refinance its debt.<sup>62</sup>

The period between the 1970s and today showed a marked decrease in the militancy and frequency of strikes in unions, replacing it with strong political mobilization. Indeed, public sector unions have become intimately involved with the passage of worker rights laws, and on the local level are a powerful voting bloc. During the same time, economic pressures were taking away many private sector benefits and employers were becoming increasingly sophisticated at avoiding unionization.<sup>63</sup>

As a result, in 2009, public union membership surpassed that of the private sector nationally for the first time.<sup>64</sup> As one union researcher describes, “The shift in American labor unionism from a private to a public sector movement has been described as a structural break in American labor unionism with implications not for the profitability of firms but for the solvency of governments.”<sup>65</sup> With the rise of the Great Recession, concerns about the rising costs of public sector unions have been repeatedly hashed out by media, researchers, and politicians alike. However, another union researcher believes that “The argument that public sector collective bargaining drives states into bankruptcy is not supported by the facts.”<sup>66</sup>

Regardless, public sector unionism may be entering a new era. A recent (March 2012) article in the Los Angeles times detailed a general shift by unions away from national political activity and back toward coalition building and mobilizing members on the local level. Many unions are now fighting against fiscal conservatives attempting to curtail collective bargaining rights in the public sector.<sup>67</sup>

New York City has one of the largest public sector union densities in the country. Since the 1970s, unions have been involved in helping to weather fiscal crises, have served as vocal players (positive and negative) in ongoing dynamics of race and class in the public service system, and have secured wide-ranging benefits and services for their members. Despite continued periodic unrest and ongoing challenging negotiations, the power and influence of unions have made it clear that public sector unions are here to stay and are a force with which to be reckoned. DC 37 continues to reign as one of the largest voices in the movement, with some involvement from the unions listed above, particularly the United Federation of Teachers. Altogether, the history of the civil service System has become intimately entwined with the politics and actions of the City’s workforce.

While it seems as though New York City unions may be some of the safest in the country, they still feel the pinch from unions in other jurisdictions and at the national level. They are also already in fierce battles over pension plans. There is fear that major concessions could open the doors for larger changes, and down the road potentially reduce the role of unions and their ability to advocate for employees. With this context in mind, the outcomes of any civil service reform take on new implications for the viability of the labor movement itself.

# CONCLUSION

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Following many years of corruption, patronage and political woes, the development and evolution of the civil service system in New York City has fundamentally altered the relationship of the City to its employees. As the history of the system demonstrates, the New York City civil service system has undergone scrutiny and reform since its inception.

The numerous stakeholders and the complexity of the system contribute to ongoing tensions between city **effectiveness**, civil service system **efficiency**, and **equity** issues. Tensions between equity, efficiency, effectiveness, and upholding the merit system have appeared throughout the history of New York City's civil service system. However, each of these principles must be optimized to provide the best services to the citizens of New York City. It is with these principles in mind that our research employed a multi-stakeholder approach designed to focus on common ground between the diverse and often conflicting voices within and around City personnel and civil service policies.



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# INTRODUCTION

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The goal of this report is to provide feasible and practical recommendations for civil service reform. To accomplish this task, this report uses information collected from interviews and literature reviews. Our research examined best practices from other jurisdictions and the federal government in addition to academic public administration and human resources management journals, news coverage, union publications, materials from advocacy groups, and City manuals and policies.

Stakeholder and expert interviews also informed this report by providing perspectives on the successes and challenges of the current civil service system. Recently proposed reform recommendations and, to a varying extent, some of this report's recommendations were presented to stakeholders for their response. Because political feasibility was an important criterion for this report, a particular emphasis was placed on having a well-rounded representation of all key stakeholders.

In total, we interviewed 26 individuals and attended community events addressing the diverse topics related to our inquiry. Our interviewees ranged from labor union representatives to City managers, administrators, and employees; teachers and principals; experts in New York's civil service system and budget; and experts on national civil service trends. To protect the confidentiality of these individuals, this report uses generic terms such as "a City administrator" or "a union representative." In a few instances, individuals gave permission for their names to be used.

From this exhaustive review, we have been able to identify key problems and concerns plaguing New York City's civil service system, weigh the diverse perspectives on each issue, and develop recommendations for reform that promote the shared goals of city **effectiveness, efficiency** and **equity**. Our recommendations are divided into sections addressing governance, exams and hiring, job classifications, and workforce management throughout the City, with special reference to the hot-button issues and best practices related to teachers. Through our inquiry and analysis, we emphasized feasibility and the need for buy-in from a broad spectrum of major stakeholders to ensure that these recommendations are viable next steps toward more efficient, effective and equitable City functioning.

# CIVIL SERVICE GOVERNANCE

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## INTRODUCTION

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The civil service system is a complicated patchwork of players and laws, with embedded checks and balances that ensure no single interest ever prevails completely. These checks are in place because interests across stakeholders are varied and often at odds. Management seeks to ensure employees are proficient and productive, and employees seek to improve the quality of the environment and maximize their ability to move through the system. Labor unions seek to ensure their workers are being treated fairly, and taxpaying citizens seek to ensure that the system is efficient and effective in meeting their needs. While there seem to be natural alignments with managers and taxpayers on one side and employees and labor unions on the other, in reality there are many issues that can easily cause fractures.

Indeed, it is often because of these diverse interests that the civil service system is as complicated as it is. Identifying common ground solutions to ongoing problems requires an understanding of how the system functions administratively and manages stakeholder goals.

This section will begin by covering the many laws and governing bodies that oversee matters relating to civil service. Following this breakdown, the section will describe the politics and any recommendations as they relate to the various tensions between stakeholders in the system. These include The State and the City, Quasi-Public Agencies and the City, Department of Citywide Administrative Services and City Agencies, and Unions and Management (and Employees).

# GOVERNANCE CHART

STATE	NEW YORK STATE CONSTITUTION*	NEW YORK STATE CIVIL SERVICE LAW	State Department of Civil Service	State Civil Service Commission Prescribe and amend suitable rules and regulations (classification, exams, leave); investigate enforcement and effect of civil service rules; assists with classification, examinations, and technical advice	Three members, both parties represented
			Test Validation Boards Review all test protests		Representatives of the employing agency(ies), bargaining unit (i.e., union) and DCAS Bureau of Examinations
	CITY	NEW YORK CITY CHARTER CHAPTER 35; PERSONNEL RULES AND REGULATIONS OF THE CITY OF NEW YORK	Civil Service Commission Hears appeals, reviews administration of personnel		Five members, not more than three of the same political party, appointed by the Mayor
			New York City Department of Administrative Services - Division of Citywide Personnel Services	Bureau of Examinations Classification of titles, and for all examination matters, including test development, test writing, test administration, and test rating.	
				Bureau of Civil Service Administration Citywide administration of civil service eligible lists and databases maintenance	
				Management Service Citywide service for identifying managers	Composed of Mayors, Agency Heads, DCAS
			Individual Departments/Agencies	Heads of Agencies Recruitment, Exams, Classification, Career	
				Personnel/Human Resources Functions Support for unique agency needs	
		NEW YORK CITY COLLECTIVE BARGAINING LAW	Office of Labor Relations Represents the Mayor in the conduct of all labor relations		Controlled by Mayor
			Office of Collective Bargaining	Board of Collective Bargaining Covers bargaining in good faith on wages and benefits, hours, working conditions and provisions for the deduction from the wages or salaries of employees	Two are City members, two are labor members, and three, of whom one shall be chairman, shall be impartial members
				Board of Certification Certifies bargaining units, representatives	Impartial members of Board of Collective Bargaining
				Municipal Labor Committee Bargains with the City on issues affecting employees citywide	Represents all of the certified unions

\*NOTE: New York State Taylor Law and New York State Labor Law also govern select agencies and aspects of the civil service system. See narrative.

## CIVIL SERVICE JURISDICTION

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The chart on page 39 is an approximate overview of the relevant laws and governing bodies that oversee the civil service system in New York City.

### **State Governance**

The “Home Rule” provision in the **New York State Constitution** grants the power to local governments to self-govern and restricts the State Legislature from acting in relation to the government’s property and affairs. However, the New York Municipal Home Rule - Article 2 - § 11 places Restrictions on the Adoption of Local Laws, including those related to civil service.

Currently, the **New York State Civil Service Law** and chapter 35 (Rules I-XII) of the **New York City Charter** govern the **Personnel Rules and Regulations of New York City**. These laws are summarized in Appendix I. The State Civil Service Laws set the blueprint for the cities and counties of New York. Both the State and the City laws are in accordance with the State Constitution, and both cover areas in Civil Service Administration, Jurisdictional Classification, Classification and Compensation, Examinations and Appointments. The **State Civil Service Commission** governs the prescription, amendment, and enforcement of civil service rules and regulations. Finally, the State Civil Service Law § 50-A also authorizes local **Test Validation Boards** comprised of a mix of representatives for every exam administered.

### **City Governance**

Within New York City, the **Department of Citywide Administrative Services (DCAS)** (formerly the Department of Personnel) has been tasked with carrying out the Personnel Rules and Regulations. DCAS includes the **Bureau of Examinations**, which is responsible for “the classification of titles, and for all examination matters, including test development, test writing, test administration, and test rating” and the **Bureau of Civil Service Administration**, which is responsible for “the Citywide administration of civil service eligible lists, and maintaining the databases that provide most of the personnel information.”<sup>68</sup>

The City Charter and Rules and Regulations of Personnel also allow a certain amount of power to the **heads of agencies** to enable them to work effectively with DCAS in ensuring their personnel needs are being met. Each agency further holds its own **personnel and human resources functions** to support the heads and the special needs of their agency. The Charter also requires a municipal **Civil Service Commission**, which hears appeals and reviews the administration of personnel rules and regulations at the City level.

Additionally, New York City has a **Collective Bargaining Law** that in many ways mirrors the New York State Taylor Law. The Taylor Law (Public Employees Fair Employment Act) defines the rights and limitations of unions for public employees. Due to the fact that the City instituted its own collective bargaining laws prior to the passing of the Taylor Law, the City has maintained its own law in place of the Taylor Law for all City departments and other agencies that elect coverage. The notable exceptions to this scheme are employees subject to a Prevailing Wage Rate (i.e. employees with private sector equivalents), who are covered by § 220 of the New York State Labor Law. City public agencies that are not governed by the New York City Collective Bargaining Law are covered by the State Public Employee Relations Board under the Taylor Law (Article 14 of the State Civil Service Law). Furthermore, the City’s laws must generally conform to the State’s laws, or the State Public Employee Relations Board may challenge them.



The **New York City Office of Collective Bargaining** (OCB) and its constituent Boards, the **Board of Collective Bargaining** (BCB) and the **Board of Certification** (BOC), were created through enactment of Chapter 54 of the City Charter. At present, the office is responsible for bargaining in good faith on wages and benefits, hours, working conditions and provisions for the deduction from the wages or salaries of employees.

The **Office of Labor Relations** represents the Mayor in the conduct of all labor relations between the City of New York and labor organizations representing employees of the City. Thus, while the Office of Collective Bargaining helps to carry out the Collective Bargaining Law in an objective manner, the Office of Labor Relations is the organization that actually pursues specifically policy and bargaining objectives with labor representatives.

Finally, the **Municipal Labor Committee** is also allowed through the Collective Bargaining Law. While not a City Agency, this group serves as the representative umbrella organization of official collective bargaining units within the City government. The primary function of the Committee is to elect members to the Board of Collective Bargaining and to coordinate among the many municipal unions, serving as a clearinghouse of policies and strategies.

## **THE STATE AND THE CITY**

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While New York State grants many powers to New York City, the State has retained oversight over the civil service system. As a part of this oversight, the City must obtain authorization from the State to make changes to classifications and other basic tenets of the system. The purpose of this relationship is to prevent the promulgation of patronage throughout a City when the system is entirely City-controlled, and was developed in response to the prevalence of machine politics in the earlier part of the century.

At the moment, most individuals we interviewed working at the City level find the State oversight of the system cumbersome at best and unproductive at worst. The general consensus was that the State's civil service infrastructure is not designed to support a system as big as that of New York City and does not have the bandwidth or capacity to allow for flexibility in managing a "21<sup>st</sup> Century Workforce."<sup>69</sup> One of the most contentious issues pertains to the classification of positions into exempt, competitive, or non-competitive categories. The WRTF Report claims that "the City's efforts to streamline and modernize its system for hiring and managing employees have stalled" due to the State Civil Service Commission's lack of responsiveness on multiple proposals sent from the City.

The City's Municipal Service Workforce includes approximately 230,000 workers. The State's workforce itself only has 160,000 workers<sup>70</sup> and the next largest municipal systems in the State have between about 2,500-3,500 workers.<sup>71</sup> However, the City's large workforce does not necessarily translate into more attention. The Report explains that the State must oversee 100 municipal civil service agencies, including 57 counties and over 35 cities, regions, towns and public entities and claims that the State is unable to keep pace with the needs of both New York City and the rest of the State.

Despite these administrative challenges, the Municipal Labor Committee is vehemently opposed to removing any of the requirements for State oversight. In their view, "The State Civil Service Commission protects the integrity of the civil service system and acts as a buffer against unilateral actions by the City."<sup>72</sup> Their major concerns are around the classification of titles and the notion that the City could make significant changes to the Personnel Rules without requiring any approval.

The challenge of State oversight as presented by the City is primarily administrative- they believe it is inefficient to request the State's permission when the State is incapable of being as responsive as they need. The City is required to pay \$600,000 to the State to perform a service, and believe the State is failing to do so. The unions, however, see the problem as philosophical- should the City have control over the very systems that were previously removed from their jurisdiction due to malfeasance?

As discussed previously, the specter of patronage remains today in other cities around the country. With the City's strong-mayor form of government, the Mayor has significant power to appoint Commissioners and other types of leaders in the City. New York City politics are as complicated as the City itself, and many mayors have proven effective at bulldozing their ideas through to enactment.

Under the current system, if a Mayor decided that civil service reform was an important agenda item, there would be checks and balances to what he or she would be able to do to change the system on his or her own. The Mayor may be able to invest more resources in his or her administration, take a particular stance toward bargaining with the unions, and work with the City Council to promulgate changes in either the Personnel Rules and Regulations or even the City Charter itself. However, many or most of the changes would require permission from the State.

Without the State's involvement and with enough political capital, the Mayor could change virtually anything in the civil service system. The primary oversight body in the system's current form is the City Civil Service Commission. The screening committee for identifying potential members of the Commission is six people, four of whom are appointed by the Mayor and two of whom are appointed by the Municipal Labor Committee. The Mayor may then appoint individuals from the screening committee's nominations. The only caveat is that no more than three of the five members can be of the same political party. The Mayor can also appoint the Chair and Vice-Chair for one-year terms. This Commission then identifies and appoints counsel (who may not simultaneously serve in any other City agency).

Thus, the potential checks and balances are not wholly present as labor only has one-third of the vote for potential Commission members. Furthermore, requiring representatives from both political parties is hardly a roadblock in New York City where party politics can be secondary to special interest politics. Under this system, it seems critical to have measures resembling the State oversight in place to curb Mayoral control.

However, the question is then whether the State is the most appropriate entity to perform this function, or whether a new model should be considered. Indeed, the State has its own politics, which dovetail with City politics in many expected and unexpected ways. As one Citizens Union employee described, all that State oversight does is replace one political system with a second tier of politics that may be equally subjective in its approach to civil service.

We heard from one City employee that the State is reluctant to make changes at the City level for fear that those changes will set a precedent for the State level. As an example, the City employee described how the City is desperate to remove IT workers from the competitive classification. The State, however, has significant conflicts with the union who represents those workers at the State level. Thus, the State has chosen to largely ignore the City's request, knowing that accepting it or rejecting it may ripple through their own system.

However, on the other end of the spectrum, changes at the State level have the potential to grease the works for the City and allow them to make changes without having to gain as much political capital. In February 2012, the State released recommendations of the Spending and Government Efficiency (SAGE)'s Commission. Any changes that the State makes (such as in how they deal with IT workers, one issue that is addressed explicitly in the recommendations) will likely also then be easy for the City without to make too much fanfare. Whether or not unions agree with those changes will matter less because the City will know that the State would approve the changes.

### **What does it all mean?**

There are multiple approaches for dealing with the concerns around State oversight. The first decision that must be made is whether changes should focus on administrative challenges or philosophical arguments for why the City should be allowed to include civil service under Home Rule. Cities with strong Home Rule systems around the country are generally allowed to administer their own civil service systems, albeit usually with some requirement to conform to relevant State laws. Cities with fewer powers may administer the system while being required to ensure that any rules are in line with more detailed principles or standards laid out at the State level. However, civil service expert Stephen Condrey noted that New York is likely one of the last states to require oversight with no alternative.

#### **➤RECOMMENDATION: Explore options for improving the civil service oversight system.**

- A. **Option 1:** Work with the State on or advocate for the improvement of administrative capacity to address City issues. This might include:
  - a. New laws on response time requirements from the State Civil Service Commission
  - b. Re-assessment of fees the City is required to pay
  - c. Re-assessment of staffing at the State level for coordinating Commission activity
- B. **Option 2:** Develop a system in which the State must be notified of and may overrule changes, but is not required to give approval
- C. **Option 3:** Advocate for the movement of the State oversight function to a new, independent City Civil Service Commission that is shielded from control by elected officials

#### **Option 1**

The first option is focused on administrative changes in how the State Civil Service Commission interacts with the City. If the City is dissatisfied with the level of service, it should advocate for new Rules and Regulations as far as how the State Civil Service Commission functions. The City could seek new time restrictions for how long the State may take to review a proposed change, or develop some kind of expedited process for minor changes wherein the Commission could designate authority to another entity to review and make recommendations to the Commission.

The City could also seek to work with the State to assess whether the current approximately \$600,000 in fees the City pays may either not be enough to cover costs (exchanging resources for increased responsiveness) or whether the City may be paying too much for services it is not receiving. Related to this idea, the City could attempt to work with the State to perform an assessment of its capacity in its current administrative form. Rather than a fee structure, the City might look to alternatives such as cost-sharing for employees at the State level who would be dedicated to responding to City requests.

#### **Option 2**

The second option is a combination of a philosophical and administrative solution, and would require research into various forms of State oversight that may be less invasive than direct approval requirements. For example, the City could be required to notify the State of any changes and the State

may then have a specified period of time in which it would be allowed to veto the change. This might also involve giving the State Civil Service Commission the ability to investigate certain practices of the City civil service system to ensure compliance with State laws.

This option would not provide complete Home Rule to the City, but would alter the relationship between the State and the City to place the burden of refusing a change on the State, rather than requiring the State to give its approval. This flip in onus might serve to alter the politics around changes enough that the City would feel it had more agency in enacting changes when desired.

### **Option 3**

The third option is the most complicated and involves a complete philosophical shift in the administration of civil service. Rather than a State Civil Service Commission with oversight and a City Civil Service Commission in which members are elected primarily through Mayoral decree, a new City Civil Service Commission could be created that would retain independence while providing expedited and more appropriate services to the City's needs.

One model for such a Commission is the Independent Budget Office (IBO) in the City. The IBO has a board comprised of specific types of actors from around the City who are not necessarily affiliated with the current administration. These board members then recommend a person to head the agency who will act in a nonpartisan manner. In the case of a new Civil Service Commission, an advisory board could be developed who would nominate individuals to the Commission based on certain merit criteria (including retaining the current rules about political affiliation).

Rather than being housed within an agency and having a budget subject to political will, the Commission could have a dedicated line item in the budget. In the case of the IBO, this reads "The appropriations available to pay for the expenses of the independent budget office during each fiscal year shall not be less than ten percentum of the appropriations available to pay for the expenses of the office of management and budget during such fiscal year."<sup>73</sup> A similar fiscal arrangement could be made in regard to the budget of the Division of Citywide Personnel Services. Alternatively, the City could look at the current fees being paid to the State and model a budget for the Commission accordingly (with allowances for growth as the City continues to grow).

This new Commission could then be vested with a combination of authorities that are currently housed in the State Civil Service Commission and City Civil Service Commission. The State could still have some level of oversight in that any rules would need to conform to State Civil Service and Labor laws.

### **Feasibility**

Any of these three options would require a significant amount of political will to overcome opposition. The third option in particular would incur serious debate. One news article covering the WRTF Report summed up the State's perspective on this matter with no equivocation:

State Sen. Diane Savino, who chaired the Senate's Civil Service and Pensions Committee when Democrats were in the majority, called the City's proposal to end the State Civil Service Commission's authority over hiring in the City a "nonstarter." She said she was not consulted by the Task Force. "I think I just heard Teddy Roosevelt roll over in his grave," she said. She added that she'd be open to changes that modernize some rules, but would fight any attempt "to dismantle a system that protects economic opportunity for every New Yorker."<sup>74</sup>

The unions also consider this recommendation one of the egregious that the State developed. It is possible that they may be more open to a system that would replace State oversight with a truly independent commission. If option three were pursued, cooperation and transparency would be absolutely critical to either overcoming union opposition or gaining union endorsement for the plan.

The first two options would likely also require a significant push at the State level. At the moment, the State has very little incentive to make changes. They receive fees for their service and have significant authority that they would be loath to give up. Unions may also be dubious of supporting such changes, because they are generally opposed to changes in classifications and any core tenets of civil service.

All that being said, the system does appear to be largely dysfunctional at the moment. With budget belts tightening, it is possible that a leader could make a compelling case for streamlining the ability of the City to modify rules of civil service to comply with the changing needs of the 21<sup>st</sup> Century. Many other places around the country have performed significant overhauls of their systems; at some point, New York City will need to make changes to keep up, and it would be best if these changes could be made expeditiously with as little cost as possible.

## **AFFILIATED PUBLIC AUTHORITIES AND THE CITY**

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New York City has many affiliated public authorities that operate under Civil Service law. The two largest of these are the New York City Transit Authority (NYCT) and the Triborough Bridge and Tunnel Authority (TBTA). Despite a wish by these organizations for autonomy, the City must spend over \$4 million a year to administer civil service exams on their behalf.<sup>75</sup>

New York City is in many ways unique in regards to how it treats affiliated and quasi-public authorities. National civil service expert Stephen Condrey noted that in most other jurisdictions, these types of entities would not be included under civil service. A City representative further elucidated that the determination of who falls under Civil Service law and who does not tends to be historical rather than systemic. Thus, for example, the New York City Health and Hospitals Corporation and the City University of New York do not fall under civil service, while entities such as the Department of Education, the Housing Authority, and the Municipal Water Finance Authority do.

These relationships are further complicated by their lack of overlap with the governance of the Collective Bargaining Law. The Office of Collective Bargaining has a similar patchwork of jurisdiction because of the overlap of the State Taylor Law and the City Collective Bargaining Law; many entities have elected to use the State system instead of the City rules.

The WRTF Report suggests that the NYCT and the TBTA should be removed from the jurisdiction of the City's personnel rules. They argue that the City is already not involved in either the collective bargaining or the payroll administration of the NYCT or the TBTA, and that it is a drain on resources for the City to have to spend \$4 million annually for DCAS to develop and administer exams for these entities. The Report proposes, and a City employee working at the NYCT confirmed, that the NYCT and TBTA are very much interested in governing their own system. In the employee's view, the transfer would remove a significant burden on DCAS, while eliminating the need for these entities to "wait in line" for tests from DCAS.

Unions, however, are skeptical of such a change. Their concerns are related to their members who work in those authorities and are threefold – the loss of transferability of employees during layoffs to other City agencies, potentially harmful changes to job classifications and pay rates, and wasted resources as a result of duplicating the City’s function of developing and administering exams.

➤ **RECOMMENDATION: Allow the Metropolitan Transportation Authority to administer exams on behalf of the New York City Transit Authority and the Triborough Bridge and Tunnel Authority**

While the union’s concerns about the effects of the change on their employees is valid and to be considered, both the NYCT/TBTA and DCAS would likely see efficiency gains rather than losses. The Independent Budget Office echoed this recommendation in their 2011 report on Budget Options for New York City. Over 40,000 of the 230,000 employees under DCAS jurisdiction are a part of these two agencies, at a large cost to the City. The Metropolitan Transportation Authority is willing to absorb this cost in exchange for control over exams. The gains of the change would be more frequent exams that are scheduled by the agencies according to their need, and more capacity at DCAS to focus on the needs of other City agencies. As the WRTF Report noted, the City University of New York made a move out from under the City’s jurisdiction, which most would likely agree has been effective for both the City and for CUNY.

The great administrative challenge to this change is that it requires State approval. Union disapproval will likely also result in political challenges. One City employee recommended that grandfathering workers currently in the system to be able to continue to transfer to other agencies might be one concession to gain union support. This type of grandfathering has been done in other places (ex: Massachusetts) and for other issues related to civil service (ex: long-term New Jersey employees who work in Pennsylvania and are not subject to restrictions for living in the State).

As an additional note, should the State oversight capacity be moved into the City, the new Civil Service Commission could maintain oversight over the MTA without having to integrate the two systems. San Francisco, CA currently has a system in which the Civil Service Commission governs Miscellaneous Classes, Uniformed Ranks of the Police Department, Uniformed Ranks of the Fire Department, and the Municipal Transportation Agency “service critical” staff with an overlapping but distinct set of rules for each. This autonomy over personnel matters was granted in 1999 with Proposition E.

One final note is that this recommendation does not address any other departments that should or should not be under the civil service system. Given the idiosyncratic rules of which authorities are included, attempting to issue any other changes without buy-in from the City and/or authority would likely involve a considerable investment of resources and require significant research to understand the financial and political impacts of attempting to make such changes.

However, if State oversight capacity was moved to the City, we recommend conducting relevant interviews and inquiries with authorities to determine whether they should fall under the new system or remain under the State. Some qualities to consider may include whether the authority is regional or City-specific, where the majority of the budget comes from, and whether the authority is covered under the City or State’s collective bargaining laws.



## DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES AND CITY AGENCIES

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Human Resources Management (HRM) is a field in its own right. The nature of public service only complicates the issue. Human Resource Management as a practice is traditionally invested in developing fair procedures, identifying and nurturing the best candidates for a job, and developing system-wide efficiency for administration. However, many government agencies are performing tasks far more diverse and with far more complicated intended outcomes than the average business. What works in one agency may be completely inappropriate for another, and the personnel department may have little flexibility to adapt the rules agency by agency.

According to national civil service expert Stephen Condrey, most civil service systems have faced balancing acts over the years around the proper role of a public sector personnel department, particularly between centralization and decentralization of personnel functions. Indeed, many of the largest overhauls of public management in other cities have revolved not just around issues of civil service, but of re-imagining the practice of human resources.<sup>76</sup> Centralization and standardization of practices has benefits of efficiency, while decentralization and a sort of “home rule” attitude for line agencies allows each agency to design systems that are unique to their needs.

New York City has been no stranger to these types of changes, having frequently moved and redefined the Department of Personnel (now under DCAS) since the beginning of the system. Prior critiques of the New York City civil service system suggest frequent tension between line agencies that seek to maximize their ability to deliver services and the personnel agencies that support this ability.<sup>77</sup>

New York City line agencies react to the restrictions of civil service differently. As one City employee described, well-funded agencies are more likely to understand and facilitate effective maneuvering in the system, allowing them to skirt or bend some rules that other agencies are following precisely. They also have more capacity to, as one New York City researcher put it, “‘end run’ unwanted centralization and ... do their own training and executive development.”<sup>78</sup> Another City employee notes that particularly when it comes to discipline, some agencies use the system frequently and are well-versed in the requirements of due process, while others rarely use it and have little training with which to do so.

One common best practice cited for human resources management is the “IBM model,” which has long been a mainstay in the private sector. This model has three primary “legs.” The first, as public administration guru Steven Hays describes it, “contains all of the old specializations, however now they are conceived as service centers that process paperwork efficiently and try to assist line managers with their technical human resource needs.” This is largely equivalent to what DCAS does now, although soon there will be added efficiency in this model through a new HR Shared Services Center proposed in the 2010 Maximizing Efficiencies in New York City Government plan released by Bloomberg. The idea behind this strategy is that “by redirecting time spent on transactional work there will be significant opportunities for cost savings and the development of workforce strategy and talent management programs.”<sup>79</sup> The City estimates that it currently spends over 70% of the \$410 million spent on Human Resources on transactional costs.<sup>80</sup>

A second leg in the IBM model is “a ‘center for excellence’ that is responsible for training, employee development, succession planning, and other long-range strategies to enhance agency performance.” The City, as a part of the same Efficiency plan, will also develop “smaller, more strategic HR offices within each agency that will focus on workforce development (e.g. retention and succession planning)

and employee-facing transactions (e.g. recruiting decisions, grievances).<sup>81</sup> Additionally, the City will create Centers of Expertise out of all of the personnel oversight agencies that “will focus on the strategy, design, process and outcomes of Citywide HR programs such as civil service, labor relations, training, HR systems, and payroll.”<sup>82</sup>

Finally, the third leg “consists of a pool of personnel generalists (known as “business partners” in the private sector) who provide consultative services to other managers in a troubleshooting posture.”<sup>83</sup> This function will be covered somewhat between the HR Shared Services Center call center and the strategic HR offices that will focus on workforce development.

Despite the progress the City is making in streamlining and redirecting its HR functions, the interviews we conducted pointed to a few areas that will be critical to ensure are present in the Mayor’s new plan.

➤ **RECOMMENDATION: Allocate resources to the following areas:**

- A. DCAS’ ability to pilot new ideas** (exams, E&E, performance evaluations, promotions, etc)
- B. Employee development** (best practice training, reward incentives)
- C. Managerial training & troubleshooting** (esp. around transfers, discipline, performance)

Each of these three items allows DCAS to fundamentally improve the operations of all agencies, without having to centralize any additional functions. These three items also complement both the IBM best practice model of HRM and the changes the City is currently making to improve efficiency at DCAS. Moreover, they will help to push for significant improvements in effectiveness and efficiency in all areas of civil service administration and workforce management.

The first, DCAS’ ability to pilot new ideas, is aligned nicely with the forthcoming Centers of Expertise. Both in accordance with further recommendations in this report and also with any recommendations arising out of the Centers of Expertise, DCAS will need to have the flexibility to try new practices without having to make wide-scale, drastic changes that may be undoable if the new systems prove ineffective. Indeed, using “pilot programs” is becoming a more common practice at the City level. These programs, which can require any amount of resources from small slush funds to large line items, allow the City to experiment with success on a small scale.<sup>84</sup>

In supporting pilot programs, the City will likely also improve its ability to make a case for changes both at the State level and to unions. Applying evidence-based practice is widely understood as a method for effective management in many public interest and government fields, and if the programs perform well and show net positive benefits to employees, there will be little cause for malcontent or bureaucratic ties-ups.

The second component, employee development, involves exposing employees at all levels to more best practices in their field and providing reward incentives, whether monetary or not. This function, while possibly an outcome of the Centers of Expertise studies, is not currently a major part of the HR redesign. However, other jurisdictions around the country at all levels have successfully implemented forms of employee development (ex: South Carolina; Oklahoma; North Carolina Counties; Sacramento County, CA; City of Phoenix, AZ; and the City of Austin, TX) and have found their investments to pay off in a more satisfied, productive workforce.<sup>85</sup> In Maricopa County, AZ, reformers have found that when employee-training budgets are centralized, individual managers are far less reluctant to allow employees to participate in development because the funding does not directly impact their own budget.<sup>86</sup>



The third, more extensive managerial training and troubleshooting, has the potential to change the way that all employees interact with the civil service system and their job. Some of these functions may be encompassed by the call center, but managers should have access to dedicated experts on issues of motivation, promotion, discipline, and problem-solving to remove the fear of interacting with the system or to bring actions more in line with the statutes and intent of the civil service laws.

Furthermore, the current Management Academy through DCAS requires \$2100 per enrollee from agencies. The WRTF Report suggests that this program could be extended by changing the training communication methods to “be done through a web-based portal and live feed discussions, regular meetings and newsletters that share best practices, case studies, and new and innovative approaches to high performance.”<sup>87</sup> These types of communications methods could be scaled up with far less cost and potentially similar outcomes as an intensive, expensive 12-week academy. They would also allow for managers to keep up with trends as opposed to having one intensive learning experience and then never receiving training again.

Ultimately, these changes can all be made relatively cheaply and as a part of a larger plan to overhaul HR practices. They would likely see wide support from both the City and unions alike. Furthermore, the State is currently looking into similar efficiency measures and thus may be amenable to fast-tracking pilot programs and other resources that may be of use.

## **UNIONS AND MANAGEMENT (AND EMPLOYEES)**

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### **Overview**

Unions have many interests that pertain to worker rights and compensation in general. However, their relationship to the civil service system specifically has two major components: first, to ensure that hiring practices are conducted fairly according to an objective standard and second, to seek to minimize any favoritism or partisan-ism that would result in unfair promotions or demotions of a worker for reasons other than job performance or severe infractions. While these concerns are systematically met by the merit-and-fitness clause of civil service, equating the two can occasionally cause confusion about union motivation. Unions support the merit-and-fitness principles embedded in civil service because of their inherent orientation toward objectivity. They are concerned that without these protections, they would be serving at the whim of every new governor and mayor to step into office.

Clashes between unions and the City tend to revolve around an equity/efficiency trade-off, where developing fair practices can require a sacrifice of some form of operating efficiency. Effectiveness is more of a grey area. One union representative strongly cautioned against assuming that unions support poor performance, and instead made the simple statement that “people need to be treated with dignity and they need to do their jobs.” He further made it clear that in disciplinary proceedings, unions serve to ensure that due process is carried out and employees are treated fairly, and not that union members who are not doing their jobs are protected from discipline and dismissal.

However, despite the fact that both unions and the City want to make sure that the most effective employees are retained, they often use different measures of effectiveness. For example, one of the core principles of the labor movement is seniority, which places a high premium on the idea of “paying your dues” and the notion that long-time employees have valuable institutional knowledge. On the

other end of the spectrum, managers often fear that tenure leads to complacency and that skills often become outdated over time as new technology cycles through the workforce.

Employees are yet a third prong of the debate, although one that is frequently left out of the major discussions. The labor unions officially represent the needs of employees, but employee interests can also often be aligned with management when they are seeking to maximize their own situation. Indeed, unions are primarily concerned with the fairness of the whole system. Employees benefit from this when suffering unfair treatment, but also may find themselves barred from advancing based on their performance and cultivated special relationships with managers. Furthermore, as one City employee noted, there are also inherent conflicts between being a salaried professional as many City employees are, and rules about how long or late a person can work to complete their work.

The truth, as a New York City researcher describes, is that the range of employees is just as wide as that of managers. Some are passionate and driven, while others are merely “doing time.”<sup>88</sup> The same was said of unions, or even factions of unions, by some City representatives. As membership entities, the City sees the unions as being in place primarily to serve their current workers, which can lessen the drive for proactive changes that might benefit the system in the long-run but have shorter-term negative effects on their members. There are also diverse types of unions, and the interests of the uniformed personnel may not always be exactly in line with the interests of DC37 or the SSEU.

At the same time, they do have significant power, particularly in New York City. A 1978 report describes how the power of the New York City unions derives from “the size of the membership, the extent of their financial resources, and their potential power as a major voting bloc.”<sup>89</sup> The relationship between unions and the City has had its ups and downs, although one union representative noted that the relationship has significantly declined since Giuliani came into office and “decided he wanted to make things more ‘business-like.’”

### **Civil Service and Collective Bargaining**

As noted previously, civil service workers are governed both by the civil service laws and also collective bargaining laws. In their 1973 critique of the New York City system, Savas and Ginsberg describe collective bargaining as:

...a second personnel system overlapping and at times conflicting with and negating the civil service system. Job classifications and duties, recruitment, promotion paths, eligibility for advancement, and grievances all fall within the purview of the civil service system, yet all are in fact negotiated, albeit informally, with the municipal unions.<sup>90</sup>

Labor-Management expert Joel M. Douglas describes the two sets of laws as “Systems in Conflict” and explains that there are three major components: “1) mandatory subjects that must be bargained; 2) prohibited subjects that may not be bargained; and 3) permissive subjects that may be bargained.”<sup>91</sup> This third component is the one where the most overlap between the two systems arises. A City employee noted that if everything were bargained, it would significantly slow the system down. According to an Office of Collective Bargaining representative, one of the biggest efficiency gains in the last 20 years has been the rise of pattern bargaining, where the City will negotiate a limited number of contracts and then use those as templates/constraints for other unions. This approach saves significant time, but does not allow for very much customization for special circumstances.

## **Unions and Management**

Given the complexity of collective bargaining and the occasionally hostile relationship between the City and unions, many City agencies are uncomfortable in dealing directly with unions themselves except when required. As one New York City civil service expert declared, the Office of Labor Relations is so concerned about losing ground that it intimidates individuals in agencies to avoid any and all contact with unions, lest it provoke additional conflict. Furthermore, as a City employee said, given the strong emotions on both sides of the tables, the City is concerned that involving unions in brainstorming about how the civil service system functions may stifle their ability to consider innovative ideas.

The same City employee noted that the original WRTF Report sought to promulgate innovative ideas to the public, but that the MLC Response essentially made everything infeasible. Another City employee explained that there is a lot of mistrust by the unions over the fear of perceived attempts to take away their members' rights. There are three general steps that interviewees described as needing to happen to get the unions on board.

The first is that collaboration between managers and unions is required in reality and not in name-only. The second is that unions and managers need to work together to understand what is not working in the system, and they must involve those who are most intimate with the system: the employees. The third is that the City needs to prove that new procedures can live up to measures of fairness/objectivity, and that new rules will be implemented transparently with an eye toward how the changes affect workers.

➤ **RECOMMENDATION: Establish a series of Labor-Management Committees to include at least one Office of Labor Relations and one union representative on the following topics:**

- A. **Job Title Management** (in perpetuity) – also add union representation to Provisional Reduction Analysis Team
- B. **Workforce Morale – Stakeholder Surveys** (temporary working group)
- C. **Restructuring Test Validation** (temporary working group)
- D. **Arbitration Efficiency** (temporary working group)

At their most basic, Labor-Management Committees allow for unions and employees to feel as if they have a say and for managers to take advantage of the vast institutional knowledge of their human capital. They cannot only serve to address problems, but also to help bridge the gap between the two so that innovation can be implemented on a regular basis.

Labor-Management Committees have historically proven successful when both sides approach the table in good faith with an eye toward positive development. They are mandated at the New York State level, but that particular rule has not fully trickled down to the City. The City does have some provisions for labor-management cooperation and committees, but as one union representative stated, “the City has a labor relations process, but they need to actually use it!”

A 1998 study of Labor-Management Committees in other counties in New York State highlighted some lessons learned for successful Labor-Management Committees. Tompkins, Genesee, and Ontario Counties all had successful committees as of the report's release. They were able to develop these committees by starting with “addressing issues that are less contentious, to build momentum so committees can tackle larger, more difficult problems in the future.”<sup>92</sup> They had all previously experienced unsuccessful committees. The secret to their eventual success was learning that “by

focusing on relationships, building trust, and gaining the commitment of leadership they were able to establish the successful committees that operate today.”<sup>93</sup>

It is important to distinguish that the function of these Committees should be preventative/proactive. The topics for the proposed Committees were selected based on areas where there are clear mutual gains to be made. The unions have expressed interest in being a part of each of these issues in their response to the WRTF Report. The City is currently experiencing frustrations in many of these areas, in many cases specifically as a result of union concerns around the issues. Currently, both City and union representatives said that there is positive work around health insurance and safety concerns. While this is likely due to the fact that there are very clear shared wins when those issues are adequately addressed, cooperation on health and safety can serve as a model for other issues.

The Federal Mediation & Conciliation Service offers a general guide for establishing Labor-Management Committees which includes ideas and tips for making them work.<sup>94</sup> Moreover, at the State level, the New York State and Civil Service Employees Association Partnership for Education and Training provides comprehensive training around labor-management relations. They have developed “A Guide for Establishing and Maintaining Labor-Management Committees”<sup>95</sup> and also regularly release reports on progress. A 2008 Report cited successes at the State level around a new pilot program to expedite disciplinary process, work quality improvements, recruitment improvements, work schedule alterations, and safety.

Proactive committees allow the parties to seek out incremental or drastic changes that would improve the system as a whole, as opposed to devolving into bickering in trying to respond to problems as they occur. For these committees to be effective, we recommend the following provisions based on our interviews with City, union, and budget representatives and general research:

- Committees are composed of equal numbers of management and labor representatives
- City and unions each self-appoint their own members
- At least one City representative has some sort of budgetary authority
- The City’s members include at least one representative from the Office of Labor Relations and one representative from the Department of Citywide Administrative Services
- Recommendations are published to a public location, with opportunities for input and comments
- To ensure adequate attention is given, job descriptions for members of the Committees include time dedicated to participation on the Committee (particularly for the Job Title Management functions in perpetuity, but also for temporary working groups as special projects)<sup>1</sup>

These provisions will help to ensure that committees do not fall apart because of lack of buy-in, lack of resources, lack of time, or lack of communication. It is easy for proactive work to get lost when problems requiring immediate attention crop up. However, by reviewing best practice models for committees and imposing strict structures on how they are run along with necessary resources, they may have a chance to survive. Moreover, they may have a chance to change the politics around some of the most pressing civil service issues.

There are four specific areas of potential reform that are most pressing for labor-management cooperation. Controversies over job title management have been constant, but recently came to a head

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<sup>1</sup> This recommendation was emphasized in particular in an interview on budgetary implications of changes

around the City of Long Beach vs. Civil Service Employees Association, Inc decision requiring the reduction of provisional employees from the workforce. Many of the union representatives we spoke to indicated that even though they were ultimately not in favor of broadbanding or consolidation, they were willing to sit down and discuss the issues if the City would include them. Unfortunately, the City has mostly failed to do so and has moved ahead with a Provisional Reduction Analysis Team with no labor input.

While the City can continue to move ahead without union involvement, the State may be less likely to approve changes without the unions on board, and the City will eventually need to bring in the unions anyway to bargain new contracts around consolidated positions and to sort out which unions may represent broadbanded positions. Negotiations around these issues would be significantly improved by a more positive and proactive relationship prior to that point.

A Workforce Morale committee would focus on conducting mass surveys and research on employee morale and insights toward identifying critical areas for improvement and easy wins. The committee might also be considered in concert with the changes to DCAS and the HR Centers of Expertise to centralize knowledge gathering, analysis, and recommendations for workforce changes. The State may once again prove to be a valuable model to look at. As a part of the 2012 Sage Commission recommendations through Governor Cuomo, the State has approved the initiation of a stakeholder engagement process that includes interviews, focus groups and a survey of the State workforce.<sup>96</sup>

Finally, both the restructuring of Test Validation and the efficiency of Arbitration are areas in which the unions have already expressed that they are willing to sit down with the City in response to the WRTF Report. Given this willingness, it would be in the City's best interest to engage the unions to achieve the most expeditious changes.

# HIRING & EXAMS

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Exams are the pathway into civil service competitive positions. The goal of this process is to accurately assess a candidate's potential job performance in a fair and competitive manner. In theory, this eliminates any corruption and political influence. Competitive exams are mandated by New York State's Constitution (Article V Section 6), and widely embraced by both City managers and union representatives as the core mechanism in upholding the merit-and-fitness system.

Although exams have been accepted as the primary selection tool in most jurisdictions, civil service experts Steve Hays and Jessica Sowa argue that "...no principle in the merit catechism has been more difficult to apply."<sup>97</sup> Their article "Staffing the Bureaucracy" explains that despite this difficulty, there is a need for a formal and regulated selection process: "Public jobs are considered resources to which everyone has a potential claim. Government's staffing function, therefore, must be performed in a manner that is acceptable to the community."<sup>98</sup> While most stakeholders recognize the need for a formalized selection process, many also recognize the need for improvement. The following sections will analyze the New York City's process for developing, administering, scoring, and contesting entrance exams.

## DEVELOPMENT

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Exam development is a complicated process with major implications for the City. Given that exams are the gatekeeper to civil service jobs, a test developer must ensure these exams closely measure the skills needed for the job. If an exam cannot accurately measure these skills, the City workforce may not be equipped to perform essential functions. The Department of Citywide Administrative Services (DCAS) is responsible for the test development process. Their process emphasizes content validity (i.e. measuring the essential knowledge, skills, and abilities needed for the job).

For every exam, DCAS conducts a job analysis. During this analysis, test developers work with agencies to identify the qualifications for the position; beyond this, consultation agency heads are not involved in the test development process. To provide additional background, sometimes an outside expert is consulted. Once DCAS concludes their agency interviews and surveys, a panel is formed to determine how to link testable abilities to the needed job qualifications. DCAS test developers then determine what kind of test would be most appropriate to measure the specified abilities. Many test formats are provided through the City; some of the most utilized formats are multiple choice written exams, Education & Experience, and practical/physical. For multiple choice exams, DCAS sometimes implements an additional step to the selection process called selective certification to identify specialized skills.

A few concerns have emerged regarding the test development process itself. One of these issues is the fairness of exams. Not only do tests need to measure a job candidate's abilities, but the test must provide all applicants an equitable chance to succeed. This issue of exam equity has been thrown into the spotlight because of the current FDNY Employment Discrimination Case. The Department of Justice describes this case's ruling: "On July 22, 2009, Judge Nicholas G. Garaufis ruled that the City violated Title VII. The Court found that the City's use of the written examinations had an unlawful disparate impact on African-American and Hispanic applicants and could not, as the law requires, be justified as

job-related..."<sup>99</sup> Some of the best practices in addressing disparate impacts<sup>2</sup> are to implement selection processes not based on written exams (e.g. assessment centers have less adverse impact, but are much more costly to administer<sup>100</sup>), change scoring to pass/fail, or emphasize minority recruitment efforts.

Many of the stakeholder interviews conducted for this research did not view disparate impact as a prevalent issue within New York City's civil service exams; they believed this was an isolated issue within the Fire Department of New York. Yet, it is important to keep in mind that the outcomes of the Fire Department Employment Discrimination case could have widespread implications for the City's exam process. Since this was not viewed as a system wide issue by stakeholders and the outcomes of the case are still in progress, this consulting team does not have any recommendations to address disparate impact. Although no recommendations are provided, this is an important issue to be aware of when considering the exam development process.

Another issue with the test development process is efficiency: the large amount of time dedicated to test development causes significant delays in the hiring process. During our stakeholder interviews, this was an issue expressed by both union and City stakeholders. Currently, DCAS produces about 100 tests a year, but there are over 1,000 competitive class job titles. Test need to be effective and equitable, but achieving these goals requires extensive efforts. Because of the significant work required and the volume of exams needed, DCAS is unable to keep up with the City's needs. Another factor is that some positions are difficult to test because of the field is rapidly changing (e.g. information technology positions). There are a few options for expediting this process: 1) eliminate the amount of competitive job titles, 2) dedicate more resources to DCAS test development, and 3) consider purchasing tests through private companies.

As one government administrator interviewee, said, "The test development process is just as hard no matter how many people take the test." A valid test must be developed for every competitive job in order to fill an open position. To reduce the amount of tests that need to be developed, one option is to cut the amount of job titles. A City employee familiar with DCAS suggested 400 – 500 job titles would be manageable under DCAS's current capacity. See the "Job Classification" section for a thorough discussion regarding job title broadbanding.

To the extent that the City continues to rely on exams, there are two other options which can help the City address this demand:

➤ **RECOMMENDATION: Consider purchasing exams through a private company with caution**

The WRTF Report proposed outsourcing the development of exams.<sup>101</sup> The Report framed the privatization of exams as a cost savings measure, but this is debatable. Many experts in the field of test development suggested that for a City the size of New York, privatization could be more expensive than keeping test development as an internal function. The WRTF Report did not provide any cost estimates for purchasing licenses for exams, so it is hard to determine if this would generate cost savings.

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<sup>2</sup> Disparate impact is a legal term describing when an employment practices has a disproportionate "adverse impact" on members of a protected class. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) was the first case which established this legal concept. Proving disparate impact means the employment practice is in violation of Title VII of the 1964 Civil Rights Act.



On the other hand, purchasing exam licenses from exam development companies could help the City meet the test development demand. These exams would be adapted from other jurisdictions with similar positions. A few issues to consider before moving forward with using private exam companies:

- Test development experts should still be retained within New York City. Test development is a complicated process, and there should be an internal capacity maintained so that the accuracy and fairness of these tests can be evaluated. These privately developed tests may also need to be adapted if there are jurisdiction-specific issues to consider and/or skills needed for a position (e.g. ability to work with diverse populations may be a skill needed in a city as large as New York City, but may not be tested for in other jurisdictions).
- Laws mandating the publication of answer keys and the Test Validation Board process would need to be changed. Private exam companies do not want their licensed exam keys to be published. This is potentially politically feasible because the Municipal Labor Committee is willing to discuss these changes, but they insist “...there be some mechanism for validation and challenging exams.”<sup>102</sup>
- These exam companies should be put through a vetting and bidding process to ensure an equitable contracting process.

Overall, there are issues to consider when looking at outsourcing the exam development process, but this could be an effective strategy to scale-up the production of civil service exams.

➤ **RECOMMENDATION: Devote more resources and training to help DCAS increase their capacity for exam development**

Multiple interviewees identified that DCAS is an under-resourced agency. The City has not been able to keep up with testing methodology because of this resource allocation issue. If DCAS received additional resources and training, better tests could be developed, more efficient processes could be established, and more staff could be hired. Of course, if few exams needed to be developed to begin with (by decreasing the number of job titles or purchasing exam licenses through a private company) this recommendation would not be necessary.

According to the WRTF Report, the average cost to administer an exam and produce a ranked list is \$98k. Although \$98k sounds like a significant amount, the Division of Citywide Personnel Services total budget for 2011 was \$23 million in a City whose budget is \$67 billion (about 0.0003% of the total budget).<sup>103</sup> Although the cost of exams is not a major issue, the time required to develop an exam is a major drag on the City’s ability to efficiently hire and a candidate’s ability to obtain employment. Devoting additional resources to this vital service could go a long way in improving the test development process.

### **Exam Format**

Although the City needs to increase their capacity for developing exams, another facet of test development is what kinds of tests are used. The exam format has important implications for city effectiveness and the efficiency of the development process. Up until this point, this analysis has focused on the development of typical civil service multiple choice exams. Civil service stakeholders and human resource experts have highlighted two alternative selection processes: unassembled exams (i.e. Education & Experience) and selective certification.



An example of an Education & Experience exam can be found in Appendix III. These exams essentially have a scoring rubric which assigns points for specific achievements in a job candidate's history. Although the City already uses this type of exam fairly frequently (used for 25 titles in 2010), these exams have been criticized by both the unions and human resource experts as being too subjective and easy to manipulate. Candidates can lie on their applications and assessment scorers have to make judgment calls which can lead to "...a tendency to overemphasize quantitative factors (years of experience, number of publications) rather than qualitative concerns that may be more relevant to job performance."<sup>104</sup> While Education & Experience exams have drawbacks, one benefit of these exams is that they are generally easier to assemble and administer. New York City is already utilizing an online system for these exams.

Selective certification allows agencies to target candidates with specialized skills that are not tested for in the written exam (e.g. fluency in a language). Essentially, agencies can "request the names of only those candidates on a list who have stated they have enhanced skills."<sup>105</sup> To varying degrees, selective certification is used by City agencies. A concern is how to define specialized "skills" without reverting back to patronage. To ensure patronage does not become an issue DCAS works with agencies to identify positions appropriate for the selective certification process and unions have offered to discuss this certification for specific job titles on "...a case-by-case basis."<sup>106</sup>

➤ **RECOMMENDATION: Continue with the implementation of Education & Experience exams (expansion should be met with caution) and increase the use of Selective Certification**

The WRTF Report recommended that both of these exams be used more frequently. The Task Force argued that E&E exams should be implemented especially for positions where a candidate has already proved their merit by obtaining a degree, license, or certificate in their field. While these exams are easier and cheaper to implement, both human resource experts and unions believe these exams are subjective and easy for applicants to manipulate. Expanding the E&E exams will be met with push-back from unions, and implementing this system presents trade-offs between fairness/accuracy of testing and ease/cost-savings for the City.

Selective certification, on the other hand, should be expanded where it is appropriate. Both City administrators and union representatives are open to increased use of this process. Unions and DCAS should be involved with approving the use of selective certification for specific job titles in order to avoid abuse of this process. Overall, increasing the use of this process will help improve city effectiveness because candidates with the necessary specialized skills will be identified.

## **ADMINISTRATION**

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Once an exam has been developed, it must be administered. There are two components of administering the exams: 1) outreach and logistics prior to the exam, and 2) the actual act of giving the exam. This first step requires outreach efforts to inform the public about job openings and exam schedules. DCAS is responsible for publishing job announcements and examination schedules. The announcements include the "title of the position, the minimum qualifications required, the tests of the examination, and such other information as the commissioner of Citywide administrative services may deem necessary."<sup>107</sup> A tentative yearly exam schedule is also published, along with monthly schedules.

Both DCAS and the agencies with vacancies are in charge of active recruitment efforts.<sup>3</sup> If an applicant is interested in a position that is not currently open, they can sign up for exam email updates.

Every “Notice of Examination” contains instructions on how interested applicants can apply for the exam. There are typically three options available for applying: online, in-person at the Computerized Testing Center, or completing hard copy applications. Currently, the City has two computerized testing centers (CTC) and is looking to expand these centers to all five boroughs. Almost all of the tests require that applicants pay a fee; applicants who apply electronically receive a discount and special fee waivers are available for veterans, those on public assistance, or those who are unemployed. Once an applicant has registered for the exam, they are sent an “Exam Admission Card” which has details regarding the test time, location, and date.

Most multiple choice exams are still administered using paper-and-pencil scantron sheets. The testing sites for these exams are usually held at high schools. Education & Experience exams, on the other hand, are starting to be administered online. In 2011, the median number of days between DCAS administering the exam and creating the list was 298 days.<sup>108</sup> According to the WRTF Report, the average time it takes to administer an exam and produce a ranked list is 16 months. This time delay is the major issue in regards to the exam administration; frustration over this inefficiency was expressed by both union and City stakeholders.

➤ **RECOMMENDATION: Increase the implementation of technology to facilitate easier access and administration of exams (e.g. test centers, walk-in exams, online exams)**

DCAS recognizes that there is a need for increasing the technological infrastructure for exam administration. Unions also embrace the idea of expanding technology in this capacity. Currently, there are two computer centers and efforts are being made to open centers in all the boroughs. Some exams are offered as walk-in exams at these centers. Also, some testing is moving to an online format. In 2011, the City was piloting their Online Education and Experience (OLEE) portal.

While technology can provide substantial benefits, this implementation should be planned in a way that minimizes any potential adverse impacts; this is because “...age, education, and gender are associated with differential levels of both mastery and the use of information technology.”<sup>109</sup> Another concern to consider when implementing new online systems is information security; the City needs to take the appropriate precautions to minimize the potential for security breaches. Thought and analysis is needed for increased use of technology in the screening process. This planning will be well worth it since increasing the use of technology will make the administration of exams more efficient and, in turn, will shorten the time needed between administering and ranking exam scores.

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<sup>3</sup> There are specific regulations governing these recruitment efforts which are beyond this project’s scope.

➤ **RECOMMENDATION: Pilot a program focused on continual recruitment/ongoing testing**

While technology is one option for eliminating the hiring time delay, another option is for the City to experiment with continual recruitment and testing systems. Other states have implemented these systems. One example is the State of Michigan; Steve Hayes' in his article "Trends and Best Practices in State and Local Human Resource Management" explains this case:

...hiring delays have been virtually eliminated in the social service agency through the use of a centrally coordinated hiring pool (CCHP). This means that recruitment for some job categories goes on constantly. Workers are recruited, screened, and trained on a continual basis, whether vacancies have been declared. Notably, assessment centers staffed by supervisory personnel are used to screen all job applicants. Because employees cannot be placed into front-line jobs without first receiving several weeks of training, the CCHP format permits instantaneous replacement employees and also creates a small pool of "floaters" who are available to fill in for employees who are on extended leave. In so doing, the state has essentially eliminated a major cause of worker dissatisfaction and attrition—excessive caseloads arising from unfilled vacancies. Similar situations exist under classical and more modern HR techniques.<sup>110</sup>

New York City could explore this system by creating a pilot program. With the implementation of the Computer Testing Centers, the administration of this kind of pilot program is possible. This strategy could be particularly helpful for positions which are difficult to fill, positions with high turnover, or positions that need extensive initial training. If the pilot is successful, this strategy could help eliminate time delays between the testing process and filling positions. Further research needs to be conducted into the legal and administrative implications of this pilot program.

## SCORING

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Once an exam is complete, it is then scored, an eligibility list is compiled, answer keys are published, and candidates are informed of their exam score and list rank. There are a couple potential methods for scoring an exam. Currently, the City scores exams<sup>4</sup> and establishes a rank-ordered list. From this rank-ordered list, the hiring manager must select from one of the three the highest score on the eligibility list. Tied scores are treated equally in listing, so there may be more than three eligible candidates in consideration.

When all of the top three scores have been appointed or have declined an offered position, the hiring manager must continue down the list in this fashion until a new list is established. The duration of a list cannot be less than one or more than four years.<sup>5</sup> Once a new exam is scheduled, any candidate who wishes to remain in consideration must retake the exam. Debates around the exam scoring topic revolve around fairness and equity.

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<sup>4</sup> Scoring is based on performance on exam, but veterans can claim additional credit.

<sup>5</sup> If there is a hiring freeze or a new exam has not been scheduled, DCAS can extend the list eligibility beyond four years.

The current system used by New York City is called the 1-in-3 rule. Most jurisdictions have moved away from these kinds of scoring restrictions. An article written in 2001 reviewed current state civil service trends and said: "...four states still adhere to the traditional 'rule of three;' that is, managers are forced to choose among the top three scores. Other states, such as Maryland, have moved to the use of bands of qualified applicants."<sup>111</sup>

Band scoring and pass/fail are alternatives to the 1-in-3 rule. The City already implements a version of band scoring for Education & Experience exams, and many advocates for reforming the competitive exam scoring process prefer the band scoring technique. Band scoring establishes ranges which are statistically equivalent, such as 100-96. A statistically equivalent set of scores means that the couple points difference in scores is not a meaningful difference in predicting a candidate's qualifications.

Proponents for switching to this technique argue that band scoring is a more equitable process and provides managers with a larger hiring pool to find the best match. On the other hand, unions and some City employees are vehemently opposed to this change. These individuals argue that band scoring leaves too much discretion to the manager and discourages candidates from studying hard for the exams (and thus new hires will be less knowledgeable on these job-related subjects). In essence, opponents to band scoring believe it is contrary to merit-and-fitness principles.

#### ➤ **RECOMMENDATION: Implement band scoring**

A strong argument can be made to move toward band scoring. Band scoring is a more equitable process. Treating candidates with statistically equivalent scores similarly is actually in line with merit and fitness; since everyone scored the "same" on an exam (which is measuring their fitness for the job) it would be more equitable if all of these candidates were considered for the position. Moving towards band scoring can also help find the best match for the position, and help with hiring the massive backlog of provisional employees within the City. Yet, because this reform will be met with significant pushback from unions (and potentially some City workers) outreach efforts should be conducted. This is not a radical reform effort; many jurisdictions have recognized the benefits of band scoring and moved away from the rule of three. Further analysis of moving forward on this recommendation (with or without union support) should be considered.

## **CHALLENGING EXAMS**

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Test development and administration have been identified as causing delays within the testing and hiring process. Challenging exams can also cause delays. DCAS's website explains the process of challenging exam answers:

Candidates then have thirty (30) days to submit written protests to the proposed key answers. Candidates must justify why their answers are as good or better than the key answers...The Test Validation Board (TVB) reviews each protest, making appropriate changes to an exam's answer key based on these reviews. The TVB traditionally consists of one representative of the union, a subject expert, and an exam expert. Upon completion of the TVB review a final answer key is established, the exams are rated and the hiring list is established.<sup>112</sup>

The Test Validation Board process is mandated by Section 50-A of the New York State Civil Service Law. Changes to the Test Validation Board came up in the "Development" section above, in that, this process would need to change if the City chooses to purchase exams licenses from private companies. The WRTF

Report challenged the appointment process for the Test Validation Board members citing their concern that all the appointees do not have backgrounds in exam development. This Report also argues that New York City should be able to develop their own system for challenging exams since other jurisdictions within New York State are allowed to create their own test challenging procedures while New York City is still mandated by the State to have a Test Validation Board.

➤ **RECOMMENDATION: Establish a Labor-Management Committee to revisit the Test Validation Board process**

The Test Validation Board process did not arise as a concern during the stakeholder interviews conducted for this report. Yet, this procedure provides an important due process function and the decisions of the board can have a significant impact on the City workforce. The WRTF Report explains the importance of this board: "...the undue authority TVB members have over the results of each civil service exam—members are empowered to disqualify questions and adjust scoring based on challenges by exam takers, playing a significant role in determining who is hired."<sup>113</sup> In response, the Municipal Labor Committee said they "...are willing to discuss alternatives but there must be a mechanism for validation and challenging exams."<sup>114</sup> This point should be emphasized – the City should maintain an internal mechanism for validation and challenges, otherwise these challenges will end up in the time consuming and resource draining court system.

While both the City and unions are willing to explore other validation options, the fact remains that State law would need to be changed. Because of this potential obstacle, a Labor-Management Committee should be established to identify the need and vision for a new process before major efforts to reform State law are pursued. If the TVB process continues, this committee should explore changes to the board selection process, specifically if there should be minimum level of examination expertise required for board members.

# JOB CLASSIFICATIONS

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## DEFINITION OF MANAGER

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The civil service system functions with several key players. One of the roles central to city functioning is, and will continue to be, the managers. Managers are responsible for a plethora of functions which allow the system to run smoothly. However, due in part to problematic job classifications, managers lack clarity about how to navigate and enforce the civil service system. The current definition of a manager under the City Civil Service law states that to be considered a manager an employee must “formulate policy or assist directly in the preparations, negotiations, administration of collective bargaining agreements or personnel management; or... assist and act in a confidential capacity for the managerial employees described in the first category.”<sup>115</sup> This definition can be confusing since there are a number of City employees who perform managerial functions are not classified as “managers” due to the City’s narrow definition.

Positions such as principals, chiefs of staff, and precinct commanders are not defined as managers, although some stakeholders argue that they have “managerial” duties. The WRTF Report argues that there is a conflict of interest for employees who have managerial responsibilities, yet are not officially classified as “managers.” This potential conflict of interest stems from the fact that some of these unofficial managers are in the same collective bargaining unit as those they supervise. Another major concern expressed in the WRTF Report, is the overtime cost for these employees who have managerial duties but not classified as managers. The Report says the cost of overtime is projected to increase by \$15,000,000 over the next five years.<sup>116</sup> In an era of austerity, this figure represents a significant opportunity where cuts could be made for the City budget.

Principals provided an interesting perspective on the issue of how to define a manager. Principals do not consider themselves to be managers; this was a perspective shared by both principals and union representatives. One union representative described how principals’ lack of autonomy makes it difficult to effectively run a school. Principals do not have control over their budget and have very little say in policy-making decisions. One current principal described her role more like a facilitator: principals take orders directly from the Department of Education and implement the policies, programs, and budget restrictions. The need for autonomy is necessary in order to be fully considered working managers. Furthermore, one City employee explained that the ambiguous definition “hampers the ability of managers to manage.” The lack of a clear, comprehensive definition of a manager has an impact on the City’s efficiency because these unrecognized managers are uncertain of the extent of their authority.

The union’s main concern regarding this issue is the lack of representation and worker’s rights. When an employee is officially classified as a “manager,” he/she no longer has collective bargaining rights. The WRTF Report insists that principals are managers; this is implying that principals should not have these collective bargaining rights. However, if principals have no autonomy over such things as budget or policies, these rights should not be stripped away. Some unions believe that the City’s efforts to increase “managerial” classifications among employees are a veiled attempt at weakening the unions’ presence within the City. The MLC Response to the WRTF Report states: “the current law also provides the City with uniformity to what would otherwise be an untenable process of negotiating terms and conditions for tens of thousands of municipal ‘managers.’”<sup>117</sup> The MLC Response goes on to challenge the change of definition as, “an invitation to the City and other public employers to redefine job descriptions in a

manner to make tens of thousands of public employees through the State purportedly supervisory even when they have never exercised any hint of supervisory authority.”<sup>118</sup>

Unions also take issue with the fact that some of their employees perform managerial tasks but do not receive the appropriate recognition or pay. These pseudo managers need to, at times, make labor decisions that affect a multitude of other City employees. This kind of work requires both additional responsibility and liability, which many stakeholders (including unions) believe should be both recognized and compensated. While unions seek to have a better definition for managers with clear responsibilities and appropriate pay, unions also require bargaining rights. Yet, as one industry expert recognized, it would be difficult if more management titles became unionized because of the complex nature of the City/labor dynamic.

Through our research and interviews, we determined amending the definition of manager is currently not feasible because the issue is riddled with City/union politics and it is unclear what criteria should be applied to develop a “better” definition. However, there may be space to make changes if the City develops a compelling case for why some positions have disproportionate overtime pay.

➤ **RECOMMENDATION: Develop new criteria regarding overtime pay for “unofficial” managers to reduce expenses; present criteria to unions during collective bargaining discussions**

This recommendation addresses some of the concerns put forth in the WRTF Report. By addressing the issue of longer hours and overtime pay, the City can potentially decrease costs in the coming years. These discussions will enable the City and unions to tackle a dilemma in which certain employees could abuse working longer hours and receive overtime pay.

In 2011, New York agencies statewide paid over \$469 million in overtime. The Civil Service Employees Association attributed this high number to managers relying on overtime due to understaffing.<sup>119</sup> It will be more beneficial to discuss overtime pay during collective bargaining agreements due to the need for buy-in from all stakeholders to truly address this issue.

## **TRAINING AND PROFESSIONAL DEVELOPMENT**

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Managers need tools to effectively and efficiently run an operation. New York City civil service experts and employees agree that there is not adequate appropriate training and professional development opportunities for managers. Providing manager-specific trainings regarding the civil service system will make the entire system run more efficiently and effectively. Moreover, public sector organizations believe interpersonal skills are critical and essential for every manager.<sup>120</sup> Providing professional development in interpersonal skills relating to communication, motivation, and leadership will result in managers being better prepared to deal with a varied workforce.

Other jurisdictions have also experienced issues regarding the ability of managers to properly apply and navigate the civil service system. The concern is not whether or not the definition of manager is clearly defined, but whether managers are receiving the knowledge of civil service policies and procedures to properly apply them in the face of political pressure.<sup>121</sup> For instance, in the City of San Francisco, managers face challenges in properly identifying end dates for probationary periods and promoting an effective performance management system. The San Francisco civil service reports states, “managers do



not want to release underperformers during probation because they fear delays and obstacles in refilling the position.” This becomes an issue not only because managers are fearful of the system, but because they are also potentially keeping underperforming workers. Overcoming these obstacles is critical because if a system fails to motivate employees, it frustrates managers, which thus hampers the ability to City deliver quality services.<sup>122</sup>

Currently, New York City’s Department of Administrative Services supports the Management Academy and the Leadership Institute. In order to apply for the Management Academy, managers are required to be effective and high performing, with outstanding skill sets in their areas of expertise.<sup>123</sup> The program was established to help these managers navigate through City government while providing them with resources to succeed as managers. The Academy covers areas such as: building and managing relationships; measuring, assessing and reporting results; and understanding the civil service hiring process. The Leadership Institute is a program for more seasoned managers. The same qualifications are required, but content is geared toward those managers who have more significant decision-making authority.

While the Academy and Institute provide an invaluable resource, the trainings and resources are not available to all managers. Both the Academy and Institute have capacity to train 25-30 managers annually. Managers who are not considered “high performing” and are lacking certain managerial skills are not eligible to apply for these programs. These programs, therefore, fail to service those managers who could benefit the most from these resources and support. These successful programs need to be expanded to provide training to all managers, not only the highest performing.

All managers should be guaranteed training and educational opportunities to develop their careers and be more effective civil servants in the system.<sup>124</sup> Furthermore, this opportunity should be extended to those employees with managerial duties regardless of whether they hold the official title of manager.

➤ **RECOMMENDATION: Increase the amount of training provided to managers and supervisors**

We recommend establishing more managerial training and professional development opportunities. The City and unions agree that managerial training needs to be expanded. Unions believe that ensuring sufficient managerial training opportunities is an imperative part of their role to support their employees. Unions are willing to and have communicated the need to work together to formulate and implement collaborative training sessions and professional development opportunities. These trainings will be a great way for the City and unions to unite and help managers excel. More importantly, it will give all managers a chance to receive proper trainings, support, and resources to efficiently and effectively run their offices.

The first step to implement such trainings would be to facilitate a survey (performed by third-party administrator) among the current managers, managers in training, and those who have management responsibilities but are not considered “managers.” This survey will be a way to gauge where managers need the most support and what resources are needed to meet those needs.

There are, of course, financial implications. The current Management Academy requires \$2100 per enrollee from agencies. The WRTF Report suggests that this program could be expanded by changing the training format to “be done through a web-based portal and live feed discussions, regular meetings and newsletters that share best practices, case studies, and new and



innovative approaches to high performance.”<sup>125</sup> These methods could be scaled-up with far less cost and potentially similar outcomes as an intensive, expensive 12-week academy program. These new trainings would also allow managers to keep up with trends on an ongoing basis, as opposed to having one intensive learning experience and then never receiving training again.

## **JOB CLASSIFICATION AND FREQUENCY OF EXAMS**

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In New York City, there are currently over 1,000 job titles within the civil service system. Job titles range from police officer to City custodial assistant, surveyors, electrical engineers, executive agency counsel, and radio television operators. The vast quantity of titles has challenged the efficiency of the civil service system as a viable system to properly hire an effective workforce. The high number of job titles often impedes the ability of employees to be flexible when necessary. Furthermore, misclassifications can lead to poor management practices and result in improper distribution of assignments and poor utilization of skills sets.<sup>126</sup>

A related issue attributed to the high number of job classifications is the inefficiencies of the examination process. Due to such a large number of titles, there is high demand for the City to both [administer and develop exams more frequently](#). The wait to take an exam can last months, if not years. During an interview, one City employee stated that he had submitted an application months prior to the conversation and has yet to hear when he will be able to take the exam. As stated earlier in the [“Hiring & Exam”](#) section, a potential job candidate must take the appropriate exam before they can be considered for an open competitive position. However, as exemplified by the limited number of exams DCAS schedules every year, the City does not have the capacity to create exams for so many classifications.

The inability to address the demand for exams results in many qualified applicants losing interest and/or taking other positions due to the lengthy time delays. Thus, the City misses opportunities to recruit top talent that could produce a more competitive and effective workforce. A solution that has been presented over the years and echoed in other civil service reform reports is to implement broadband existing titles.

Broadbanding is defined as horizontally combining similar titles, “where the work performed and salary range in two or more existing titles is substantially similar,”<sup>127</sup> and consolidating is “combining higher grades into one position.” The advantage of horizontally and/or vertically combining titles is that it reduces the number of titles and the number of exams, and enhances agency flexibility to better serve the public’s changing needs. The City has the ability to reduce the number of job titles drastically by broadbanding the job classification system.

William Eimicke, former City employee and industry expert, believes that narrow job classifications is one of the top three problems affecting the system today. He states that over time, the civil service has made job descriptions more narrow and specific to protect employees from management and to provide opportunities for promotion. One example that he illustrated is the notion of having Painter I, Painter II and Painter III job titles. They perform the same duties but differ in the height of how far they can paint. In an effort to promote employment growth, the number of titles for the same job increases. He states, “it is ridiculous, we need to create more generic titles where managers and employees have flexibility to do a complete job.” There can be some modifications dealing with promotions and the implementation of broadbanding, see [promotions sections](#) for in depth look at the City’s current system.

The Veterans Benefits Administration highlights the potential benefits of broadbanding. In the 1990's, the New York regional benefits office of the Veterans Benefits Administration underwent major classification and compensation system changes to better streamline their services. Due to an overwhelming workload, the time to complete claims grew longer and workforce morale decreased. Because of this, the organization put in motion certain monumental changes. One of the changes incorporated was the modification of their job classifications.

To begin this process, the office collapsed job families and position descriptions. For instance, the office took five clerk positions and collapsed it into one position- a case technician. The grade level of the new case technician was then increased so the clerks entering the new position would receive a slightly higher salary. The office was able to modify the classification system to include more employees classified at equal levels in fewer job families, ultimately creating an effective broadbanding model. However, changes to compensation were also critical in building an effective model. As such, the benefits office partnered with the union to discuss a system that listed core skills, skill blocks, and combinations of skills for the new positions. This process enabled a transition system to create compensation levels that were aligned with skills sets to establish new salary requirements.<sup>128</sup>

In addition, there have been other jurisdictions that have adopted the broadbanding approach, such as the State of Washington. The State of Washington was able to create its own unique version of broadbanding titled the "Washington Management System." This system is geared towards managers and allows each agency to classify its managers into one of four management bands. At the time, there were approximately 32,000 managers in a workforce of 137,000. The bands are set with a minimum and maximum salary level that allows agencies to regulate within the band.<sup>129</sup> The State researched civil service reforms nationwide and concluded that the best way to streamline classification systems is to adopt the broadband approach. They state, "many are using a broadband approach in which large numbers of jobs or functions are grouped into broad categories based on various factors, such as type of work, level of responsibility, compensation level, occupational group, competencies, and so on."<sup>130</sup> Furthermore, in 2002, the State of Washington successfully passed the Personnel System Reform Act. This act, supported by the State employee labor organizations, included the following:

- Reforming the civil service system—including hiring, job classification and compensation—to give managers the ability to meet changing business needs and improve employees' opportunities for mobility in the workforce, performance recognition and career success.
- Authorizing agencies and post-secondary education institutions to competitively contract for services with businesses and nonprofit organizations, allowing employee groups to compete for contracts.
- Expanding collective bargaining for classified civil service employees to include wages, hours, and terms and conditions of employment.

The passing of this act was successful since legislation supported the State's need to address the needs of its employees and agency management.<sup>131</sup>

Moreover, the State of Florida has also envisioned success in implementing a broadband system. A broadbanding report produced by the State of Florida proposed that by adopting the broadband approach, the personnel administration would be simplified, agencies would be more responsive and employees would be more satisfied.<sup>132</sup> Their argument was that broadbanding gives the State the ability eliminate the narrow classifications and concentrate on a few broad classifications – thus, this system

enables an employee to be incentivized, which leads to development of new skills that ultimately provides the agencies a more highly qualified workforce.

Unions in New York, however, are skeptical of such a change within the system. Their opposition to broadbanding stems from a concern regarding the stifling impact of position classification on the upward mobility of employees in large public bureaucracies, like New York City.<sup>133</sup> Unions are also concerned that employees will be overworked and not properly paid for the duties they perform. A union representative stated, “The union is opposed when asked for people to do more and not compensated for the work performed.” These concerns underscore the need to protect employees’ rights when creating a civil service system with a manageable amount of job titles.

Despite this potential opposition, there is a possibility to work with unions to accomplish this goal. In the MLC Response, unions state several times that the City should meet and discuss ways to review titles in reference to broadbanding. According to the MLC Response, unions are generally opposed to consolidating titles but are willing to negotiate on a case-by-case basis if there are clear and objective standards.<sup>134</sup> By doing this, there is an opportunity for the City and unions to work together to decrease the number of job classifications. Therefore, establishing a transparent process with the inclusion of union representation is key.

➤ **RECOMMENDATION: Establish a Labor-Management Committee to address broadbanding and consolidation of titles**

We recommend the establishment of a Labor-Management Committee to discuss how the City should move forward in adopting the broadband approach. As previously mentioned, several jurisdictions have adopted their own unique form of broadbanding, which have successfully streamlined operations and services. More importantly, these jurisdictions have partnered with unions to develop a plan best suited for the employees. Although the results will vary, it is necessary to explore such conversations within the committee to help the City retain and manage an optimal workforce. The partnership has the potential to discuss policy implications that could result into a passing of an act, similar to that passed in the State of Washington.

## **PROVISIONAL EMPLOYEES**

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Within New York City’s civil service system, there are a substantially large number of employees who are considered provisional employees. In 2008, over 37,000 employees were considered provisional employees.<sup>135</sup> A provisional employee is an appointment made when there is no viable eligible list in which at least three people are willing to accept a permanent position in the competitive class. The City is “supposed to hold a test [for the provisional title] within nine months of that appointment,”<sup>136</sup> but this is a rule that has notoriously been overlooked. Provisional employees are eligible to be part of a union but have neither bargaining rights nor job security: they are essentially “at-will” employees.

Provisional employees retain their positions on a temporary basis, but often stay long-term due to delays in an exam for a particular position or attempts to hire based on other criteria as opposed to exams. These provisional employees remain in their positions until the City is able to produce a viable list. When the City promulgates an open competitive list, the provisional employee must score well on the exam or will face losing his position. This open competitive list may cause a large amount of turnover and disruption within an agency. Furthermore, agency managers cannot plan ahead for these

disruptions as they do not know when a open competitive exam will be administered until the beginning of the fiscal year.

The fact that many provisional employees remain in their positions for years attest to the infrequency of exams for certain titles mentioned in previous sections. In 1986, a chief editor from an independent government workers paper wrote: “failing to give tests, denies job security to provisional’s, advancement to other City workers and job opportunities to outsiders.”<sup>137</sup> It is evident that 25 years later, some of the same challenges exist.

In the case, City of Long Beach vs. CSEA, the courts “found the City of Long Beach with ‘a number of competitive class positions [that] had been improperly filled and retained by provisional employees; at least one for as long as 19 years.”<sup>138</sup> Many of the “improperly filled” provisional employees had been working for the City for many years.<sup>139</sup> As a result of this case, State municipalities were ordered to develop a plan to reduce the number of provisional employees. New York City developed a five-year plan to reduce the number of provisional employees through increasing the number of competitive and promotional exams for titles with the largest number of provisionals; broadbanding and consolidating; and requiring strict compliance with removing provisional employees once a list is established.<sup>140</sup> The Plan was approved by the State Civil Service Commission in 2008 and has been enforced to decrease the number of provisional employees drastically. An estimated 34,000 provisional employees will be eliminated within the plan’s 5-year timeline.<sup>141</sup>

The Department of Citywide Administrative Services established a Provisional Reduction Team to spearhead this initiative. The team, working within DCAS, assists in the reduction of provisional employees but must also work with the agencies to ensure services and operations are not critically disrupted.<sup>142</sup> The most recent progress report states that there are two major reasons a significant number of provisional employees remain. First, the report indicates that the citywide hiring freeze prohibits any new hire from eligible civil service lists. The hiring freeze makes it difficult to reduce provisional employees since this requires hiring from an eligible list. Second, there continue to be efforts to reduce the number of clerical, administrative and transit authority titles; all of which seem to have many provisional employees.<sup>143</sup>

The semi-annual progress report also states that an estimated 11,000 provisional employees have already been reduced. According to the Plan, this figure is behind the performance target of 14,000 provisional employees reduced by November 2010 (see below). The Provisional Reduction Team has, however, successfully decreased the number of provisional employees by 31%, a percentage they hope to keep increasing in the next couple of years.<sup>144</sup>

Report Date: 1/15/2011

	As of 5/31/2010	As of 11/30/2010
Total # of Provisional Employees	29,324	26,135
Total # of Provisional Employees in Competitive Titles	25,951	22,595
Total # of Provisional Employees in Temporary Titles	3,344	3,521
Total # of Provisional Employees in Earmarked Titles	25	16
Data Error Being Investigated	4	3
# of Competitive Titles	1,023	1,009

\*extracted from DCAS Progress Report

During one interview, a union representative also echoed the need to properly administer tests and ensure provisional employees only serve their 9-month appointment. The representative proposed administering one fair and objective education and experience exam for the current provisional employees. Unions want to ensure that provisional employees take the exams so that they can become permanent employees and members. The union representative described a similar situation in the 1970's for teachers. According to the union representative, the one-time exam was administered for teachers to become permanent employees. According to the representative, the exam was objective and resulted in a much quicker process of determining who would be able to stay.

As such, we acknowledge the 5-Year Plan DCAS has created to reduce the City's provisional employees and applaud its commitment. However, if at the end of the fifth year the number of provisional is still significantly high, the City should explore alternatives as described below.

➤ **RECOMMENDATION: Develop education and experience exam for all provisional employees and train managers to encourage provisional employees to take exams**

With an education and experience exam, provisional employees will have an opportunity to continue working for the City and where applicable, maintain legal position. The exam should be fair, objective, sufficiently resourced, and administered to provisional employees in a timely manner. Ideally, the City would work with the already established Provisional Reduction Team to identify ways the exam can be developed.

According to the WRTF Report, the City is in favor of awarding provisional employees credit for high performance. Unfortunately, the unions do not support this recommendation. The WRTF Report does, however, encourage education and experience exams for competitive titles. Although this WRTF Report recommendation was not developed to address the issue of provisionals, this recommendation suggests there is space to work with the unions to develop a fair and object exam of this nature.

The development of the exam could give the City an opportunity to move forward with a fresh start. Drastically reducing the number of provisionals will allow the City to focus on other areas that require attention. Moreover, shifting the energy and resources to other areas can help build a more efficient system. Moving forward, the City should also provide managers more training in how to deal with provisional employees. In situations where provisional employees are uninformed about the necessity to take an exam, the manager should provide information and encourage the employee to take the exam. Understanding the laws and regulations will help managers appropriately guide the provisional employees to ultimately become permanent civil servants.

## **OUTSOURCED EMPLOYEES & TEMPORARY APPOINTMENTS**

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There is an increasing movement among public service employers to reduce cost and enhance flexibility by reducing the number of permanent hires and steadily increasing the number of outsourced and temporary employees. The attractiveness of hiring such employees is a result of lower salaries and fewer to no benefits. In addition, the most enticing factor is that these employees can be hired and fired "at will" and can bypass the civil service system or collective bargaining agreements set forth.<sup>145</sup>

Outsourced employees are contracted via agencies when there are specific jobs/projects that require certain expertise. Similarly, a temporary appointment may be made without examination when the person appointed will render professional, scientific, technical or other expert services on an occasional basis, or on a full-time or regular part-time basis in a temporary position established to conduct a special study or project for a period not exceeding 18 months.<sup>146</sup> According to a Union representative, in New York City, there are concerns regarding this particular practice. There is the possibility that the rate of hiring of outsourced and temporary employees could increasingly be higher than the rate of hiring civil servants.

One agency which has been in the spotlight for having an excess of outsourced employees is the Department of Education. One City employee said that the outsourced employees are primarily hired for supportive roles in the central office and not influential jobs that can affect policies. However, a union representative shared her concerns about the hiring of these outsourced and temporary employees; she believes that the DOE has no accountability. She states, “they can hire whomever; these people are supposed to be hired to support teachers and principals but do not have suitable backgrounds.” In addition, she is concerned about the employees not taking examinations to determine their qualifications because once an employee attains a temporary position they can often stay for long periods of time.

Other experts and union representatives agree that outsourced employees and temporary appointments serve an important purpose; however, they believe these employees should be hired only in certain circumstances and within civil service laws. A former City employee states, “consultants make sense when government doesn’t have certain expertise.” For instance, in areas such as IT and special projects where the skill sets needed are beyond the skills of the available workforce, it is more efficient to hire such employees to complete short-term projects. The former employee went on to say, “Although unions support such employees for the appropriate timeframe...there is still concern over the abuse of such employees.” These abuses can result in work performed for lower wages, no benefits, and no employee rights. One union representative said that some agencies hire employees for short-term projects but the employees remain employed for years: “It then becomes a way to undercut civil service.” The union representative also stated that although he is supportive of hiring for special projects the system must be cautious not to abuse the opportunity. Furthermore, temporary appointments should be kept temporary because these employees did not take the appropriate examinations, and thus a long-term appointment would be undermining the current civil service laws.

The WRTF Report recommended the extension of the temporary appointments from 18 months to 3 years to be able to complete “special projects”. Unfortunately, the unions are opposed to this recommendation. The unions do present an alternative though, suggesting the City consider temporarily assigning permanent employees to participate in the special projects.<sup>147</sup>

➤ **RECOMMENDATION: Impose more rigid rules for outsourcing employees and temporary appointments, particularly in regards to the enforcement and strict monitoring of timeline deviations**

We recommend imposing more rigid rules and regulations to govern the agency’s ability to hiring outsourced employees and temporary appointments. By imposing these rules the City can monitor and streamline the process of these practices. Consistent with the MLC Response, we also encourage the City, while monitoring special projects, to consider temporarily appointing a permanent civil servant to fulfill the necessary duties.

This recommendation will require resources from the City. A team will need to be established to oversee these policies. It will be at the City's discretion to determine who will be responsible for implementing and monitoring the rules and regulations. More specifically, the City will help in the formation of these policies and establishing the appropriate oversight.



# **WORKFORCE MANAGEMENT:**

## **Probationary Periods, Performance Evaluations & Promotions**

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### **PROBATIONARY PERIODS**

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The probationary period is the last stage of the candidate selection process. Probationary periods take place after a candidate has been hired or promoted in a new position. The period generally lasts for one year for competitive employees, six months for non-competitive employees and three years for teachers. During this period, employees will be evaluated every three months using a formal performance evaluation. Agencies can request a probationary period extension for up to an additional six months. Provisional and temporary employees are not required to serve probationary periods. Prior experience as provisional or temporary employee is not a substitute for one's probationary period.<sup>148</sup>

The probationary period is intended for agencies to assess on-the-job performance that is not captured by examination, as well as the candidate's ability to "apply previously tested knowledge."<sup>149</sup> New York City encourages agencies to use this period as a time to identify poor performers because once the probationary period commences, employees "gain certain statutory or contractual rights, which make it much more difficult to subsequently terminate the employees' services." The City also uses this time period as a way to maintain the City's high quality workforce.<sup>150</sup>

### **Perspectives**

The WRTF Report believes that probationary periods should be extended when "more actively-managed period would benefit employees and agencies."<sup>151</sup> More "actively managed positions" include those positions that require more intensive initial training, such as police officers and sanitation workers. The City is basing this recommendation on the assumption that performance evaluations will be revised as suggested in the WRTF Report. One former City manager agrees that it might take much longer to learn some positions than others and probationary periods should reflect various learning curves. One of the former managers believes that the probationary period of one year does not take into account various skills, which may take more than one year for the employee to learn and for management to properly assess.

The MLC Response stated that the City has failed to show why "one-year period is insufficient for it to make the desired judgments. Extending the probationary period does nothing to ensure better service delivery."<sup>152</sup> A union member that we interviewed believes that one year is plenty of time to assess a candidate's on-the-job performance and once the year is up, the employee is able to gain due-process rights.

The City's argument (i.e. one year is not enough time to properly assess a candidate and extending probationary periods would serve to better assess a candidate's merit and fitness) does not seem to be as much of a burning problem throughout the City. One civil service expert said one year is a sufficient amount of time to judge an employee's performance. He added that the issue is not whether the employee is a good worker during his/her first year, the problems occur further down the road when "People get in, get secure, get their status," and once they're "locked-in" to their positions, they "stop caring, come in late, go home early, sick a lot."



➤ **RECOMMENDATION: Collectively bargain longer probationary periods (if the City is able to make a compelling case)**

An individual employee's probationary period can be extended for up to six months at the request of either the agency or of the employee. However, any change to the official probationary period specification for a class of employees or for a position would require a change in New York State law. If the City can make a case as to how it can benefit by certain positions having longer probationary periods, the union may be willing to negotiate.

## **PERFORMANCE EVALUATIONS**

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### **General Format of Current Performance Evaluations**

Ten years ago, the Department of Citywide Administrative Services developed a general performance evaluation template that is provided to every agency. Included in the evaluation templates are "tasks and standards," which is agency-specific criteria "related to their civil service titles and responsibilities."<sup>153</sup> Evaluations are conducted annually for permanent employees and quarterly for new employees who are in their probationary period. An employee is rated on a scale that ranges from "Outstanding" to "Unsatisfactory" or "Unratable" if the "employee has been performing the task for fewer than three months."<sup>154</sup> Performance appraisals are established according to the City's personnel rules and by some collective bargaining agreements, although evaluations are not a mandatory subject of bargaining.<sup>155</sup> Employees can challenge evaluations and have the opportunity to attach a rebuttal letter. Only signed evaluations can be used in arbitration.

### **Current Incentives:**

It is a DCAS policy that all agencies have an employee recognition ceremony that is solely based on attendance or total length of time served. The ceremony is intended to "support and foster better performance of employees." Monetary incentives must be collectively bargained.

### **(In reality) Current Performance Evaluation System in the New York City Government:**

The performance evaluation system in New York City is completely ineffective. There is widespread agreement among City managers, employees and union representatives that the performance evaluations are only of value in a disciplinary context. Results from our interviews were surprising: uneven implementation across agencies; carelessly or improperly completed; and when completed, performance evaluations are generally uniformly positive unless used for disciplinary purposes.

To pinpoint one source of how and why performance evaluations are in its current state of affairs would be oversimplifying the matter. Rather, there are a multitude of systemic issues that contribute to the little value that performance evaluations have in today's workforce. These sources include:

- no meaningful incentives for both employee and manager
- disciplinary (judgmental rather than developmental) context of evaluations
- the complicated and long disciplinary process
- poor managerial training
- no clear communication as to the intent of performance evaluations
- systemic cultural acceptance of this "meaningless" evaluation system

In its current state, performance evaluations can be viewed as inequitable in attempts to uphold merit-and-fitness standards. The current performance evaluation system is an inefficient use of City resources and takes employee time away from implementing the agency's mission. The ineffectiveness of the performance evaluation system further perpetuates the City's inability to properly identify and remove poor performers, which hinders the City's ability to retain a high functioning and motivated employee base. There is a difficult trade-off between maintaining "equity" as defined through the traditional objective merit-and-fitness standards and implementing a thorough and effective performance evaluation system.

### **Merit and Fitness**

In its attempts to maintain the purely objective merit-and-fitness system ideals, it can be argued that the current performance evaluation has become inequitable for both employees and managers. The performance evaluation system is not linked to any meaningful rewards, such as promotions or monetary rewards. In the general civil service system, as opposed to uniformed positions, employees who excel at their position do not experience any greater rewards in terms of salary or promotional opportunities compared to ineffective employees. Employees are not recognized for their skills on the job, but only for their test-taking ability, which may or may not be directly related to their actual tasks.

These same concerns have been cited in civil service reports since the 1960s. In 1963, the Brookings Report stated the following problems: "There was no link between pay and performance, and poor performers were usually paid at the same rate as superior performers. The City's performance rating system did not provide objective information and had little effect upon most personnel decisions."<sup>156</sup> The issues brought up by the Brookings Institute decades ago still resonate with today's system.

On the other hand, current performance evaluation system could be viewed as the most objective way to uphold the merit-and-fitness principles. Managerial discretion is limited: the manager cannot use performance evaluations to favor one employee over another in terms of promotions and pay. With no rewards or incentives linked to evaluations, the performance evaluations in New York City limit the possibility of patronage and abuse.

### **Functionality**

In New York City government, the lack of rewards and incentives, the disciplinary context of evaluations and the lack of managerial accountability contribute to performance evaluation's ineffectiveness. Ineffective evaluations put a strain on agencies as the time spent conducting and reviewing evaluations takes time away from implementing an agency's mission. In addition, ineffective evaluations further limit the City's ability to identify and remove poor performers and retain a high quality workforce.

According to the *Handbook of Human Resource Management in Government*, performance evaluations can be categorized as either developmental or judgmental.<sup>157</sup> Both developmental and judgmental perspectives are aimed at enhancing organizational productivity and effectiveness but have two distinct approaches. Developmental evaluations focus on "individual's potential rather than on his or her current level of skills and capabilities."<sup>158</sup> Judgmental evaluations follow a "command and control, model of authority...they are explicitly linked to extrinsic rewards and punishments."<sup>159</sup>

The existence of a reward structure and its adequacy "are important questions when considering the effectiveness of appraising for judgmental purposes."<sup>160</sup> In the public sector and governments, the existence of a meaningful "organizational reward structure has proved an important limitation on judgmental purposes, such as the making of decisions regarding promotions and merit pay."<sup>161</sup> New

York City is no exception: the inadequacy of the reward structure combined with a judgmental (as opposed to developmental) evaluation system, contributes to its ineffectiveness.

Without managers' ability to link non-monetarily or monetarily rewards to work performance, evaluations only have value in a disciplinary context and are insignificant to the majority of the workforce. The City managers' severely limited carrots and sticks create a disincentive to take the time to properly and thoughtfully complete evaluations. Without the ability to reward employees, the only incentive managers have to complete the appraisal is to fulfill the City's requirement that they be conducted.

One manager expressed that unless the employee has made an egregious error and/or has explicitly broken an agency regulation, there is no incentive to give one employee a poor evaluation and another one a positive evaluation because it will lower workplace morale and productivity. Performance evaluations in this particular agency (and other agencies we researched) are essentially all positive replicas of one another and are thereby rendered "meaningless."

This disciplinary context of performance evaluations contributes to employees' negative attitude toward the process and enhances the implementation issues. William Eimicke, an expert on civil service issues in New York City, summarized his perception that there is no "'point' to performance evaluations...there are no consequences to getting a 'great' or a 'lousy'...In litigation (evaluations) can be helpful, but if you're a manager with 100 people working for you, how energetic can you be in filling them out in a case that may or may not come 10 years from now." Unions and employees hold the same perspective regarding this process: evaluations are only used to remove employees from the system. This attitude is evident in cases where an employee enters the disciplinary process and their personnel folder contains no evaluations, sloppy evaluations or all positive evaluations.

For many of the managers we spoke to, the prospect of entering into the progressive disciplinary process is another a deterrent to providing poor performance reviews because once a manager enters in the disciplinary process, he/she must spend hours of time documenting every aspect of employee behavior to prove objectivity. This process is extremely time-consuming and it may take years to remove an employee from an agency. However, even if the employee is removed from an agency, there are additional disciplinary processes the employee must go through to be permanently dismissed. (See Discipline section)

There is also no managerial accountability for the poor quality of evaluations. This may be due to lack of a clear message from the City to agencies and/or a managers personal beliefs about performance evaluations and what purpose (disciplinary or growth) evaluations serve. This lack of a "clear message" may also be a result of uneven managerial training across agencies. (See "Definition of a Manager - Training and Professional Development"). One former City manager expressed that managerial training and professional development opportunities vary from agency to agency. The current uneven approach toward evaluations is so pervasive, that another manager expressed that if evaluations have no bearing on an employees' growth trajectory or on the manager's position, then managerial training with respect to performance evaluations is a waste of time.

New York City has maintained a strong stance toward upholding merit and fitness in terms of limiting managerial discretion with respect to performance evaluations. This limitation of incentives and rewards, however, is at the expense of civil service efficiency and city effectiveness with service delivery. The civil service system's efficiency is reduced by both managers and employees taking the time to

complete an evaluation that is not used to increase an agency's productivity and is not used to help an employee professionally grow. Another former City manager expressed that if there is no pay increase (or decrease) linked to positive (or poor) evaluations, then it is a waste of time and takes away from City employees to focus on implementing the agency's mission. The resulting uneven and poor implementation across agencies is not efficient use of employees' time, which translates to taxpayers funds.

In terms of the City's effectiveness, the current system fails to enhance performance and to identify and remove poor performers. When evaluations are not thoughtfully tied to the objectives of the agency or the outcomes of performance evaluations, employees have no motivation to work at their full capacity. By not formally recognizing employees that excel in their position, the City is faced with the inability to capitalize on retaining high performing employees and enhance service delivery. Since professional growth is not an objective of these evaluations, it is up to the individual manager to make performance evaluations meaningful either by using it as an opportunity to provide constructive feedback or to document areas of employee development/ improvement.

Ineffective evaluations also point to a larger issue of poor performing employees remaining in their positions, thereby weakening the City's workforce and endangering public safety among uniformed employees. This uneven and low quality use of performance evaluations does not improve agencies' service delivery. There is currently little impetus to change the system and an entire cultural acceptance of these meaningless evaluations is needed.

➤ **RECOMMENDATION: Engage in a series of steps to change the culture around evaluations to make them more meaningful:**

- A. Conduct an independent survey administered to all managerial and nonmanagerial employees, which will enable DCAS to understand and identify current problems with the system and to reframe the central message.
- B. Increase employee involvement with developing the "tasks and standards" portion of each agency-specific performance evaluation
- C. Make employee appraisals geared toward "development" where there is goal setting with the manager and employee
- D. Improve managerial training with respect to performance evaluations to make them more evenly implemented across agencies

There needs to be a dramatic culture shift away from the negative attitude towards performance evaluations, regardless of whether the current performance evaluation remains or whether there is movement for reform. DCAS needs to clarify the purpose of performance evaluations and to communicate this message clearly to staff. Perceptions of appraisals range from "waste of time" to "no point;" this can only be changed if employees and managers believe there is some benefit to completing them well. This shift is a necessary first step to increasing the value of evaluations for the City, its employees and managers, and to improving the quality of the workforce.

In this sense, we agree with the WRTF Report's recommendation that the Mayor's Office of Operations and DCAS work with agencies to "develop a new set of guidelines and standards for agencies to measure performance at the employee and unit level." We would add that union involvement is imperative to developing equitable and fair standards.

**A. An independent survey administered to all managerial and non-managerial employees will enable DCAS to understand and identify current problems with the system and to reframe the central message.**

This culture change needs to be spearheaded by DCAS and/or agency heads. The first step is for DCAS to assess what is working and what is not working with the current performance evaluation system by assessing the current perception of evaluations among all employees. In conjunction with unions, the City needs to conduct an independent survey for all City employees and make the results readily available to the public.

While the Municipal Labor Committee's believes that "the collective bargaining representatives of the City workforce are in the best position to communicate the needs and morale of the workforce," it would be beneficial for the City to be able to directly gauge employee satisfaction to be able to meet employee needs and address concerns. An independent survey company that both the City and unions agree on would enhance transparency and communication with the City and unions so that both entities have access to the same objective results.

**B. Increase employee involvement with developing the 'tasks and standards' portion of each agency-specific performance evaluation.**

One important aspect of changing attitudes and culture surrounding performance evaluations is to actively attempt to legitimize the process among employees. Involving employees in the process will enhance the legitimacy and employee acceptance of the evaluation system, which is "a crucial element in determining whether the system will be successful."<sup>162</sup> This collaborative process presents an opportunity for employees to "voice their concern and assist in clarifying potential misunderstandings."<sup>163</sup> Employees will have a stake in a more transparent process and will change both managerial and employee perceptions toward evaluations.

**C. Make employee appraisals geared toward development, where there is goal setting with the manager and employee.**

Perception of appraisals can only be changed if employees and managers believe there is some benefit and incentive. One union representative expressed that evaluations would be more useful if they were used to assess how an agency can improve "in terms of fulfilling agency need for employees, more funds to provide services, etc." Researchers have found that "developmental appraisals – that focused on the planning for the coming year and clarifying expectations – were more effective than appraisals that focused only on past performance."<sup>164</sup> If evaluations were geared toward individual development and improving objective organizational objectives, both manager and employee have incentive to accurately complete appraisals.

**D. Improve managerial training with respect to performance evaluations to make them more evenly implemented across agencies.**

It is ultimately up to the manager to decide how he/she will implement performance evaluations. Union representatives and employees expressed that a "good manager" will continuously provide performance feedback rather than waiting until the annual evaluation to notify an employee of poor performance. To improve evaluation effectiveness, managers will need to be trained on explicitly why performance evaluations matter, how to implement and conduct evaluations, and the City's expectations in terms of quality. This recommendation is in line with the WRTF Report's suggestion to expand managerial training.

Changing to a new performance evaluation system will not solve the current state of performance evaluation in the City. Systemic issues need to be addressed first and then the City should consider alternative systems.

### **Perspectives on Incentives tied to Performance**

Linking monetary or promotional incentives to performance evaluations has rarely been successful in other jurisdictions. The WRTF Report suggested “developing creative ways to tie performance evaluations to meaningful rewards such as opportunities for training, new and challenging assignments, award ceremonies, and pay and promotion,” but noted that the City currently “often cannot do so due to laws or rules.”<sup>165</sup> In 1976, Citizens Union also recommended that a “program of awards, both symbolic and material” be established to reward high achieving employees.<sup>166</sup>

While the unions are willing to sit down with the City to negotiate a “fair and equitable” performance evaluation system, it is unlikely that the unions would agree to an incentives based evaluation system, as it would enhance managerial subjectivity and undermine the objectivity of the merit-based system. Currently, merit pay, which may or may not be based on performance evaluations, must be collectively bargained with the unions and be fair and equitable.

Performance pay is based “on the premise that employees should be rewarded for results,” and, “reform advocates believe that when emphasis is placed on incentives, organizational productivity will improve.”<sup>167</sup> Tying monetary incentives to evaluations is presumed to increase workforce motivation and enhance the quality of the workforce. However, this ideology rarely attains these outcomes in practice. Since salary is linked to the performance evaluation outcome, “subjectivity and flawed evaluations exacerbate employee dissatisfaction and are one of the chief causes of grievances.”<sup>168</sup>

Additionally, it is often the case that employees and their managers are “not on the same page concerning mutual expectations of one another, or the performance standards that are being enforced.” The resulting “disconnect between evaluation and actual performance—as measured by some objective link to job outcomes—reduces motivation and impedes mission accomplishment.”<sup>169</sup> In the past, New York City has looked to the federal government for guidance regarding how to structure performance evaluation systems. Outside of a few successes, the majority of these federal demonstration projects have failed.

In attempts to move away from the current pay system that promotes “longevity” rather than “performance,” the federal government has made several unsuccessful attempts to link pay to performance.<sup>170</sup> As part of the Civil Service Reform Act of 1978, the Federal Government attempted to strengthen the link between performance and pay for mid to higher level managers.<sup>171</sup> The greatest challenge for the federal government was that this system was not perceived as “fair” by employees and the public and therefore “failed to establish the critical link between pay and performance.”<sup>172</sup> Years later, the federal government continued to spearhead the implementation of pay for performance demonstration projects according to the Government Performance and Results Act of 1993. This act aimed “to improve the efficiency and effectiveness of Federal programs by establishing a system to set goals for program performance and to measure results.”<sup>173</sup>

In 2006, the US Merit System and Protections Board developed a guide “*Designing an effective pay for performance compensation system*.”<sup>174</sup> This was written as a push from the legislature to create a workforce based on “performance rather than tenure”<sup>175</sup> and to further promote the legislative

proposals to employ a system-wide pay for performance framework. However, this push for pay for performance was halted after it was learned that attempts at pay for performance by both the Department of Defense and Homeland Security had failed.

The Department of Defense's performance system is the most recent example of a failed pay for performance system. The National Academy of Public Administration report "concluded that the Defense Civilian Intelligence Personnel System (DCIPS) gave better ratings and raises to higher-ranking employees, that employees have lost faith in the system....and that there was no evidence that the pay-for-performance system at NGA has improved employee productivity or agency performance."<sup>176</sup> Since it ended in 2010, the Department of Homeland Security has halted its pay for performance system after it "produced many productivity problems, court defeats, and widespread dissatisfaction."<sup>177</sup>

It is also worth noting that the attempts of many state and local governments to administer pay for performance systems have failed. On the state and local level, Kellough and Nigro noted that "track record of pay for performance has been so dismal that the National Commission on the State and Local Public Service recommended in 1993 against its use."<sup>178</sup> Dennis Daley, who has written on best practices with performance evaluations in government, also agrees that "outside of a few, short term experiments that are anecdotally repeated, overwhelming evidence exists that merit pay does not work in the public sector."<sup>179</sup>

However, there have been a few successful examples of pay for performance systems. Pay banding has been successful in smaller agencies such as China Lake, NIST and the Department of Commerce.<sup>180</sup> China Lake was one of the first demonstration projects and "was so successful it was made permanent."<sup>181</sup> China Lake performance management system involved employees in developing an individualized performance plan based either on tasks (individuals output), function ("individuals skills and how well they are to be performed"), and/or managerial competencies. China Lake performance based pay was made permanent in 1994 after the 26-year demonstration project was labeled a "success." Success in this case is apparent by the employee satisfaction survey: more than half of the China Lake employees view the system as "fair and accurate" measure of employee performance, 71% of employees were in favor of the demonstration project.<sup>182</sup>

Other "significant outcomes" cited as part of the system's success include: increased manager-employee communication, "pay satisfaction increased slightly at the demonstration sites and declined at the control sites," employee perception of a more flexible system, and employees' having more "input into the development of the performance plans" than employees in the control group.<sup>183</sup> In recent years, the Federal Government has continued its efforts to replicate China Lake's success.

The federal government continues to make attempts to establish pay for performance systems in select agencies. According to Max Stier, president of the nonprofit Partnership for Public Service, agencies need to first "identify good performance in a fair and transparent way" prior to incorporating pay as a reward.<sup>184</sup> As of January 2012, the following agencies are piloting new performance systems with the eventually goal to tie pay to performance: Veterans Affairs, Housing and Urban Development, Energy and Labor departments, the Coast Guard and the Office of Personnel Management.<sup>185</sup>



➤ **RECOMMENDATION: Consider pay-for-performance only with due diligence**

If New York City is intent on rewarding performance with pay or promotions, we recommend that it first assess the feasibility by looking at examples of successes and failures in both the federal and state governments. We further recommend that, rather than an entire system overhaul, New York City initiate demonstration projects in one or two agencies to assess results. Two things must be kept in mind by the City as it initiates pay for performance: (1) A fair and transparent performance system must be established prior to linking it with any rewards and (2) The unions must be a central part of these discussions.

## **PROMOTIONS**

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### **How Promotions Work in New York City**

According to New York State law, the City must rank candidates for competitive class title positions, including promotions, based on their exam results. The City defines a “promotion” as “an increase in the salary or other compensation...beyond the limit fixed for the grade of such position” or a move to a “higher rank.”<sup>186</sup> The agency must fill the vacancy among the top three candidates on this rank ordered list unless that candidate is on the “preferred list,” “which is only for certain former permanent incumbents of the eligible title who have rehiring rights.”<sup>187</sup> The Notice of Exam specifies respective promotional eligibility criteria. The tests score encompasses the largest percentage of the final score. Other factors that may be considered in the final score include: “seniority, previous training and experience of candidates, and performance based on performance evaluation.”<sup>188</sup>

### **Promotions do not recognize on the job performance and other valued skills that a position entails.**

The current promotional system does not successfully maintain a motivated and high quality workforce. A common theme that we heard was that employees are not recognized for their on-the-job performance, only for test-taking ability which may or may not be directly related to required tasks for the promotional position. While performance reviews can be weighted into one’s final score and position on the list, on-the-job performance cannot be accurately recognized without an effective performance evaluation system (See “Performance Evaluations”). Once an employee has tested in the civil service system and become a permanent employee, they have to demonstrate “merit and fitness” through performance on-the-job and value to the agency – in other words, once tested into the system, competitive examination is no longer the most objective standard. In terms of equity, employees who work hard on the job are not rewarded with promotions (or pay) at a greater rate than poor performers.

The infrequency of promotional exams is another issue. This infrequency leads to uncertainty in terms of career growth and/or professional development and promotes turnover among the current employees. This concern was cited in past studies of the New York civil service system, most notably in the 1994 report, “The Overregulated Civil Service.”<sup>189</sup> The commissioner of the Department of Citywide Administrative Services or the agency head decides whether an open competitive or a promotional exam is most appropriate for a vacant position. Open competitive exams are open to the public and promotional exams are only open to those employees who hold a lower employment position.

The promotional exam for the “Administrative Staff Analyst” position exemplifies this issue; the last exam for this position was administered in 2005 after having not been administered for decades.<sup>190</sup>



Among the less senior “Associate Staff Analyst” position, there was only a three-year time period between promotional exams,<sup>191</sup> but if an employee’s final score is not near the top of the list, he/she may expect to wait another few decades (or years) before having the same opportunity to take the exam again. Without any guarantee of progressing in one’s career, employees would most likely be looking for opportunities outside of the City government. This has an impact on retaining high quality employees in the workforce and is telling of civil service inefficiencies.

One reason that promotional exams are infrequently administered in New York is that the plethora of narrow job titles overwhelms the system. One of our interviewees agreed that a major issue in the civil service system is that the narrow job titles require the administration of both open competitive and promotional exams (See “Job Classifications”). As a consequence of the infrequent promotional exams, some civil service lists are not available for certain positions and City agencies resort to filling vacancies with provisional employees<sup>192</sup> (See “[Job Classification – Provisional Employees](#)”). The temporary nature of provisional employment results in agency disruptions once an exam is administered. These consequences of infrequent promotional exams exemplifies civil service inefficiency and hinders the City’s ability to provide services effectively.

The infrequent promotional exams combined with the difficulties with hiring outside the civil service system for upper level positions places limitations on workforce innovation by maintaining an insular labor force. Many upper level titles are only open to promotional exams as opposed to open competitive exams – thereby making these positions only available for those who are already in the civil service system. William Eimicke noted that the ability to recruit or attract managers from other cities with “related but different experiences” would help the workforce innovate and potentially enhance the City’s effectiveness with service provision.

New York State’s Spending and Government Efficiency (ie: SAGE) Commission recognizing this hiring difficulty and proposed solutions for reform. The SAGE Commission provided recommendations for “pursuing civil service reforms that facilitate the entry of mid-level professionals into the Civil Service,” that includes “enact[ing] ‘Open Promotion’ legislation for IT and other technical positions that permits the use of both Open & Competitive and Promotional lists to fill promotional vacancies.”<sup>193</sup> The State’s actions may set a precedent for New York City to expand mid-senior hiring efforts to include those outside the system.

## **Proposed Solutions**

[Broadbanding and consolidating positions](#) are often-cited solutions to better recognize education and performance with promotions – these methods also serve as a way to reduce the number of promotional exams administered.

The WRTF Report suggested incorporating broadbanding and consolidating as a way to better recognize on the job performance when promoting without running into administrative barriers.<sup>194</sup> As part of the DCAS’s five-year plan to [eliminate the number of provisional employees](#), the City intends to consolidate and broadband specific positions to reduce the number of exams administer per year and increase the frequency of exams.<sup>195</sup> More specifically, consolidating positions will reduce the number of promotional exams in the future.<sup>196</sup>

In “Trends and Best Practices,”<sup>197</sup> Hays cites that the primary obstacle to these reforms is “worker suspicion and the likelihood that some supervisors will exploit the system to reward friends and punish enemies.”<sup>198</sup> Hays recommends that these concerns can be alleviated if employees believe in an

“unambiguous performance benchmarks.”<sup>199</sup> Union representatives in New York voiced these concerns: with respect to broadbanding, the unions are generally opposed to employees being asked to perform tasks that they may not be appropriately compensated for. The union will seek to bargain over the impact of those employees that are performing work outside of their job description.

The unions have a larger issue with consolidation due to the discretionary manner that employees advance. The primary concern is that consolidation eliminates objective standards with respect to how employees are promoted. Unions have historically supported longevity (salary increases based on time in service) to counter promotional advancement through subjectivity.<sup>200</sup> Unions are willing to work with the City to establish objective standards for how employees move up the promotional ladder in a consolidated position. The MLC Response expressed a willingness to negotiate with the City to establish objective standards on a case-by-case basis.<sup>201</sup>

➤ **RECOMMENDATION: Establish objective standards for promotions with the unions**

According to civil service expert Steven Condrey, many jurisdictions have moved away from written exams and have instead moved toward assessment centers or using web based system of looking at resumes and ranking them based on experience and education. New York needs to implement a more accurate way to measure one’s merit and fitness for a promotional position than a competitive examination. The only feasible way for New York to more accurately assess merit based on education and experience is for the City to work with unions to provide objective standards for advancing. Ideas of such objective promotional benchmarks include:

- time in a certain position
- education requirements
- benchmarks attained for advancing agency-wide goals.

Establishing objective criteria for promotions will enhance employee morale, and also improve retention and performance if employees believe there is room for growth

➤ **RECOMMENDATION: Use Assessment Centers for promotion to managerial positions**

The assessment center method of evaluating job candidates involves a combination of job-related simulations, interviews and/or other tests to measure position-relevant skills. Simulations are designed to observe and assess behaviors that are consistent with the position such as: analyzing a work-related problem and preparing a written report, preparing and presenting oral presentations, talking with customers about complaints, etc.<sup>202</sup> Trained independent assessors judge the simulations and develop the final score.

Assessment centers provide an objective and fair alternative to written exams by taking into account behavioral attributes that a written exam does not capture. Additionally, assessment centers are “seen as fair and ‘face valid’” by participants; “they show little adverse impact [and] they predict a variety of criteria (e.g. performance, potential, training success, career advancement).”<sup>203</sup> By increasing equity and accurately predicting and assessing job-relevant behaviors, the centers will also help retain a high quality workforce and ultimately improve city effectiveness.

While assessment centers increase promotional equity by taking into account one’s prior job performance and job-relevant behaviors, these centers entail significant costs and may further hinder civil service efficiency. These substantial costs include “labor, physical space, and a large amount of

people's time."<sup>204</sup> As opposed the mass amount of candidates that are tested via a written exam, assessment centers can only test a small group of candidates and can take "from a half day to several days completing the exercises."<sup>205</sup> Assessment centers may further exacerbate the testing inefficiency issue that was previously mentioned.

While there is a risk of further creating inefficiencies in the civil service system, assessment centers are an equitable and accurate way of promoting employees to managerial positions. Assessment centers will ensure the City maintains and retains a high quality workforce.

➤ **RECOMMENDATION: Increase the number open competitive exams to be administered for mid- to higher-level managerial positions**

Increasing the number of mid to higher-level managerial positions that use open competitive exams as opposed to solely a promotional exam will facilitate the entrance of those outside the civil service system. The ability to recruit those outside the civil service system for mid to higher-level managerial positions will increase civil service system flexibility, facilitate innovation in leadership positions and enhance the work force. If the State enacts the SAGE commission recommendation, it could set a precedent to encourage hiring upper-level managers from outside of the system.

# WORKFORCE MANAGEMENT: Discipline, Due Process, and Downsizing

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## DISCIPLINE

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There is a widespread understanding that people cannot be fired from the civil service. The bureaucracy involved with disciplining or dismissing an employee is real, and may in fact deter disciplinary action. However, the problem does not lie with the system itself, but with its application and use.

First, it must be said that a functioning performance evaluation system is an important foundation for effective use of disciplinary measures, not only to keep performance or behavior concerns from requiring disciplinary action, but also to facilitate the success of worthwhile discipline by backing up charges with accurate and timely documentation. A culture shift in New York City around [performance evaluation](#) will be a key ingredient in advancing the optimal use of the disciplinary procedures.

Most New York City civil service employees are reprimanded under a system of “progressive discipline,” established through collective bargaining agreements. A four-step progression (oral warning, written warning, suspension, dismissal) is designed to change employee behavior before it must result in firing.<sup>206</sup> City and union representatives agree that progressive discipline is not used consistently by managers in the City, and some attempts to discipline employees fail due to inadequate documentation of employee behavior. Both the City and unions place blame squarely with managers’ lack of understanding of the system. Because some managers do not have experience with supervision, says Robin Roach, attorney at DC 37, they are not aware of discipline procedures. The multiple influences on the definition of managers ([see analysis above](#)) means that those who supervise staff may not receive managerial training in such protocol.

None of our interviewees identified specific aspects of the discipline system that were too onerous for managers. However, the time it takes to document employee behavior and navigate the procedures did raise ire from City representatives. Many factors contribute to the time burden, and it is important to distinguish between two timeframes that can be conflated: the **number of hours** spent by a manager following discipline protocol over the course of the process, and the **number of weeks or months** of low morale and/or low productivity due to disciplinee’s suspension or absence, and, in the case of dismissal, rehiring and training.

The latter has been addressed by the City in partnerships with unions, and is fleshed out in detail in the discussion of due process and arbitration below. This is the nature of the “burden” described by the WRTF Report to make a case for a less onerous process. The changes they recommend would likely focus on reducing red tape, which best addresses hours spent, and to a lesser extent, weeks spent. However, they may also represent a weakening of the system, through amending laws that outline discipline procedures. Our interviewees favored improving the function of the current system rather than weakening it. While, according to one City interviewee, managers did want to “be able to fire someone,” it remains important to require managers to substantiate claims and to allow them to be challenged, which add necessary, if time-consuming, steps to the discipline process.

Presenting another side of the issue, a prominent union representative pointed to a case in which an employer chose to file disciplinary charges when the situation may have been rectified simply by speaking with the employee, who was sitting at his or her desk. If the process were actually overly onerous, such cases would be unlikely. It is true that the burden of the process may fall more heavily on some managers than others. Still, if some stakeholders are concerned that the process is too onerous, while others think it is easy enough to be used in frivolous cases, the level of burden may not be the key problem. Rather, an approach that increases flexibility that is agreed upon by supervisors and supervisees alike may reduce the use of the system for easily rectified discipline problems, and focus the use of progressive discipline on the stickier problems.

Another recommendation of the WRTF Report is in line with both proposed and practiced innovations for managers, while also increasing system flexibility. We found that informal discipline procedures, vetted through collective bargaining, are in place in the City and being used by various agencies. Command discipline, the best-known, is used in the uniformed forces. Officers' shifts, duties or vacation hours may be modified as a reprimand for unwanted behavior that, if resolved, stays out of the official personnel file. While command discipline has come under fire when used for serious discipline issues that may have been better handled through formal discipline, it remains a model for informal systems that may bypass red tape to address lesser violations. City sources also cite opt-in systems of informal discipline that are available to employees in departments such as Sanitation, who elect on a blanket or case-by-case basis to have disciplinary actions handled internally. After a year or so, the charge will disappear from the employee's file, provided the concern has been addressed.

Informal discipline procedures are also used to save time and money in other jurisdictions. One example is 360-degree reviews and peer reviews, which have been used by one manager we interviewed within New York City in place of other evaluation or discipline to great effect, and have also been remarked upon in academic literature.<sup>207</sup> Another example is Employee-Proposed Discipline (EPD), developed as a response to low-morale consequences of progressive discipline. Under EPD, employees can opt to propose their own discipline after an infraction occurred. Management then can choose whether or not to accept this measure, but if it is adopted, the employee agrees not to grieve the discipline, averting a time- and resource-demanding process for both the union and the City. EPD was applied to 40% of infractions over 5 years in Albuquerque, New Mexico, and accepted by managers in 60% of the cases<sup>208</sup>.

➤ **RECOMMENDATION: Establish a pool of informal discipline procedures in which managers can be trained**

The recommendation that overarches this one is intensive manager training. The pool recommended would include command discipline, 360-degree review, and the opt-in temporary-reprimand discipline procedure that is already being used within the City, so that other managers and departments could adopt best practices already in use. Additionally available within the pool would be best practices from other jurisdictions, such as Employee-Proposed Discipline.

Criteria for inclusion will be:

- 1) the system is voluntary/opt-in for employees
- 2) it is documented to be less time- and resource-consuming than formal discipline procedures
- 3) it is consistent with formal discipline if the informal measures do not change employee behavior
- 4) it is oriented towards increasing morale and employee development, rather than judgment/punishment
- 5) it is restricted to use for minor infractions only.

This last point is particularly important for informal systems that have been in place in the past, such as command discipline. The culture of bypassing formal mechanisms may result in employees getting an informal “slap on the wrist,” rather than having the concern adequately addressed. Therefore, systems should be monitored to evaluate the type of infraction addressed, to ensure that employee behavior is met with an appropriate response.

Structurally, the pool would represent systems available to be considered by collective bargaining agreements. This will ensure that the City and the union are both monitoring the informal systems to evaluate equity, effectiveness and efficiency as they are adopted within the City.

## **DUE PROCESS AND ARBITRATION**

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A long-noted problem with discipline procedures is the significant lag time from the issuance of a reprimand or warning to the return to full workplace functioning, either by the employee once the discipline process has taken its course, or by a long-term replacement if the employee is dismissed. Because suspension without pay is limited to 30 days, employers also must welcome employees back into the office after that time period if discipline proceedings are not completed, which is common. This takes a toll on productivity, morale, and city effectiveness overall.

Some of this lag time can be attributed to [slow hiring processes](#), or the difficulty of substantiating ongoing performance concerns [when evaluations are not commonly done](#). Managers may also be loath to initiate the process if they fear lengthy grievance proceedings, a concern that will hopefully be obviated by informal procedures that keep disciplinary actions from entering long hearings or arbitrations.

However, sometimes managers and employees cannot agree, and disciplinary actions must be contested. Two processes are widely used in New York City in this case. Roughly 80% of discipline proceedings follow statutory due process as outlined in the New York City Civil Service code,<sup>209</sup> commonly referred to as “Section 75” by the City and the unions. Though some agencies such as the Housing Authority have their own process, most City agencies direct these proceedings to the Office of Administrative Trials and Hearings (OATH). An OATH judge hears the case and issues a non-binding recommendation to the agency, taking into account not only the offense but also potentially the employee’s work record. The agency then considers the ruling, but makes its own determination about how to discipline the employee.

Unions representing City employees do not always view OATH as the fairest process for the employees they represent because it is non-binding, and because the process happens within the City. However, as discussed below, the alternative process of arbitration, available to many employees under collective bargaining agreements, is resource- and time-consuming for all parties. Though the union representing an employee often has the option to opt for arbitration, this longer process is typically chosen only in the cases where high penalties are at stake.

In fact, AFSCME Local 371, a late affiliate of DC 37 that has retained some autonomy, announced in the summer of 2011 that they would begin to opt for OATH proceedings over arbitration for “member grievances involving disciplinary penalties of 30 days or less.”<sup>210</sup> (This indicates dissatisfaction with arbitration, possibly due to high costs and tightening union funds. As a result, Local 371 and other unions may be open to working with the City toward arbitration reform, [discussed in-depth below](#).)

A union representative cited that OATH can allow employers to move so quickly through the proceedings that employees were caught off-guard – yet another example that contradicts the conventional wisdom among City officials that individual managers or agencies are unable to move the process along quickly. While no fixes for OATH were proposed by our union interviewees, City representatives cited [better manager training](#) as a key recommendation, which fits nicely with increased training around informal discipline procedures.

Though most grievances are processed through OATH, the ones that seem to cause acrimony and calls for change within the civil service system are the ones that are challenged through arbitration. This route is typically an option to employees, whose collective bargaining representative act on their behalf to opt for arbitration, in cases with higher penalties involved or a possibility of dismissal.

There are three rounds of consideration in arbitration proceedings. The first step occurs within the work location, and typically the employee loses at this stage. Next, a representative of the agency may hear the case. Although the idea is to resolve the issue at the lowest possible level, again, an informed City representative says that the decision there is usually in favor of the manager. That decision can then be appealed by the employee, sending the case to the third and final stage. At this level, the case is heard by the Office of Labor Relations in a Step 3 Disciplinary Hearing. If there is no resolution, the case can be appealed to OCB arbitration, where a panel of neutral arbitrators is maintained. A list of possible arbitrators is given both to the City agency and the union, and they designate acceptable choices. The arbitrator that is most acceptable to both sides is chosen, and his or her decision is binding and enforceable in court.

As the four stages indicate, this can be a long and resource-intensive process. In addition to the \$500 fee per day of arbitration (standard-length arbitrations can take a day or more to hear), the City employs in-house lawyers, and the union often must go beyond its full-time lawyers to hire additional legal help. For this reason, the City and unions have collaborated to develop new systems. To combat the infamous “rubber room” phenomenon, in which teachers with pending arbitrations might sit in a reassignment center for months or even years without teaching or being assigned tasks, the DOE and New York State United Teachers worked together to reduce the backlog in the system, hiring more lawyers and arbitrators to move teachers through the system.<sup>211</sup>

Beyond the DOE, the City now uses expedited arbitrations increasingly, though not typically for the toughest cases. Under the expedited process, up to five arbitrations could be heard in a single day, shrinking the price tag in OCB fees and lawyers’ pay for both the union and City representatives. These faster and more streamlined processes indicate that multi-stakeholder collaborations can be fruitful, saving money and increasing system efficiency.

The WRTF Report proposes shortening even the standard arbitration by establishing a panel of standing arbitrators, implementing an electronic case management system to measure the length of discipline proceedings, and establishing a standard of review for arbitrators’ rulings. The MLC Response attributes the backlog and delays to inadequate funding of OLR and OCB. While the Committee rejects an objective standard for arbitrations, it seems likely based on feedback from other issues that a standard into which the union had equal input may in fact help to streamline the process and make it more consistent, and therefore fairer. In discussions with DC 37, it seems that the union is initially reticent to agree to a standing panel due to concerns that they would no longer have the same input into who was chosen.



Moving forward on these recommendations may benefit both the City and the unions, if they act in concert to ensure that input for all sides is preserved.

➤ **RECOMMENDATION: Establish a Labor-Management Committee to address streamlining of arbitrations**

Because the length and complexity of arbitrations require investment of considerable time and resource from both the City and the unions that represent workers, stakeholders on all sides of the issue have demonstrated interest in quicker processes that maintain fairness and due process. This provides a foundation of common ground on which to effectively build. The WRTF Report recommendations, particularly the suggestion to collect more data on length of arbitrations, could benefit all parties, but trust and open lines of communication must be established. Labor-Management Committees are mandated to address concerns within the State civil service system, and have a proven track record of bringing together stakeholders from opposite sides of an issue. The common goal of shortening arbitrations should bring these sides together, to consider the Report recommendations alongside other proposals for arbitration reform.

## **CITY DOWNSIZING AND LAYOFF POLICY**

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Layoffs are not welcome to any City administrator or employee. Downsizing occurs in times of crisis, and is fought hard by departments and unions alike. A common response to questions about relative merits of various layoff policies is that there should not be layoffs in the first place.

However, having an efficient layoff policy in place is the best way to ensure that cuts are done fairly when the time comes, and that the City can retain effective functioning during and after downsizing. There was general agreement across our interviewees that for the bulk of the civil service (teachers being the exception), a seniority-based system is relatively fair, if imperfect. Union representatives stand fully behind seniority as a cornerstone of civil service job protections. On the other side of the bargaining table, City employees agreed that it limits the opportunity for “mischief.” One City representative said that layoffs should not be an opportunity to dismiss low-performing employees, and if discipline and performance evaluation systems work as intended, there would be no need for “back door” approaches such as targeted layoffs to preserve organizational excellence.

While these systems, as we discuss throughout the report, are flawed, a policy response to their failings should be addressed directly, rather than accomplished through budget-driven layoffs. Particularly in the [absence of effective employee evaluation](#), policies that govern downsizing could not feasibly shift toward performance-based criteria in the foreseeable future. An attempt to do so would require complete managerial discretion, which would give rise to layoff challenges at the City’s lowest-resource periods.

Regardless, there does not seem to be clamor for movement away from the seniority-based system except in the case of teachers, which we discuss in a [feature section](#). The potentially contentious aspects of downsizing policy concern the decisions made before and after seniority plays a role – in selecting which positions are on the chopping block, and how laid off employees are replaced both those still in the system.



When an agency budget requires layoffs, the agency proposes titles for elimination, which they submit to their general counsel for a disparate impact analysis on different types of employees. Next, the Office of Labor Relations vets the selection, and identifies those laid off due to seniority (for competitive titles, each year working for the City counts – for non-competitive or labor class, only years in that title are counted). The WRTF Report notes position “bumping” occurs when more senior people are retained and moved into jobs (previously held by newer staff) in the same title but a different part of the agency.

With concerns about the effects of this displacement such as disruption and the need for retraining, the WRTF Report recommends that agencies be able to organize smaller groups of personnel to minimize the difference between positions considered similar by the system. For example, if layoff displacements could ripple only within one department and not across an entire agency, then workers would not, for example, move from HR to collections, and thus would likely end up in new posts with which they were fairly familiar. This would contribute to shorter retraining periods and less opportunity for employee dissatisfaction in the new role. However, the Municipal Labor Committee is opposed to such a change, saying that narrowing layoff units without objective criteria could result in targeting of specific employees.

Because the agency first identifies the title that is most expendable and then ultimately lays off those least senior in the title or similar titles, this practice intersects with job classifications. With no changes to the layoff system, title broadbanding would lead to *more* titles being considered equivalent in the layoff process, rather than fewer. City movement toward [broadbanding and consolidation](#) suggests that greater distinctions in the layoff process are even more necessary.

➤ **RECOMMENDATION: Add additional layoff subdivisions (consistently across all agencies and well in advance of pending layoffs) to ease concerns of employee targeting**

Increasing managerial discretion at the moment of downsizing is to be avoided, to minimize chances for “mischief” or unfair treatment. However, there is some evidence that employees can ricochet far from their prior position after layoffs, which may increase through combined job classifications. Already, interviewees noted that positions with similar titles often have different job functions in different organizational contexts or cultures that develop at the agency or department level, which can lead to reduced effectiveness during and after reassignment.

A solution to this concern would be for leadership in each agency to convene as if to discuss layoffs, but in fact to submit a proposal for subdividing their agency into a larger number of layoff units – that is, each unit would be smaller than under previous policy, and formed with an understanding of job function to reduce the chance of “bumping” that would lead to ill-fitting positions. They would review the titles present in more than one department, and subdivide with a light touch, with the goal of separating like titles with dissimilar functions. As with layoff proposals, this would go to their general counsel for evaluation of disparate impact (current job holders could be used as a proxy as necessary), and then to OLR. OLR will then submit this proposal to the State Civil Service Commission for consideration.

An additional benefit of this proposal is that it would deter manipulations of the system to use performance as a silent criterion for layoffs, which was a strategy we heard about in our interviews. If department heads might end up with a laid off employee within their own department, they may not see layoffs as an escape valve for underperformers, and will be incentivized to use disciplinary or staff development tools to address employee issues.

➤ **RECOMMENDATION: Pilot "mutual matching" for displaced workers to new positions based on managers' and workers' choices**

"Mutual matching" has been discussed in Oakland, California as a remedy for ill fits in the school district following layoffs. The process as discussed allows those senior teachers displaced from their positions to have informal interviews at the schools with open spots, to determine a fit – both candidates and employers could submit a rank-ordered choice. Though ultimately rejected by the Oakland teachers' union as a potential threat to seniority (the district eagerly offered early retirement to those who may not be selected through the system, prompting accusations of ageism), a closed system that guaranteed a spot for each employee would be an easy fix.

One manager within New York City mentioned to us that he used a similar "mini job fair" process informally. A pilot of mutual matching would allow managers to test its merits for the City. As a benefit, employers and employees both would have the impression of being "selected" by the other, as opposed to being "assigned to" them, which could facilitate better morale. Job satisfaction, length of training periods, and an evaluation of employee performance could be among the aspects measured in surveys used to determine the effectiveness of the pilot.

# SPECIAL SECTION: Teacher Performance Evaluation and Layoffs

## HISTORICAL CONTEXT OF NEW YORK CITY DEPARTMENT OF EDUCATION

To contextualize our recommendations that are aimed to improve performance evaluations and layoff procedures for teachers, below are included snapshots of the history of the Department of Education (DOE) oversight and degree of centralization.

### Timeline

<b>1966:</b>	Protesters took over the Great Hall of the Board of Education and declared themselves the People's Board of Education; this led to the decentralization law of 1969.
<b>1969:</b>	Decentralization of New York City public schools. "The State Legislature created 32 elected community school boards and a seven-member central Board of Education, appointed by the borough presidents and the mayor. The board chose the chancellor." <sup>212</sup>
<b>2002:</b>	New York City switches back to a centralized system. The State legislature gave the mayor full control of the schools. <sup>213</sup> This legislation also created the Panel for Education Policy which replaced the former Board of Education. The Panel is comprised of thirteen members: each Borough President appoints a member to the Panel while the remaining eight members are appointed by the mayor. <sup>214</sup> The mayor appoints the school Chancellor to oversee the district.
<b>June 2009:</b>	State legislature allowed mayoral control over schools to expire.
<b>August 2009:</b>	State legislature reinstated mayoral control over schools.

### Summary

Unlike most of the rest of the civil service System, the Department of Education has a variety of other rules and systems that help to govern its constituents. The Department of Education is one of New York's largest agencies employing civil servants and is a mixed status agency, meaning it reports to both the City and State. Some of the most contested and controversial issues within New York City's civil service system revolve around the school district. This can be seen throughout the district's history.

New York City's public school system started out as a centralized system until 1969, when the district became more decentralized with parts of the system being run by community boards and other parts being run by the Board of Education. This decentralization stemmed from frustration of the drastic disparities in the quality of schools and education provided to poor and minority neighborhoods. Initially, the community boards were supported by the teacher's union, but this support quickly faded as questions arose about the community boards' power to fire teachers. This new system also did not give the community as much control over the schools as they wanted and did not drastically improve the district. Patronage within the community boards eventually became an issue and the teachers union soon dominated the school board elections through financing and get-out-the-vote efforts.<sup>215</sup>

To address these issues, in 2002, the district transitioned back to a centralized district. The State legislature gave the mayor full control of the schools. This legislation also created the Panel for Education Policy which replaced the former Board of Education. The Panel is composed of thirteen members: each Borough President appoints a member to the Panel while the remaining eight members are appointed by the mayor.<sup>216</sup> The mayor appoints the School Chancellor to oversee the district. Yet, the move to a centralized system has not alleviated the tension between the district, the teachers, and

the communities they serve. This can be seen in the controversy over Mayor Bloomberg's appointment of Cathie Black for School Chancellor and the tension between Bloomberg and the State legislature exemplified when the legislature let the mayoral control lapse briefly in 2009 by not renewing the bill.

More tensions persist beyond the structure of the school district, such as the disciplining and laying off of teachers. These issues have typically driven a wedge between the teacher's union, community, and the district administrators. These conflicts suggest the need for in-depth review of education as an issue distinct from the rest of the civil service system.

## TEACHER PERFORMANCE EVALUATIONS

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The State Education Department, New York State United Teachers union and Governor Cuomo agreed upon a framework for teacher performance evaluations on February 16, 2012.<sup>217</sup> The performance evaluation system is required for states to receive \$700 million in Race to the Top federal funding. The State Assembly, senate and legislature must agree to the new evaluation system for it to become a State law.<sup>218</sup> New York City's performance evaluation standards are currently under negotiation.<sup>219</sup>

The current evaluation system is based on a "satisfactory" or "unsatisfactory" rating system that is administered twice a year. After three years of "satisfactory" ratings, the teacher will receive a tenure recommendation. Teachers are generally observed once or twice a year, depending on years employed and type of school.<sup>220</sup>

The proposed system expands the rating scale to include: "highly effective, effective, developing or ineffective."<sup>221</sup> Teachers that are rated "ineffective...for two years can be dismissed through an expedited process." Teachers that are rated "ineffective" are given a development plan and observed by the Principal and outside observers. If the independent observer and principal agree on the "ineffective" findings, the City would be able to "fire the teacher with a presumption of incompetence and an expedited procedure."<sup>222</sup> The union will be able to challenge 13% of these "ineffective" ratings annually.<sup>223</sup>

The proposed State law "requires that 60% of a teacher's score be based on subjective measures like classroom observation and 40% on student test scores or other measures of student performance. Half of the student-achievement portion is to be based on State tests and half on locally developed measures."<sup>224</sup> The student achievement portion will "be based on student's test score *growth* from one year to the next" incorporating the relatively recent "value added model." The value-added model uses statistical techniques to adjust for "student past performance, demographics, and other factors,"<sup>225</sup> which will serve to "level the playing field for teachers of higher-needs and lower-needs students when it comes to standardized test scores."<sup>226</sup> School districts have flexibility to determine 20% of the student achievement portion, but these measures must be State-approved. For example, districts could "use test data to measure student achievement in some other way — say, the progress of specific groups of students, like those who are not proficient in English or have special needs. They also could devise their own tests, or use tests developed by a third party."<sup>227</sup>

Politicians, education reform advocates and policymakers believe that the "Satisfactory/Unsatisfactory" evaluation system fails to identify poor performing teachers. There is general agreement among teachers and unions that the binary rating system fails to help teachers grow. Although not a guarantee,

a broadened rating scale combined with independent evaluators and an expedited disciplinary process, is a promising step toward further distinguishing teacher performance.

The media, politicians and policymakers cite that the binary system fails to eliminate poor performing teachers<sup>228</sup> at the expense of the children and communities.<sup>229</sup> The Teachers Union believes that this system, based on Principal or Assistant Principal observation, is “cursory and subjective” and does not offer substantive suggestions for teacher improvement and growth. Teachers that we interviewed are also in agreement the system is subjective and does not accurately measure teacher performance.

**A broader rating scale is a necessary addition to the evaluation system, but there is no guarantee that it will effectively differentiate among teacher performance.**

The ineffectiveness of the binary system is a common theme in school districts across the country. A report published by the New Teacher Project found that in “districts that use binary evaluation ratings, more than 99% of teachers receive the satisfactory rating.” This failure to distinguish performance persists even among those districts that expand the range of ratings: “In these districts, 94% of teachers receive one of the top two ratings and less than 1% are rated unsatisfactory.”<sup>230</sup> To pinpoint whether the performance system or the culture is at the root of the problem is difficult, but what is true is that the current evaluation system “fail[s] to differentiate performance among teachers. As a result, teacher effectiveness is largely ignored.”<sup>231</sup> While broader evaluation categories did not serve to differentiate among teacher ratings in other jurisdictions, the additional categories are a necessary evolution from the binary system and may enable further performance differentiation.

**This expedited disciplinary process may alleviate efficiency concerns among principals.**

Our interviews with former and current DOE teachers elucidate the performance differentiation landscape in New York. A DOE teacher commented that administrators were discouraged from rating a teacher a “U” due to the time consuming and lengthy disciplinary process. If a principal gave someone three U’s in a row, then the teacher would most likely protest the ruling with union representation and go through the costly court process. It takes years and many hours to eliminate “deadweight.” Other educators also identified the lengthy disciplinary process as one possible reason why ineffective teachers are not identified in New York City.

**Role of the independent evaluator will alleviate the subjectivity concerns.**

The UFT advocated for independent evaluators to be a part of the disciplinary process, thereby alleviating some subjectivity claims based on evaluation ratings. There have been blatant cases where teachers were given an “Unsatisfactory” rating based on factors other than classroom performance,<sup>232</sup> such as union activity. Some DOE educators believed that the S and U rating scale was subjective and based on an administrator’s bias.

The proposed evaluation system will “bring independent observers into the City’s classrooms to monitor the weakest teachers,” – those who are rated “ineffective.” The independent evaluators will be licensed educators and agreed upon by the City education officials and the union.<sup>233</sup>

**Performance evaluations based on standardized tests scores is subjective and unfairly assesses teachers based on criteria that are out of their control.**

There is agreement among principals, union representatives and teachers that the proposed teacher evaluation model based on test scores does not measure academic performance and ignores many factors that are out of teachers control.<sup>234</sup> Teachers will receive an “ineffective” rating if their students’ scores do not increase from one year to the next, thereby inherently failing to recognize high performing

students.<sup>235</sup> At one of our interviewees' schools, the largest gain in tests scores came from those students who struggled the most in class. This growth in tests scores did not translate to how well those students were academically performing in the classroom.

➤ **RECOMMENDATION: Reduce the weight of the student performance portion of performance evaluations until researchers develop more accurate assessment methodology**

In a letter to the New York State Board of Regents, many prominent education researchers stated caution against using tests scores to measure teacher performance as it is "impossible to fully separate out the influences of students' other teachers, as well as school and home conditions, on their apparent learning."<sup>236</sup> They go on to cite that students in different socioeconomic classes may have the resources to obtain tutoring, or receive help at home from educated parents. Additionally, "A teacher who works in a well-resourced school with specialist supports serving students from stable, supportive families may appear to be more effective than one whose students don't receive these supports."<sup>237</sup> One of our interviewees put it in context: "If a teacher in the South Bronx is more likely to have some students who haven't eaten or heard gun shots the night before... it is not fair that the Bronx teacher's class will have lower grades and test scores compared to another teacher's in a well-off community."

Teachers and principals have also expressed concern that basing teacher performance on test scores is unreliable and ignores researchers' concerns. Researchers are also concerned that emphasizing standardized test scores as a measure of teacher performance results in " 'teaching to the test' at the expense of other kinds of learning; and disincentives for teachers to serve high-need students, for example, those who do not yet speak English and those who have special education needs."<sup>238</sup> Researchers from RAND, Board on Testing and Assessment of the National Research Council of the National Academy of Sciences and the Educational Testing Service also agreed that the use value-added-methodologies as a measure of teacher performance is currently "too unstable and too vulnerable to many sources of error to be used as a major part of teacher evaluation."<sup>239</sup>

There have been also questions of the validity of the tests themselves, which further questions the use of test scores for evaluation purposes. From 2006-2010, New York State education officials revealed that the State tests were easier to pass and "recalibrated the scoring" methodology, effective Spring 2011.<sup>240</sup> Officials discovered this after New York State test scores rise much higher than the gains on the national tests. It is dubious that the scores were meaningful over the years if the scoring methodology drastically changed during this time period. A measure of evaluation that incorporates test scores is only as effective as the test, and it is unreasonable to base a teacher's evaluation on a proven unreliable measure.

In a recent panel on teacher retention hosted by DEMOS and the New York Academy of Sciences, David Steiner acknowledged that reliable and valid tests are essential if they will be used for teacher assessments. He also said that researchers are currently working to develop a "much better assessment" that will lay the groundwork for the student performance portion of the teacher evaluation. If the leader of the State acknowledges that the evaluation system is only as good as the tests and the tests have proven to be faulty, it will be difficult for the current evaluation system to be considered reliable and objective. Additionally, if within a few years there will be "better" and "more accurate" assessments, the State would be better off waiting for more reliable measures before incorporating student performance. The proposed evaluation system will have a negative impact on teachers entering the profession as well as retention of good teachers.

➤ **RECOMMENDATION: Incorporate peer review teams or independent objective educators into the evaluation process.**

This would create a new role for experienced and accomplished teachers to continue to grow in their career. A UFT representative cited that many teachers currently participate in informal peer evaluations by videotaping lessons and obtaining constructive criticism from peers. Denver and Memphis have implemented peer evaluators composed of teachers from different schools in the region. However, this process is expensive and may not be feasible for New York.

The downside of peer evaluations are that peers may be biased and subjectivity issues arise again. Our interviews repeatedly uncovered that within a school, it is well known among teachers, principals and administrators, which educators are not performing up to par. Peer evaluations could recognize this aspect of teacher performance that current evaluations fail to acknowledge. However, peer evaluations may also cause dissension and tension among teachers.

### **Another Consideration**

While only 2.7% of New York City schoolteachers received a “U” rating in 2011<sup>241</sup> a representative from the UFT believes that the discourse surrounding the evaluations implies that there is a “pool” of underperforming teachers that the City has failed to eliminate. David Steiner, New York State Education Commissioner, acknowledges that this perception is true; that recent policy actions, including the proposed evaluation system, are based on “deep nervousness on poor performance, [and evaluations are] not a celebration of excellent performance.”<sup>242</sup> The approach to teachers as reflected through the intent of and discourse surrounding teacher evaluations will have a large bearing on teacher retention and attracting qualified teachers to the field. A major part of the first few years of teaching is about honing one’s craft. If the approach to evaluations is largely judgmental and disciplinary in context, as opposed to growth oriented, New York will be at the forefront of discouraging promising teachers into the field. Policymakers must be wary of the trade-off between maintaining a high quality pedagogical workforce and potentially discouraging teachers from entering the profession.

## **LAYOFFS**

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Studies in other jurisdictions have shown that teachers laid off in a strict seniority-based system like that of New York City’s Department of Education are *more effective teachers* on a variety of student behavior and performance metrics than are those retained under such a system.<sup>6</sup> The suspicion that the same could be true in this city has demanded the attention of the governor and the mayor, and fuels public concern about the state of the City’s schools and the efficacy of its policies.

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<sup>6</sup> See Dan Goldhaber’s “A Worm in the Apple? Implications of Seniority-Based Teacher Layoffs,” *American Enterprise Institute for Public Policy Research: National Research Initiative Working Paper* (January 12, 2011): 1-27, or The New Teacher Project’s *A Smarter Teacher Layoff System: How Quality-Based Layoffs Can Help Schools Keep Great Teachers in Tough Economic Times*, (March 2010): 1-12.



As teacher performance evaluations are developed, there will be commensurate movement to tie layoff systems to these evaluations, rather than role and seniority only. Mayor Bloomberg has demonstrated his commitment to moving away from a seniority-based process, even backing a March 2011 State Senate bill that would reverse the “last in, first out” (LIFO) layoff system.<sup>243</sup> The bill was blocked by senate Democrats, but after an initial clash with Mayor Bloomberg over the issue, Governor Cuomo pledged to “work together” with the Mayor on seniority, while promoting his alternative evaluation standard.<sup>244</sup>

However, given the outcry against the evaluations, there may be lag time before such a change is implemented. While layoffs have been averted for the coming year, the dire straits of the City’s financial situation puts schools on edge, as does Mayor Bloomberg’s reminder that “there are no sacred cows.”<sup>245</sup> Additionally, individual principals do let staff go due to localized budget constraints even when there are not system-wide layoffs in a process called “excessing,” in which teachers join a Department-wide pool and are typically picked up by other schools. In the Spring, when they get a sense of potential budget holes in the coming year, school administrators can issue pink slips to those at the top of the layoff list, based on the current seniority process. While pink-slipped teachers can be re-hired before the school year begins, job insecurity takes its toll. These systems demonstrate that the current LIFO process is not only relevant at the time of mass layoffs, but affects teachers throughout the system each year, and as they perform daily in the classroom.

### **Retention**

The issue of retention looms large at the school level, and is entwined with downsizing procedures, though it is typically unremarked upon in the current teacher layoff debate. First- and second-year teachers are the ones on the chopping block when budgets are tight, and though principals are often able to re-hire once they have access to the coming year’s budget in August, one former New York City teacher with whom we spoke suggested that among those given pink slips, the most talented could likely land other jobs. If they had to wait the standard 6 months between March and August to be sure they would hold onto their teaching position, they may just accept a new position, and leave the teaching profession. Sometimes teachers are given unofficial promises that their jobs will be around, or strings are pulled by administrations to hold onto some teachers while excessing others. This process muddies the effect of a seniority-based system, and contributes to greater feelings of job insecurity than even the budget would suggest.

### **Equity**

While obscured in much of the City’s public debate, high-needs schools are a key victim of the current layoff system. Because schools in low-income and high-needs areas have greater rates of turnover, they have pools of newer teachers on average, and are disproportionately affected by seniority-based system-wide layoffs. This has been substantiated by the Center on Reinventing Public Education,<sup>246</sup> and remarked upon by one City interviewee with regard to the recent layoffs of 700 teachers’ aides, who asserted that “we have districts that could lose 10 or 20 school aides” under the LIFO system.

This concern has been partially addressed by recent policy innovations in the Los Angeles and San Francisco Unified School Districts in California, in which low-income schools would be shielded from layoffs in an attempt to foster lower turnover and more consistency for the districts’ highest-need students.<sup>247</sup> Following a landmark ruling that challenged LAUSD to provide equal opportunities for all its students,<sup>248</sup> San Francisco school officials followed suit, protecting 14 schools in the “Superintendent’s Zone” which have been the recipients of additional funds to recruit, train and retain teachers, due to the documented high turnover and its perceived impact on student performance.<sup>249</sup> The district hopes to



shield the progress documented at these schools – and the investment in new teachers – from the blunt knife of seniority-driven layoffs. However, opponents (including the teachers’ union) point out that other high-needs schools in the district that happen to fall outside of the “zone” are being excluded from the protections, calling the plan unfair.<sup>250</sup>

### **Incorporating Teacher Performance**

Mayor Bloomberg and Governor Cuomo are not the only ones who have expressed support for incorporating teacher performance metrics into the layoff system. American Federation of Teachers President Randi Weingarten agrees, though her openness is less enthusiastic, calling seniority “the fairest system until the State develops a new teacher evaluation system.” She emphasizes that seniority should be a moot point:

In a normal situation given how tough teaching is, how much attrition we have... seniority will never matter if you have a good evaluation system because that will become the system that can really assess who can stay and who shouldn't stay.<sup>251</sup>

However, it is a bit unclear how this perspective will apply to the actual evaluation system as it is unveiled and tweaked. If the evaluation standards are incorporated in any way into the layoff system, a few new issues will arise. First, while many applications of the evaluations will be limited to a single school environment, system-wide layoffs using evaluation metrics would cause teachers to be compared across different schools, with different demographic populations and economic and social contexts. While the evaluation fight will hopefully address questions of how to compare a teacher with 5 English-language learners (ELL) to one in the same school with 10, how can teachers with all ELL students, or in a non-English dominant environment, have his or her literature scores compared to teachers with all English speakers? Language skills are only one of the innumerable characteristics that can be driven by school context and affect classroom scores. A layoff system that compares teachers’ scores to determine their job security will have to contend with these issues in a new way.

Secondly, an evaluation system that formed the basis for layoffs may require some comparison across job function. In the 1975 mass, system-wide layoffs that still reverberate throughout the City’s politics around this issue, those school employees that were let go first were librarians and art teachers or those supporting art programs. How will metrics evaluate these teachers or professionals, when there are not test scores to use? Would performance-based tools replace the role-based decisions that targeted these teachers (that is, would librarians as a whole be taken off the chopping block, and be replaced by “poor performers”)? Would metrics translate between art teachers, librarians and history teachers, or would there need to be separate, and therefore more complex, systems for weighing teachers against one another?

Currently, math, science and special education teachers are shielded from seniority-based layoffs. Would incentives work differently for these teachers without the threat of layoff as in other departments? While retaining the most effective teachers seems like a good idea, in practice it may be difficult not only to determine who is effective, but to compare the effectiveness of an art instructor to that of a history instructor in a meaningful and straightforward way.

Thirdly, if performance-based layoffs are used at a system-wide level, they will presumably also be used for “excessing” small numbers of teachers by individual administrators. Currently, the “open market system” developed by Joel Klein, former DOE Chancellor, allows excessed teachers to remain within the system by searching position opportunities at another school. With score-based excessing, the pool may be stigmatized. While this may not be a bad thing, it may mean that the benefits of the open market

system, such as retaining those with experience within the system when the budget doesn't allow them to stay on, would have to be sought another way.

Fourth, a former New York City teacher with whom we spoke mused that in the implementation of a performance evaluation system, it makes a difference if the goal is to determine who should be laid off, or if the goal is to provide support for teachers to develop. While there will likely always be a possibility of a tone of judgment rather than a tone of support, the use of the evaluation system to determine layoffs may actually affect the way teachers view the system, and thus its success.

Lastly, and crucially, if layoffs are partially performance-based, there will be more opportunities for administrative discretion, and therefore favoritism or corruption. This, as unions are quick to point out, would erode the merit-and-fitness basis of the workforce, which they cannot accept. This is an important consideration, and if the system goes through, there should be checks and balances that minimize opportunities for mischief. Additionally, performance-based layoffs may open the door to due process challenges during the layoff process, costing the DOE in arbitrations and lawyers' fees just at the time that they are strapped for funds.

### **Fairest one of all?**

In our discussions of the layoff system, questions of fairness came up quite a bit. The teachers with whom we spoke generally consider seniority to be not ideal, but the fairest system available. These teachers, along with every union representative with whom we spoke, responded uniformly when we asked about the layoff system they would recommend. "Why lay off teachers at all?," they asked. Considering the role of education in the progress of our nation, it is a worthy question for any policymaker to consider.

#### **➤RECOMMENDATION: Increase focus on retention within the layoff debate by conducting a study of the relationship between retention, morale, job security and current pink slip procedures**

Retention is a key issue, cited by two of our teacher interviewees as *the* major concern in New York City schools. Layoff policy has a significant impact on the perceived and actual job security of first- and second-year teachers, which affects entry of excellent employees into the system. It is also at the heart of concerns about disproportionate cuts that threaten high-needs schools. Considering these issues may be as simple as issuing a single study, or thoughtfully introducing the issue of retention into the public LIFO debate. As attempts are made to introduce performance evaluation into the layoff system, including experts in teacher retention will help to ensure that the City is not exacerbating one of its biggest problems – retention of new teachers – through the layoff or pink slip process.

#### **➤RECOMMENDATION: Emulate recent policies of the Los Angeles and San Francisco Unified School Districts to shield low-income schools from layoffs.**

Highest-need schools are hardest hit by current policies, and while performance metrics shake out, low-income students bear a disproportionate brunt of layoffs. Because not every Title 1 school in New York City could be protected (over 25% of schools fell under Title 1 as "schools that need improvement" in 2009<sup>252</sup>), a pilot program would be a good start, with randomization used to assign protection to schools within a matched-pairs evaluation design, so that the impact on students could be measured to inform future policy.



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# CONCLUSION

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CONCLUSION

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RECOMMENDATIONS BY TYPE

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# CONCLUSION

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New York City's civil service system was, in its inception, a groundbreaking and much-needed reform designed to hold the City to the highest standards of equity and city effectiveness. After a long history of growth and added complexity, there are significant challenges impeding its progress and the capacity for the system to work as intended. Through our research, we recognize that we are not the first to attempt improvements, but are adding to considerable existing literature about the system. It is clear that many want to see change but want to ensure that the system remains fair, objective, and accountable to the City's principles. Our research focused on goals of feasibility and the incorporation of perspectives of a broad range of stakeholders. We hope that this report provides more clarity and perspective on much-needed reform.

One common goal for our key stakeholders is to make sure that City government functions optimally, while ensuring its employees are not being subject to unfair and unjust practices. Although the interests of major stakeholders are often at odds, there is common ground on some key issues for all parties to collaborate and make the appropriate changes within the system. Our recommendations highlight these collaborative opportunities by addressing the areas that have potential for the greatest impact.

There remain serious gulfs between the City and the unions that champion the rights of the City's workforce. Both sides have calcified their stances over decades and as a result, have stymied reform efforts and innovations. In particular, unions have been unwilling to accept changes that could be considered common sense, afraid that small modifications will open the door to erosion of basic rights for the workforce they represent.

There are considerable historical reasons for their caution, and their hesitations must be taken seriously. If "reform" will cease to be a dirty word to unions, it will be because the City demonstrates its willingness to work together, to negotiate in good faith, and to set a standard of give-and-take that will achieve major reforms without chipping away at the morale and livelihoods of the people who make the City run. Willingness to consider new ideas must be demonstrated by the unions as well. Improving the balance of equity and effectiveness at times depends on it, as is the case with the introduction of band scoring for exams. Nationwide trends do not bode well for unions – in fact, anti-teacher attacks are dwarfed only by anti-government tirades in today's media battles. With both sides under fire, refusal to compromise will only exacerbate the impact of vitriolic public discourse on City functioning. Through our recommendations, we call on both the City and the unions to move beyond public posturing to build meaningful, collaborative solutions.

There has never been an easy model for reform of a city system as large, complex, and dense as New York City. Because of this, history has placed the City on the leading edge of change. By taking on this challenge, and particularly through pilots and program innovations, the City has the potential to improve the civil service system's hiring, firing, exams, classification, performance, promotions, discipline and layoffs. Advances in this area will undoubtedly inform trends and best practices across the nation.

The City's first phase of reform should emphasize relationship-building, information-gathering, and in-house administrative changes; these will form a foundation for some of the most impactful recommendations down the line. For example, shifts in the culture of performance evaluation will begin slowly--with our recommended survey--and build towards an overhaul of the system. Pilot programs will provide needed information to the City about New York-specific outcomes as reforms are attempted.

Equally, Labor-Management Committees, which require relationship-building, will foster further collaboration (if well-executed); these committees should begin promptly.

Below, we provide our list of recommendations organized by type, relative feasibility, and priority. This list is to aid reformers and advocates of reform to identify which recommendations require additional resources, decision-making structure, or political pushback that will delay implementation, so that these roadblocks may be addressed. We are under no illusions that change will happen overnight, but steady progress will provide the City greater effectiveness in this time of tight resources and abundant public pressures.

As these changes are considered or rolled out, we have one final recommendation to share. The City's workforce can be its greatest asset, a source of continuous information about what works and what must be improved. One of the greatest strengths of our research, and a source of keen insights and innovations, were our interviews with the employees and managers themselves. Ongoing inquiry or mechanisms for employee feedback will combat the natural calcification of roles and practices, and allow the City to be dynamic as a workplace and as an institution. Above any specific recommendations or prescriptions that we can give, the ability of the City to garner and respond to constructive feedback over time will be a key ingredient in optimizing effectiveness, system efficiency, and equitability at all levels throughout the complex organism that is New York City.

# RECOMMENDATIONS BY TYPE

The following list presents our recommendations organized into categories to represent the type of change they require as well as their relative feasibility and ease of implementation.

## LABOR-MANAGEMENT COMMITTEES

The formation and thoughtful commencement of these committees will build needed goodwill between the City and the unions, and allow them to focus their collaboration on areas in which they have a shared stake in reform. Due to both the importance of the changes they will precipitate and the impact the relationship-building can have on negotiations on other issues, these recommendations should be prioritized.

PAGE LINK	RECOMMENDATION
<a href="#">51</a>	Establish a series of Labor-Management Committees to include at least one Office of Labor Relations and one union representative on the following topics: <ul style="list-style-type: none"><li>• Job Title Management (in perpetuity) – also add union representation to Provisional Reduction Analysis Team</li></ul>
<a href="#">67</a>	<ul style="list-style-type: none"><li>◦ <i>Establish a Labor-Management Committee to address broad banding and consolidation of titles.</i></li></ul>
	<ul style="list-style-type: none"><li>• Workforce Morale – Stakeholder Surveys (temp. working group)</li></ul>
<a href="#">76</a>	<ul style="list-style-type: none"><li>◦ <i>See Performance Evaluation Recommendation</i></li></ul>
	<ul style="list-style-type: none"><li>• Restructuring Test Validation (temp. working group)</li></ul>
<a href="#">61</a>	<ul style="list-style-type: none"><li>◦ <i>Establish a Labor-Management Committee to revisit the Test Validation Board process</i></li></ul>
	<ul style="list-style-type: none"><li>• Arbitration Efficiency (temp. working group)</li></ul>
<a href="#">88</a>	<ul style="list-style-type: none"><li>◦ <i>Establish a Labor-Management Committee to address streamlining of arbitrations</i></li></ul>

## CHANGES TO ADMINISTRATION

These recommendations can be implemented with minimum outside influence. Initial steps will go a long way toward setting a foundation for a long and successful rollout. Due to their feasibility and importance, they should be prioritized by reformers.

PAGE LINK	RECOMMENDATION
<a href="#">63</a>	Develop new criteria regarding overtime pay for “unofficial” managers to reduce expenses; present criteria to unions during collective bargaining discussions
<a href="#">69</a>	Develop education and experience exam for all provisional employees and train managers to encourage provisional employees to take exams
<a href="#">76</a>	Engage in a series of steps to change the culture around evaluations to make them more meaningful. These steps include: <ul style="list-style-type: none"><li>• Conduct an independent survey administered to all managerial and nonmanagerial employees, which will enable DCAS to understand and identify current problems with the system and to reframe the central message</li></ul>

	<ul style="list-style-type: none"> <li>• Increase employee involvement with developing the “tasks and standards” portion of each agency-specific performance evaluation</li> <li>• Make employee appraisals geared toward “development” where there is goal setting with the manager and employee</li> <li>• Improve managerial training with respect to performance evaluations to make them more evenly implemented across agencies</li> </ul>
<a href="#">83</a>	Increase the number open competitive exams to be administered for mid- to higher-level managerial positions
<a href="#">89</a>	Add additional layoff subdivisions (consistently across all agencies and well in advance of pending layoffs) to ease concerns of employee targeting
<a href="#">94</a>	Reduce the weight of the student performance portion of performance evaluations until researchers develop more accurate assessment methodology

## PILOT PROGRAMS

Pilot programs will arm the City with New York-specific knowledge about the impact of potential changes. They can be accomplished with minimum resources and are a pragmatic initial step toward reform.

PAGE LINK	RECOMMENDATION
<a href="#">59</a>	Pilot a program focused on continual recruitment/ongoing testing
<a href="#">90</a>	Pilot “mutual matching” for displaced workers to new positions based on managers’ and workers’ choices
<a href="#">94</a>	Incorporate peer review teams or independent objective educators into the evaluation process
<a href="#">98</a>	Emulate recent policies of the Los Angeles and San Francisco Unified School Districts to shield low-income schools from layoffs
<a href="#">98</a>	Increase focus on retention within the layoff debate by conducting a study of the relationship between retention, morale, job security and current pink slip procedures

## RESOURCE ALLOCATION

These changes may be accomplished with the stroke of a budgetary pen; however, given the current fiscal restrictions, internal process may be required to allocate sufficient resources to the agencies we identify. Steps toward additional resource allocation to improve the civil service system efficiency should begin swiftly, but reformers must acknowledge the reality of a slow and politicized budget process.

PAGE LINK	RECOMMENDATION
<a href="#">48</a>	Allocate resources to the following areas: <ul style="list-style-type: none"> <li>• DCAS’ ability to pilot new ideas (exams, E&amp;E, performance evaluations, promotions, etc)</li> <li>• Employee development (best practice training, reward incentives)</li> <li>• Managerial training &amp; troubleshooting (esp. around transfers, discipline, performance)</li> </ul>
<a href="#">56</a>	Devote more resources and training to help DCAS increase their capacity for exam development
<a href="#">64</a>	Increase the amount of training provided to managers and supervisors

## BUILD INFRASTRUCTURE

These recommendations will likely also require additional resources, as well as possibly requiring initial inquiries and consideration of outside models. **One, implementing band scoring, will garner objections from unions.**

PAGE LINK	RECOMMENDATION
<a href="#">58</a>	Increase the implementation of technology to facilitate easier access and administration of exams (e.g. test centers, walk-in exams, online exams)
<a href="#">60</a>	Implement band scoring
<a href="#">82</a>	Use Assessment Centers for promotions to managerial positions
<a href="#">82</a>	Establish objective standards for promotions with the unions
<a href="#">85</a>	Establish a pool of informal discipline procedures in which managers can be trained

## CHANGES TO OVERSIGHT

These recommendations require, in many cases, changes to State law or approval at the State level. They will be difficult to achieve for this reason, but no less important to reform efforts.

PAGE LINK	RECOMMENDATION
<a href="#">43</a>	Explore options for improving the civil service oversight system. <ul style="list-style-type: none"><li>• Option 1: Work with the State on or advocate for the improvement of administrative capacity to address City issues.</li><li>• Option 2: Develop a system in which the State must be notified of and may overrule changes, but is not required to give approval</li><li>• Option 3: Advocate for the movement of the State oversight function to a new, independent City Civil Service Commission that is shielded from control by elected officials</li></ul>
<a href="#">46</a>	Allow the Metropolitan Transportation Authority to administer exams on behalf of the New York City Transit Authority and the Triborough Bridge and Tunnel Authority
<a href="#">70</a>	Impose more rigid rules for outsourcing employees and temporary appointments, particularly in regards to the enforcement and strict monitoring of timeline deviations

## NOTES OF CAUTION

The City should make note of these recommendations early in the reform process, and weave throughout implementation of any reforms if found desirable.

PAGE LINK	RECOMMENDATION
<a href="#">55</a>	Consider purchasing exams through a private company with caution
<a href="#">57</a>	Continue with the implementation of Education & Experience exams (expansion should be met with caution) and increase the use of Selective Certification
<a href="#">73</a>	Collectively bargain longer probationary periods (if the City is able to make a compelling case)
<a href="#">80</a>	Consider pay-for-performance only with due diligence



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- <sup>1</sup> Selden, Sally C., Patricia W. Ingraham, and Willow Jacobsen. "Human Resource Practices in State Government: Findings from a National Survey." *Human Resource Practices in State Government: Findings from a National Survey* 61, no. 5 (2001): 598-607. Accessed April 8, 2012. <http://www.jstor.org/stable/977619>. p 599
- <sup>2</sup> Hamilton, David K. "Patronage in Illinois: The Political Subjugation of Public Administration." *Review of Public Personnel Administration* 30, no. 2 (2010): 137-165. Accessed April 8, 2012. doi: 10.1177/0734371X09360851. p 137
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# APPENDICES

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## **APPENDIX I: SUMMARY OF RULES AND REGULATIONS**

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Summary of the key Rules and Regulations related to the New York City civil service system.

## APPENDIX I: Section I

### Personnel Rules and Regulations of New York City and the State Civil Service Law

State Civil Service Law and chapter 35 of the New York City charter govern the Personnel Rules and Regulations of New York City. The rules provide details in areas of civil service employment applicable to the city of New York (Rules I-XII). The State Civil Service Laws set the blueprint for the cities and counties with New York. Both laws are in accordance with the Constitution and Law. Both laws cover areas in Civil Service Administration, Jurisdictional Classification, Classification and Compensation, Examinations and Appointments.

The Civil Service Commission ("CSC") is an independent, "quasi-judicial" agency authorized under Chapter 35, §813 of the New York City Charter, to hear and decide appeals from determinations made under §50 and §76 of the New York State Civil Service Law.

#### Rule IV: Examinations

**Rules**

- \*Anyone interested in obtaining city employment (appointments and promotions) must first apply and register to take the Civil Service Exams (4.1.1) (CSL § 50.1).
- \*Guided by New York State Civil Service Law, the exams are to determine if candidates are fit and prove to be competitive and fair (CSL § 5.15.2.).
- \*It takes roughly a period of two-three months after the job announcement has been closed to receive proper documentation to sit for the required exam.

**Types**

There are currently three types of exams: Multiple Choice Examinations are offered for open competitive titles or entry-level positions. Education and Experience (E&E) Examinations are used to fulfill professional positions that have education as being a high indicator of the candidate's qualification for a particular appointment or promotion. Lastly, Practical/Physical Examinations are used to test a candidate's skill and fitness in performing a specific task. In all, the examinations are used to fulfill the City's workforce needs.

**Eligibility**

After candidates complete their exams, the exams are then rated. A list is created based on rank order based on passing score typically called Eligible List (4.6.1) (CSL § 61.1 CSR § 3.5 3.6 PR § 67.2.) The list is then used by agencies to determine what candidates can be interviewed. Keep in mind the Eligible List is created six-nine months after the test date and will generally last for four year (CSL § 56 PR § 68.1). The agencies use the Rule-of-Three to determine the highest scoring candidates who are immediately considered for appointment.

## **APPENDIX I: Section 2**

### **Rule III: Jurisdictional Classification**

#### **The Exempt Class**

All offices and positions in the classified service enumerated in section forty-one of the civil service law and all other subordinate offices or positions for the filling of which competitive or non-competitive examination shall be found by the commissioner of citywide administrative services to be not practical.

\*Not more than one appointment shall be made to or under the title of any office or position placed in the exempt class.

#### **The Non-Competitive Class**

All positions that are not in the exempt or labor class and for which it is found by the commissioner of citywide administrative services not to be practicable to ascertain the merit and fitness of applicants by competitive examination.

#### **The Labor Class**

All unskilled laborers in the classified service as are not classified in the competitive or non-competitive class.

\*Upon the termination of an employment in the labor class, the agency head shall certify to the department of citywide administrative services the reasons for termination.

### **Rule X: Classification of Position not included in the Career and Salary Plan**

#### **Position in the Exempt Class**

The titles and number of positions authorized for each title in the exempt class subject to this rule are set forth in the "classification and compensation schedules of the classified service."

#### **Position in the Non-Competitive Class**

The titles, part numbers, number of positions authorized, and limitations on tenure, if any, for each title in the non-competitive class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule N

#### **Positions in the Labor Class**

The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule L-10.

#### **Positions in the Competitive Class**

The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule C-10.

## APPENDIX I: Section 3

### Rule V: Appointments and Promotions

No person shall be appointed, promoted or employed under any title not appropriate to the duties to be performed and, except upon assignment by proper authority during the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any position unless duly appointed, promoted, transferred or reinstated to such position in accordance with the law and rules prescribed therefore.

#### Probationary Term

Every appointment and promotion to a position in the competitive or labor class shall be for a probationary period of one year unless otherwise set forth in the terms and conditions of the certification for appointment or promotion as determined by the commissioner of citywide administrative services. Appointees shall be informed of the applicable probationary period.

#### Provisional Appointments

Whenever there is no appropriate eligible list available for filling a vacancy in the competitive class, the agency head may nominate a person to the commissioner of citywide administrative services for non-competitive examination.

\*A provisional appointment shall not continue for a period in excess of nine months.

\*Any position shall be terminated within two months following the establishment of an appropriate eligible list for filling vacancies in such positions.

#### Seasonal Appointments

All positions in the competitive class, where the nature of the service is such that it is not continuous throughout the year, but recurs in each successive calendar year.

#### Exceptional Appointments

The commissioner of citywide administrative services may authorize a temporary appointment, without examination, when the person appointed will render professional, scientific, technical or other expert services

#### Trainee or Aide Appointments Authorized

The commissioner of citywide administrative services may require that permanent appointments to designated positions in the competitive class shall be conditioned upon the satisfactory completion of a period of service as a trainee or aide in an appropriate lower, trainee or aide position in such class and/or, where required, the completion of specified formal courses of training.

### Termination

An employee placed on leave pursuant to CSL Section 72 or who is voluntarily on leave by reason of a non-occupational injury or disease, may be terminated after a continuous absence of one year. An employee may, within one year of the termination of the disability, apply for reinstatement. If the person is found mentally and physically able to return to work, but an appropriate position is not available, the individual will be placed on a preferred list.

*State Civil Service Law*

## APPENDIX I: Section 4

### Collective Bargaining

#### **\*Bargaining Units**

Except for those employees considered Managerial/Confidential, there are seven bargaining units into which most employees are grouped. The Civil Service Law sets forth the salary schedules that are applicable to each specific unit. Newly hired employees receive the hiring rate of the salary schedule unless the Director of Classification and Compensation and the Director of the Division of the Budget have approved an increased hiring rate. Increased hiring rates may be approved based on recruitment difficulties and/or the outstanding qualifications of a particular candidate. CSL §130.1

*State Civil Service Law*

#### **New York City Collective Bargaining Law (NYCCBL)**

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that public employees shall be presumed eligible for the rights set forth in this section, and no employee shall be deprived of these rights unless, as to such employee, a determination of managerial or confidential status has been rendered by the board of certification. §12-305.

The New York City Office of Collective Bargaining ("OCB") and its constituent Boards, the Board of Collective Bargaining ("BCB") and the Board of Certification ("BOC"), were created by the New York City Council in 1967 through enactment of Chapter 54 of the City Charter

## **APPENDIX II: TIMELINE**

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Timeline of the history of the civil service system, organized by phases and themes.

*Themes of “Merit/Exams,” “Governance,” “Job Classification,” “Workforce Management,” and “Collective Bargaining” reflect the most common/important themes from the History of the Civil Service section.*



## PHASE I: Tammany Hall - The Early Years (1786-late 1880s)

<b>1789</b>	William Mooney, an upholsterer and Revolutionary War veteran, founded the Society of St. Tammany as a patriotic, but non-political organization.
<b>1798</b>	Aaron Burr remolded the Society of St. Tammany into a political force which supported Burr and Thomas Jefferson in the Election of 1800.
<b>1805</b>	Incorporation of the Society of Tammany.
<b>1854</b>	Tammany Hall elected its first mayor, Fernando Wood.
<b>1858</b>	William Marcy Tweed became the "Grand Sachem" of Tammany Hall.
<b>1870</b>	"Tweed Charter" was established. This new city charter formed a board of audit and eliminated all commissions. Through this board, he and his associates could control the city treasury. Through faked leases, padded bills, false vouchers, unnecessary repairs, and overpriced goods, the "Tweed ring" stole between \$30,000,000 and \$200,000,000 from New York City.
<b>Early 1870s</b>	Removing Tweed from power became the prime goal of a growing reform movement. The New York Times, the satiric cartoons of Thomas Nast in Harper's Weekly, and reform lawyer, Samuel J. Tilden all contributed to the downfall of Tweed.
<b>1873</b>	Tweed convicted and sentenced to prison on charges of forgery and larceny. Later, after being release, arrested on another conviction, and then escaping from prison, Tweed was finally captured and ended up dying in prison.
<b>1874</b>	John Kelly was in control of Tammany Hall. He overhauled Tammany's structure, tightened discipline, and revitalized its public image.
<b>1877</b>	The first civil service reform association in the country, called the Civil Service Reform Association, formed in New York City .

## PHASE 2: Establishment & Expansion of "Merit and Fitness" (late 1880s-early 1930s)

Year	Event	Civil Service Expansion	Article V, Section 6 (Merit/Fitness)
1883	<b><u>Pendleton Civil Service Reform Act</u></b> The Pendleton Civil Service Reform Act (ch. 27, 22 Stat. 403) of United States is a federal law established in 1883 that stipulated that government jobs should be awarded on the basis of merit	New York City and Brooklyn became the first cities in the nation to adopt civil service regulations.	Current New York State constitution established. Merit and fitness provision was included (Article V, Section 6): "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive. . . . Laws shall be made to provide for the enforcement of this section."
1883	<b>Expansion</b>		
1884	<b>Expansion</b>	New York State became the first state to adopt a civil service system for state workers.	
1894	<b><u>New York State Constitution</u></b>		
1896	<b><u>People ex rel. McClelland v. Roberts</u></b>		The Court of Appeals in People ex rel. McClelland v. Roberts, gave Article V, Section 6 a broad interpretation, leaving a possibility for the state and all of its civil divisions to be under the constitutional mandate.
1897	<b><u>Citizens Union</u></b> Citizens Union founded to fight the corruption of Tammany Hall.		
1898	<b><u>Greater New York Charter</u></b> Greater New York Charter was established. This consolidated the five boroughs into New York City, which increased the city's political and economic power. This charter had implications for how New York City would be governed and led to the State Legislature placing limitations in home rule.		
			The Legislature delegated the task of implementation and regulation of Article V, Section 6 to the State Civil Service Commission.
1900	<b><u>State Civil Service Commission</u></b>		
1900-1914	<b>Expansion</b>	New York State extended the merit system to five counties of New York City, twelve upstate counties, and seven villages.	Through a series of cases which began in 1908, the court determined Article V, Section 6 "applies only to those who are engaged exclusively in the public service and does not extend to public officers, who, as to all or a part of their duties are engaged in the services of a superior officer."
1901	<b><u>Mayor Seth Low</u></b> Citizens Union helped elect the first reform mayor, Seth Low, in 1901. Mayor Seth Low is credited with introducing civil service and a merit system for hiring city employees.		
1908	<b>Definition of Civil Servants</b>		
1910	<b><u>Mayor William Jay Gaynor (1910-1913)</u></b> Tammany-endorsed Mayor who undermined the patronage system by hiring outside experts to fill high-level government positions and chose city employees from civil service lists.		
1932	<b><u>Tammany Stripped</u></b> President Franklin Delano Roosevelt stripped Tammany of Federal patronage, and reduces its power to a county organization.		

### PHASE 3: Blueprint of the Modern Civil Service System (early 1930s-early 1940s)

Year	Event	Key Changes / Recommendations ( <i>italics</i> )			
1930s	Public Unions Rising	<p style="text-align: right;"><b>Collective Bargaining</b></p> <p>New York City municipal employees' interest in unions increased as the national labor movement revived and the influence of the political left grew. By World War II "unions had a foothold in the public welfare, hospital, and sanitation departments, and the boards of transportation and education."</p>			
1932	Norris-LaGuardia Act	<p style="text-align: right;"><b>Collective Bargaining</b></p> <p>The Norris-LaGuardia Act outlawed yellow-dog contracts (pledges by workers not to join a labor union) and further restricted the use of court injunctions in labor disputes against strikes, picketing, and boycotts.</p>			
1935	National Labor Relations Act Federal law commonly referred to as the Wagner Act after its sponsor.	<p style="text-align: right;"><b>Collective Bargaining</b></p> <p>Provides governmental protection for the private sector's right to engage in collective bargaining and to strike.</p>			
1934-1945	Mayor Fiorello LaGuardia Fiorello LaGuardia reorganized the Civil Service Commission and instituted main components of the modern civil service system in New York City.	<p><b>Merit/Exams</b></p> <p>*The Civil Service Commission "threw out the old subjective essay-type exams" that were reviewed by corrupt graders.</p> <p>*Other agencies began to require certain educational levels, such as high school diploma, to qualify for some municipal service positions.</p>	<p><b>Job Classification</b></p> <p>LaGuardia defined criteria for thousands of municipal positions, job classifications, and salary levels (reducing the # of unclassified and noncompetitive positions).</p>	<p><b>Workforce Management</b></p> <p>LaGuardia developed a "systematic personnel policy for appointments and promotions that rewarded connections more than competence."</p>	<p><b>Collective Bargaining</b></p> <p>LaGuardia permitted employees to join unions but barred them from striking and barred the city from engaging in collective bargaining.</p>
1937	Palmer v. Board of Education Palmer, a carpenter, sued the Board of Education in Westchester County claiming he had been illegally fired. However, he had not taken an exam.	<p><b>Merit/Exams</b></p> <p>The Court ruled that there was no contract because the 1894 mandate of the state constitution had not been carried out, implying that public employment contracts that were made after 1894 without first taking an exam were invalid.</p>			

Year	Event	Key Changes / Recommendations ( <i>italics</i> )	
1938	<b>New York City Charter</b> New York's first City Charter was drafted by a city commission in 1936 and implemented in 1938.	<b>Governance</b> *Eliminated the Board of Aldermen and instituted proportional representation in the City Council. *Established the Board of Estimate.	
1939	<b>State Civil Service Law</b> New York State Governor Lehman set up commission to examine how the civil service system could be instituted throughout New York State.	<b>Governance</b> Section 11-A of the Civil Service Law was approved by the Legislature in 1941. The act requires counties and cities to choose from among three types of civil service administration (set up their own county civil service commission, choose a county personnel officer, or work under the State Civil Service Commission's jurisdiction).	
<b>PHASE 4: The Rise of Collective Bargaining and Civil Service Growing Pains (late 1940s-early 1970s)</b>			
1946-1950	<b>Mayor William O'Dwyer</b> Mayor O'Dwyer (Tammany Hall) created a commission to evaluate civil service workers and management. The commission concluded that administrative personnel were deficient in quantity and quality.	<b>Governance</b> <i>*Instead of a Civil Service Commission responsible for both rule making and administration, the commission proposed that one agency deal with the rule making functions and another agency handle the administration of the civil service.</i> <i>*The Commission recommended that a personnel officer be assigned to each operating agency.</i>	
1947	<b>Condon-Wadlin Act</b>		<b>Collective Bargaining</b> New York State's Condon-Wadlin Act outlawed strikes by public employees. Any public employee who participated in strikes were automatically dismissed.
1950-1953	<b>Mayor Vincent R Impellitteri</b> Mayor Impellitteri (Tammany Hall Democrat) hired outside management consultants to evaluate the efficacy of the personnel administration.	<b>Merit/Exams</b> They recommended new examinations and a salary increase to make city jobs competitive with private sector jobs.	<b>Governance</b> The consultants concluded that the Municipal Civil Service Commission was underfinanced, understaffed and generally ill equipped to carry out the duties of personnel administration effectively.

Year Event	Key Changes / <i>Recommendations (italics)</i>			
<b>1954-1965</b> Mayor Robert F. Wagner implemented some of Mayor O'Dwyer's recommendations from the Mayor's Committee on Management Survey to increase the efficiency of the municipal government.		<b>Governance</b> *Civil Service Commission's Personnel Department became the City Department of Personnel, which was controlled by the Mayor's office. *Wagner created a Labor Department, which replaced the Division of Labor Relations. Labor department heard grievances, settled employment disputes, and made recommendations to the mayor's office	<b>Collective Bargaining</b> Wagner established employee grievance procedures and guaranteed the right of city workers to organize without reprisal.	
<b>1956</b> Union Dues			<b>Collective Bargaining</b> New York City allowed unions to collect dues from employees by means of voluntary withholding from paychecks and held its first union recognition election.	
<b>1958</b> Little Wagner Act Mayor Wagner issued Executive Order 49, "Little Wagner Act"			<b>Collective Bargaining</b> Granted collective bargaining rights to public sector employees represented by unions. Unions began to play a major role in determining salary levels and in defining the relationship between salary and job functions.	
<b>1960-1963</b> <i>Brookings Institution Study</i> <i>Brookings Institution was commissioned to analyze the city's personnel system and offer recommendations for improving personnel policies and practices.</i>		<b>Governance</b> <i>Report stated: "Line managers and agency heads lacked the authority to recruit, hire and advance their staff, thereby weakening their ability to manage"</i>	<b>Job Classification</b> <i>The existence of a large number of narrow, specialized titles and levels interfered with the ability of city agencies to assign and utilize staff effectively</i>	<b>Workforce Management</b> <i>*The city lacked programs for identifying and developing replacements for the large number of managers who were reaching retirement age</i> <i>*There was no link between pay and performance and poor performers were usually paid at the same rate as superior performers</i>
<b>1966</b> <i>Personnel Task Force</i> <i>Harold Riegelman led a special task force to review New York City's personnel system.</i>		<b>Governance</b> <i>Recommended that personnel decision making be decentralized from central department of personnel to the operating agencies</i>	<b>Job Classification</b> <i>The classification plan should be reviewed to identify possibilities for combining titles and levels</i>	<b>Workforce Management</b> <i>A systematic program should be established for identifying and developing people with managerial potential</i>

Year	Event	Key Changes / <i>Recommendations (italics)</i>		
1966-1973	<b>Mayor John V. Lindsay</b> Lindsay tended to circumvent existing agencies of municipal government	<b>Job Classification</b> His administration increased the number of positions in “exempt” class (from 1,500 to 12,800)	<b>Workforce Management</b> The number of provisionals tripled and these appointees were often shifted around agencies to avoid exams	<b>Collective Bargaining</b> Conflict with unions and union strikes were frequent; Lindsay oversaw the creation of OCB (see 1967)
1967	<b>Taylor Law</b> New York State legislature passed the Public Employees’ Fair Employment Act/ The Taylor Law (replaces Condon-Wadlin Act)	<b>Collective Bargaining</b> The Taylor Law “grants public employees the right to organize and be represented by a union of their choice, or to refrain there from; requires public employers to negotiate with such unions concerning terms and conditions of employment of employees; establishes impasse procedures for the resolution of disputes in negotiations; defines and prohibits improper practices by unions and public employers; prohibits strikes.”		
1967	<b>Executive Order 52</b>	<b>Collective Bargaining</b> The New York City Office of Collective Bargaining ("OCB") and its constituent Boards, the Board of Collective Bargaining ("BCB") and the Board of Certification ("BOC"), were created by the New York City Council in 1967 through enactment of Chapter 54 of the City Charter.		
PHASE 5: Reshuffling the Civil Service System (1970s)				
1970s	<b>Fiscal Crisis</b> In the first half of the 1970s, New York City faced serious fiscal problems. Municipal employee wages became a concern.	<b>Collective Bargaining</b> "Civil service unions helped the city to avoid bankruptcy by agreeing to wage deferrals, benefit reductions, large scale dismissals, and the use of pension funds to buy \$2.5 billion in municipal bonds.”		
1972	<b>Leroy G Adolph et al. v. Department Personnel Commission</b> A Test Validation Board is used for the first time o hear a dispute from the civil service employee over the results of his exam.	<b>Merit/Exams</b> The Commission, by resolution, created a 5-member board. The city hoped this would reduce lawsuits over exam results.		

Year	Event	Key Changes / Recommendations ( <i>italics</i> )		
1972	<p><b>NY City Charter Commission</b>  <i>Top officials of New York State appointed a commission to study the city charter and to recommend appropriate revisions. These are some of their findings.</i></p>	<p><b>Merit/Exams</b>  <i>Suggested the City Civil Service Commission's objectivity was compromised because the same person served as the chairman of the Commission and as head of the Department of Personnel</i></p>	<p><b>Governance</b>  <i>*There is a concentration of personnel administration functions vital to municipal service operations in overhead agencies that run no services</i>  <i>*Line agencies had totally inadequate personnel management authority and capacity to meet their service needs</i></p>	<p><b>Workforce Management</b>  <i>*Agency managers unable or unwilling to direct, motivate or discipline employees</i>  <i>*Ignored "middle managers" with inadequate training and managerial skills</i>  <i>*Poor supervision of the work force and minimal performance evaluations</i>  <i>*No connection between workers performance on the job and rewards</i>  <i>*Inadequate training and career development programs for employees</i></p>
1973	<p><b>Board of Education of City of N.Y. v. Nyquist</b>  <i>A ruling on legal case Board of Education of City of N.Y. v. Nyquist</i></p>	<p><b>Merit/Exams</b>  <i>Reaffirms the city's commitment to evaluating employees' merit and fitness based on competitive examination rather than performance evaluations by superiors.</i></p>		
1975	<p><b>NY City Charter Reforms</b>  <i>New York City's reform program formally began in 1975 when the voters approved major revisions in the City Charter</i></p>	<p><b>Merit/Exams</b>  <i>Separated Civil Service Commission as an independent entity able to appeal actions of the Personnel Director and conduct reviews of the system</i></p>	<p><b>Governance</b>  <i>*Restructured rulemaking and policymaking, transferring them from Civil Service Commission to Personnel Director, who becomes responsible for establishing citywide standards, assisting agencies to comply, and auditing agencies.</i>  <i>*Assigned primary responsibility for recruitment, position definition, hiring, training, incentives and performance evaluation to operating agencies.</i></p>	<p><b>Workforce Management</b>  <i>Created a separate personnel system for managers' recruitment, assignment, development and reward, including improvement of work quality and effective leadership, under citywide Management Service Plan.</i></p>
<b>PHASE 6: Fine-Tuning the Civil Service System (1970s-2011)</b>				
1986	<p><b>Montero V. Lum</b>  <i>A ruling on legal case Montero V. Lum, 68 N.Y.2d 253</i></p>	<p><b>Merit/Exams</b>  <i>Reaffirmed the city's commitment to exams</i></p>		<p><b>Workforce Management</b>  <i>The ruling states that probationary periods commence upon passage of civil service exam, regardless of prior "temporary" employment.</i></p>

Year Event	Key Changes / <i>Recommendations (italics)</i>
<b>1989 Talent Bank Problems</b> Commission on Government Integrity uncovers patronage within the City's "Talent Bank"	<b>Workforce Management</b> Strict policies requiring wide notice of employment opportunities were implemented as a result, and the number of provisional employees drastically reduced
<b>1989 City Charter Revision</b> Instituted under Mayor Edward Koch (1978-1989), the 1989 Charter Revision responded to a Supreme Court ruling stating that the Board of Estimate violated the 'one man, one vote' principle	<b>Governance</b> *Dismantled the Board of Estimates, removing their power over land use, contracting, and budgeting and transferred these to City Council and Mayor. *Expanded the council from 35 to 51 members to give minorities an opportunity to be elected. *Created the Equal Employment Practices Commission and the Office of Labor Services, designed to help increase the numbers and quality of experience of minority and women public service employees.
<b>1996 NYC Department of Citywide Administrative Services</b> New York City's Department of Citywide Administrative Services (DCAS) was established by Mayor Giuliani	<b>Governance</b> DCAS is responsible for administering the Personnel Rules and Regulations of New York City. Among other things, the Department supports City agencies' workforce needs in recruiting, hiring and training City employees.
<b>2002 School System Centralized</b> New York City switches back to a centralized system. The state legislature gave the mayor full control of the schools.	<b>Governance</b> Created the Panel for Education Policy, replacing the former Board of Education.
<b>2007 City of Long Beach v Civil Service Employees Association, Inc.</b> The New York Court of Appeals found the City of Long Beach holding provisional employees up to 19 years.	<b>Job Classification</b> This resulted in a 9 month cap on provisional employment, which also applies to NYC. As a result, the City created the Provisional Reduction Analysis Team and a 5-Year Plan to reduce provisionals.



Year	Event	Key Changes / <i>Recommendations (italics)</i>				
2009-2011	<b>Proposals to State Civil Service Commission</b> Over this period, NYC sent five proposals to the SCSC, but did not receive responses.	<b>Workforce Management</b> These include aspects of the Five-Year Provisional Reduction Plan, which will move the City towards compliance with the 9-month cap on provisional employment.				
2010	<b>United States of America and Vulcan Society, Inc. v. City of New York</b> A federal judge issued a ruling that the New York Fire Department had indeed knowingly discriminated against minority applicants	<b>Merit/Exams</b> Exams were declared to have no connection to job skills. In 2011, the court ruled that it must oversee hiring decisions.				
2011	<b>Mayor's Task Force</b> Mayor Bloomberg's Workforce Reform Task Force releases report.	<i>Report covers all aspects of the Civil Service System, resulting in 23 recommendations (as yet unrealized) for major changes.</i>				
TODAY		<b>Merit/Exams</b> See App. I, Section 1	<b>Governance</b> See App. I, Section 1	<b>Job Classification</b> See App. I, Section 2	<b>Workforce Management</b> See App. I, Section 3	<b>Collective Bargaining</b> See App. I, Section 4

### **APPENDIX III: EDUCATION & EXPERIENCE EXAM**

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Example of the City of New York Division of Personnel Services Education and Experience Test Paper (EETP).



THE CITY OF NEW YORK  
DIVISION OF CITYWIDE PERSONNEL SERVICES  
DCAS Application Section  
1 Centre Street, 14<sup>th</sup> Floor New York, NY 10007

Your Social Security Number

\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

FOR DCAS USE ONLY

RATING \_\_\_\_\_

NQ CODE \_\_\_\_\_

SEL CERT \_\_\_\_\_

RATER(S) \_\_\_\_\_

\_\_\_\_\_

CME \_\_\_\_\_

\_\_\_\_\_

EDUCATION AND EXPERIENCE TEST PAPER (EETP)

Do Not Write Your Name Anywhere On This EETP.

Type or Print All Required Information In **Black Or Blue Ink.**

Exam Type: (check only one) ☐ Open Competitive ☐ Promotion

Exam Title: \_\_\_\_\_

Exam Number: \_\_\_\_\_

This test is based upon your education and experience. In order for you to obtain appropriate credit, it is necessary for you to complete this form accurately. **If you need more space, attach additional sheets, using the format specified here.** Be sure to include your social security number and the exam number on each attached sheet.

The information you enter on this form must be verifiable. If information is missing, illegible, unclear, or lacks necessary detail, you may be found "Not Qualified" or receive a lower score on the test. You may be disqualified if your statements are found to be false, exaggerated, or misleading.

Refer to the Notice of Examination (NOE) to find out which sections of this form you must fill out. If you are applying for Selective Certification, be sure to complete Section D on page 4 of this form.

DO NOT attach your resume. Resumes will not be rated.

SHADED  
COLUMNS  
ARE FOR  
DCAS  
USE ONLY



SECTION A - EDUCATION

Section A.1 - FOREIGN EDUCATION EVALUATION

In order for foreign education to be rated, it must be evaluated by an evaluation service approved by DCAS. Follow the instructions on the Foreign Education Fact Sheet, and refer to the Notice of Examination to see which kind of evaluation is required for this test. If you are claiming credit for foreign education, check one of the following:

For this examination,

\_\_\_\_\_ I am having an evaluation of my foreign education submitted directly to DCAS by an approved evaluation service.

\_\_\_\_\_ I wish to use an evaluation of my foreign education which was previously submitted directly to DCAS by an approved evaluation service.

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Section A.2 - HIGH SCHOOL OR HIGH SCHOOL EQUIVALENCY (GED)

CIRCLE THE HIGHEST GRADE OR YEAR OF HIGH SCHOOL (HS) COMPLETED:      8    9    10    11    12

Did you graduate HS? ☐ Yes \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month    Year                      ☐ No      Dates of Attendance: From \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month    Year                      To \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month    Year                      Month    Year

Name of High School: \_\_\_\_\_ ☐ USA ☐ Foreign

High School located in the State of: \_\_\_\_\_ Country of: \_\_\_\_\_

Do you have a GED? ☐ Yes \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month    Year                      ☐ No      Name of Agency issuing GED: \_\_\_\_\_

(If you attended other high schools, report this information for each additional school on a separate sheet of paper using the same format)

FOR DCAS  
USE ONLY

Section A.3 - TRADE SCHOOL OR VOCATIONAL HIGH SCHOOL

If you attended a trade/vocational school, please complete the following:

Did you graduate? ☐ Yes \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month    Year                      ☐ No      Dates of Attendance: From \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month    Year                      To \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month    Year                      Month    Year

Name of Trade/Vocational School: \_\_\_\_\_ ☐ USA ☐ Foreign

Trade/Vocational School located in the State of: \_\_\_\_\_ Country of: \_\_\_\_\_

Specialty \_\_\_\_\_ Number of hours you completed in specialty: \_\_\_\_\_

(If you attended other trade or vocational schools, report this information for each additional school on a separate sheet of paper using the same format)

FOR DCAS  
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**Section A.4 – UNDERGRADUATE EDUCATION**FOR DCAS  
USE ONLY

Name of Undergraduate College/University: \_\_\_\_\_ ☐ USA ☐ Foreign

Address: \_\_\_\_\_

State: \_\_\_\_\_ Country: \_\_\_\_\_

Major: \_\_\_\_\_ Credits are: (check only one) ☐ Semester/Trimester ☐ Quarter

Number of Credits You Have Completed in Major: \_\_\_\_\_ Total Number of Credits You Have Completed: \_\_\_\_\_

Do you have a Degree? ☐ Yes ☐ No Dates of Attendance: From \_\_\_\_/\_\_\_\_/\_\_\_\_ To \_\_\_\_/\_\_\_\_/\_\_\_\_  
Month Year Month Year

Date Degree Received: \_\_\_\_\_ Type of Degree: (check only one) ☐ Associate ☐ Baccalaureate

Exact Title of Degree: \_\_\_\_\_

(If you attended other undergraduate institutions and/or obtained more than one degree, report this information for each additional institution on a separate sheet of paper using the same format)

**Section A.5 – GRADUATE EDUCATION**FOR DCAS  
USE ONLY

Name of Graduate School/University: \_\_\_\_\_ ☐ USA ☐ Foreign

Address: \_\_\_\_\_

State: \_\_\_\_\_ Country: \_\_\_\_\_

Major: \_\_\_\_\_ Credits are: (check only one) ☐ Semester/Trimester ☐ Quarter

Number of Credits You Have Completed in Major: \_\_\_\_\_ Total Number of Credits You Have Completed: \_\_\_\_\_

Do you have a Graduate Degree? ☐ Yes ☐ No Dates of Attendance: From \_\_\_\_/\_\_\_\_/\_\_\_\_ To \_\_\_\_/\_\_\_\_/\_\_\_\_  
Month Year Month Year

Date Degree Received: \_\_\_\_\_ Type of Degree: (check only one) ☐ Masters ☐ Doctorate ☐ Other: \_\_\_\_\_  
(specify)

Exact Title of Degree: \_\_\_\_\_

(If you attended other graduate institutions and/or obtained more than one degree, report this information for each additional institution on a separate sheet of paper using the same format)

**Section A.6 – COURSES**FOR DCAS  
USE ONLY

Refer to the Notice of Examination to find out if this section applies to you. If it does, complete this section listing **ONLY** those courses you have **successfully** completed that are necessary to meet the requirements or qualify for extra credit as specified in the Notice of Examination. In the column headed "**Level**", print "**U**" for an undergraduate course, "**G**" for a graduate (post-baccalaureate) course, or "**T**" for a union training, trade, Vocational HS, or apprenticeship program. You must specify whether you are reporting time in hours or credits.

Name and Address of Institution/College/Trade School	Course No.	Exact Title of Course	Level (U/G/T)	# of Credits	# of Hours	Date Completed
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

(Use additional paper, filled out in the same format, if needed)

## SECTION B – EMPLOYMENT / WORK EXPERIENCE (PAID OR VOLUNTEER)

Refer to the Notice of Examination to see whether this section applies to you. If it does, describe your **THREE** most recent relevant jobs using the format below. **You may describe other relevant jobs by adding additional sheets in the same format.** Use a separate box for each job. Number any additional job BOX 4, 5, 6 ... etc. **IF YOU HAD A SUBSTANTIAL CHANGE OF DUTIES OR A RETURN TO WORK AFTER A BREAK IN SERVICE WITH THE SAME EMPLOYER, TREAT THESE AS SEPARATE JOBS.** List the percentage of time spent on each duty, task, or function. The total of these percents should equal 100 percent for each job reported.

Include relevant part-time and volunteer experience. Describe relevant armed forces experience. If you are or have been in business for yourself, enter "self employed" on the line labeled "Name and Address of Employer." **You should not reveal your name anywhere on this test paper.**

A maximum of one year of experience will be credited for each 12-month period. Part-time experience will be pro-rated.

You are not limited to the space provided in each box. You can report the information for each additional employment on a separate sheet of paper using the same format.

BOX 1

**Most Recent Employment:** From: \_\_\_\_/\_\_\_\_/\_\_\_\_ To: \_\_\_\_/\_\_\_\_/\_\_\_\_ **Total Time:** \_\_\_\_/\_\_\_\_/\_\_\_\_  
Month Year Month Year Year(s) Month(s)

FOR DCAS  
USE ONLY

Job Title: \_\_\_\_\_ Other name of your Job Title, if any: \_\_\_\_\_

No. of Hrs. Worked per Week \_\_\_\_\_ Starting Salary \$ \_\_\_\_\_ per \_\_\_\_\_ Last Salary \$ \_\_\_\_\_ per \_\_\_\_\_

If employed with New York City or State, was this appointment: (circle only one) Permanent / Provisional / Other \_\_\_\_\_  
(specify)

Name and Address of Employer: \_\_\_\_\_

Title of Immediate Supervisor \_\_\_\_\_ Nature of Employer's Business \_\_\_\_\_

If you directly supervised staff, enter title(s) and number of people: \_\_\_\_\_

If you indirectly supervised staff, enter title(s) and number of people: \_\_\_\_\_

Describe your duties/ tasks/ functions	% Time
<b>Total Time Spent Performing These Duties =</b>	<b>100%</b>

FOR DCAS  
USE ONLY

BOX 2

**Employment:** From: \_\_\_\_/\_\_\_\_/\_\_\_\_ To: \_\_\_\_/\_\_\_\_/\_\_\_\_ **Total Time:** \_\_\_\_/\_\_\_\_/\_\_\_\_  
Month Year Month Year Year(s) Month(s)

Job Title: \_\_\_\_\_ Other name of your Job Title, if any: \_\_\_\_\_

No. of Hrs. Worked per Week \_\_\_\_\_ Starting Salary \$ \_\_\_\_\_ per \_\_\_\_\_ Last Salary \$ \_\_\_\_\_ per \_\_\_\_\_

If employed with New York City or State, was this appointment: (circle only one) Permanent / Provisional / Other \_\_\_\_\_  
(specify)

Name and Address of Employer: \_\_\_\_\_

Title of Immediate Supervisor \_\_\_\_\_ Nature of Employer's Business \_\_\_\_\_

If you directly supervised staff, enter title(s) and number of people: \_\_\_\_\_

If you indirectly supervised staff, enter title(s) and number of people: \_\_\_\_\_

(Describe your duties/tasks/functions for BOX 2 on Page Four)

BOX 2 (Continued)		
<b>Describe your duties/ tasks/ functions</b>	<b>% Time</b>	FOR DCAS USE ONLY
<b>Total Time Spent Performing These Duties =</b>	<b>100%</b>	

BOX 3	<b>Employment:</b> From: ____/____/____ To: ____/____/____ <b>Total Time:</b> ____/____/____ Month Year Month Year Year(s) Month(s)	FOR DCAS USE ONLY
Job Title: _____ Other name of your Job Title, if any: _____		
No. of Hrs. Worked per Week _____ Starting Salary \$ _____ per _____ Last Salary \$ _____ per _____		
If employed with New York City or State, was this appointment: (circle <u>only</u> one) Permanent / Provisional / Other _____ (specify)		
Name and Address of Employer: _____		
Title of Immediate Supervisor _____ Nature of Employer's Business _____		
If you <u>directly</u> supervised staff, enter title(s) and number of people: _____		
If you <u>indirectly</u> supervised staff, enter title(s) and number of people: _____		
<b>Describe your duties/ tasks/ functions</b>	<b>% Time</b>	
<b>Total Time Spent Performing These Duties =</b>	<b>100%</b>	

SECTION C – LICENSES AND CERTIFICATES		FOR DCAS USE ONLY
Refer to the Notice of Examination to see if a license or certificate is required. If it is, and you possess this license or certificate, fill in the following information. You may describe additional licenses or certificates on a separate sheet of paper using the same format.		
Title of License or Certificate: _____		
Issued by: _____		
Date Issued: _____ License Number: _____ Expiration Date: _____ (When listing a driver license, be sure to indicate class and relevant endorsements and restrictions.)		

SECTION D – SELECTIVE CERTIFICATION(S)		FOR DCAS USE ONLY
If you want to apply for Selective Certification as described in the Notice of Examination, complete this section.		
I am requesting selective certification(s) for: _____ (If selective certification is for foreign language, specify the language(s) for which you are requesting selective certification.)		



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