



# Workforce Reform Task Force

Report and Recommendations

January 7, 2011

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## Introduction

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With over 300,000 employees, the City of New York is one of the world's largest employers, surpassing many major global corporations and other public sector entities. The City's workforce is remarkable not only for its magnitude but also because it is City government's most important asset. Every day City employees keep New Yorkers safe, provide health and social services, educate one million schoolchildren, maintain 6,000 miles of streets, collect 12,000 tons of garbage and recycling, and deliver countless other crucial services. Residents, workers and visitors rely on City government employees to keep our great City running.

The demands on our workforce are changing rapidly. Evolving technology, growing service needs and limited resources require new and enhanced job skills from City workers, as well as flexibility and adaptability in their deployment. As a result, how the City manages its workforce is more critical than ever.

Yet the City's ability to address these demands is constrained by a thicket of laws, rules and policies that govern how the City hires, manages and empowers its workforce. The most significant source of legal requirements is the New York State Civil Service Law, which was first enacted over 120 years ago, in the late 1800s. The civil service "merit and fitness" system prescribes in great detail how the City must recruit, promote, discipline and retain employees. The complexity of the State Civil Service Law also compels the City to promulgate extensive procedures for administering the civil service system. Another significant source of restrictions is the City's collective bargaining agreements with municipal unions, which over time have instituted a plethora of provisions on pay, job duties, dismissals and seniority.

These governing laws and rules have not kept pace with the demands of the modern working world. Restrictive job titles prevent employees from using new skills or adapting their positions to meet changing operational needs. Inflexible hiring rules require the City to offer most jobs and promotions solely through administering competitive exams, rather than basing these important decisions on a range of assessments, including a candidate's work experience and skills. Supervisors are unable to select their seconds-in-command and instead must hire based only on competitive exam results. Narrowly-interpreted statutes unduly restrict which employees qualify as "managers." Limited tools for performance management can punish good workers while rewarding poor performers.

There are very real costs to this outdated system. The current workforce system is difficult to navigate, frustrates our best current public servants, dissuades prospective applicants for public sector positions, decreases the responsiveness of City government to the needs of New Yorkers, and prevents the City from delivering the best services possible for each hard-earned taxpayer dollar. For example, without the authority to streamline and reclassify titles, the City must develop and administer exams at a cost of almost \$12 million a year. By State law, the City must spend another \$4 million a year to administer civil service on behalf of the New York City Transit Authority and the Triborough Bridge and Tunnel Authority—despite the fact that the two authorities prefer to administer their own civil service systems. In addition, recent rulings limiting the number of managers in City government are projected to increase overtime costs by another \$15 million over the next five years.

The late 19<sup>th</sup> century desire to root out cronyism led to the creation of civil service. While this remains valid and important, today the results have become suboptimal, as over time the principles that underlie the premise of this system have been codified into a needlessly complex and restrictive set of rules and restrictions.

Mayor Bloomberg organized the Workforce Reform Task Force to study this issue and develop recommendations that will give the City the flexibility to empower and manage its workforce while strengthening its talent, skills and diversity. The Task Force includes representatives from the Department of Citywide Administrative Services (DCAS), the Office of Labor Relations (OLR), and the Office of Management and Budget (OMB) who are expert in civil service and collective bargaining and their associated costs, as well as the Mayor's Office of Operations and agency managers from across City government who know firsthand how workforce regulations impact the City's ability to deliver important services. In addition, the Task Force consulted experts from the academic, private and public sectors for insights and best practices.

The Task Force members are:

- Martha Hirst, *Chair*, former Commissioner, Department of Citywide Administrative Services
- Alexis Offen, *Senior Policy Advisor*, Mayor's Office of Operations
- Douglas Apple, *First Deputy Commissioner*, the Department of Housing Preservation and Development
- Jean Brewer, *Associate Commissioner*, Office of Labor Relations
- Seth Diamond, *Commissioner*, Department of Homeless Services
- Kenneth Godiner, *Senior Assistant Director*, Office of Management and Budget
- James G. Hein, *Former Deputy Commissioner for Citywide Personnel Service*, Department of Citywide Administrative Services
- Joe Morrisroe, *Executive Director of NYC311*, Mayor's Office of Operations
- Mitchell Paluszek, *Deputy General Counsel*, Department of Citywide Administrative Services
- Daniel Shacknai, *First Deputy Commissioner*, Fire Department

Andrea Berger, Spencer Fisher and Georgia Pestana from the Law Department served as counsel. Jordan Chisolm, a NYC Urban Fellow, provided research assistance.

The Task Force has developed 23 recommendations focusing on three key themes: **Governance**, **Hiring Flexibility**, and **Organizational Excellence**.

The **Governance** section cites the unwieldy overregulation inherent in the relationship between the City and the State on civil service matters. The State Civil Service Commission has approval authority over many of the City's civil service actions but lacks the resources to respond to the City's significant workforce needs and reform proposals. As a result, the City is prevented from adapting to the modern realities of public service and merit and fitness. In addition, the State requirement that the City administer civil service on behalf of the New York City Transit Authority and the Triborough Bridge and Tunnel Authority no longer makes operational or fiscal sense.

The section on **Hiring Flexibility** examines how existing rules surrounding civil service titles and classifications, examinations and scoring mechanisms, and staffing needs have not kept pace with current demands and best practices for hiring and promoting employees. Reform is needed to give prospective and current employees a better opportunity to work and excel in City government and for agencies to have appropriate levels of discretion to create a dynamic, diverse and modern workforce.

**The Organizational Excellence section** describes important reforms that are needed to enable the City to manage, train and reward its employees. Significant changes are needed to strengthen government through managerial development, employee empowerment, and workforce management.

Some of the recommendations can be implemented by the City alone, while others will require the cooperation, approval, or new partnerships with the Governor, State Legislature, State Civil Service Commission, and multiple public employee unions. We look forward to working with the State and labor leaders in order to reach mutually beneficial outcomes that will benefit all New Yorkers, especially the City's hard-working employees.

## I. Governance

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New York City and other municipalities are authorized under State law to administer their respective civil service systems. While the scope of this authority may sound broad, the City's powers in this area are in fact quite limited. The State Civil Service Commission (SCSC), a three-commissioner body appointed by the Governor with offices in Albany, oversees the operations of all municipal civil service commissions, as well as city and county personnel officers throughout the State. New York City is required to obtain approval from the SCSC before promulgating or amending civil service rules.

SCSC oversight of the City's civil service system may have made sense decades ago, but it has become evident that it now prevents the City from adapting to modern realities of public service and merit and fitness. The Taskforce proposes to reform this problematic governance structure through two key recommendations.

First, the Task Force concludes that SCSC approval authority over City civil service operations is neither necessary nor appropriate, and that such authority has become counter-productive to the efficient administration of City government. The Task Force therefore recommends that the State Civil Service Law be amended to eliminate the SCSC's approval jurisdiction and other oversight of the City. Second, the Task Force has concluded that the City should no longer administer the civil service system for the New York City Transit Authority and the Triborough Bridge & Tunnel Authority, as this State law requirement does not make operational or fiscal sense for any of the involved parties.

### **Recommendation 1: Amend State Law to eliminate the State Civil Service Commission's oversight authority over the City**

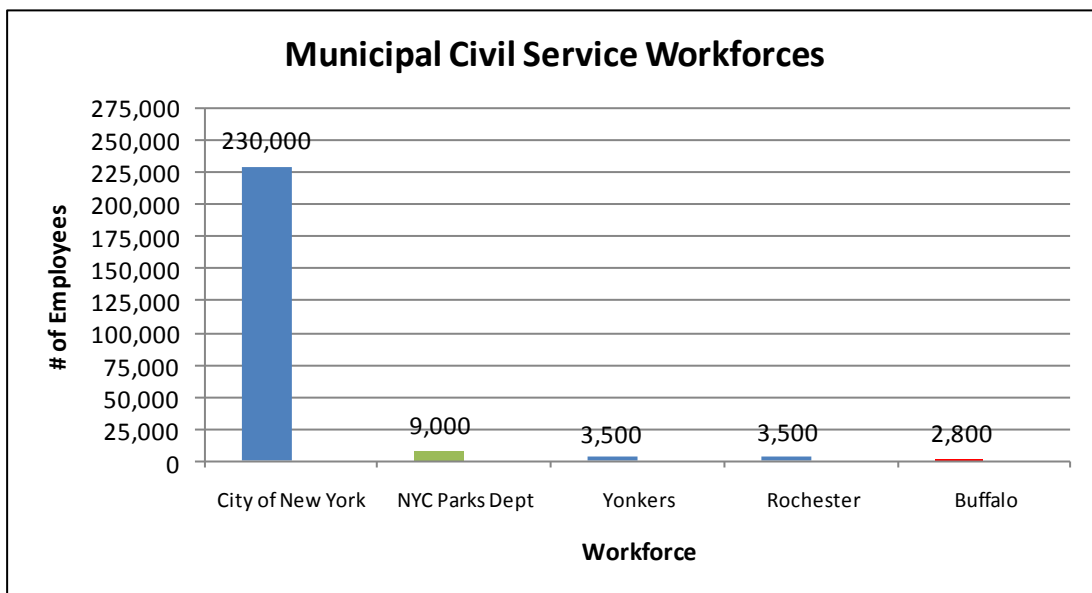
Under current law, the City must seek approval from the SCSC for classification actions and changes involving noncompetitive and exempt titles.<sup>1</sup> This authority creates significant barriers to the City's ability to effectively manage its workforce, as the overburdened SCSC has extreme difficulty in responding to the City's classification proposals in a timely fashion. Since June 2009, the City has sent five proposals to the SCSC to

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<sup>1</sup> The Civil Service Law establishes four jurisdictional classifications of titles: i) the competitive class; ii) the non-competitive class; iii) the exempt class; and iv) the labor class. Competitive class titles have minimum qualification requirements and hiring for these positions must be based on a competitive examination and a rank-ordered list. Non-competitive class titles have minimum qualification requirements, but agencies are entrusted to select from among qualified candidates without the use of a competitive examination. Exempt class titles do not have minimum qualification requirements and agencies are entrusted to select from among qualified candidates without the use of a competitive examination. Lastly, labor class titles are typically unskilled positions for which there are no qualifications that can be examined.

modernize and reform our civil service system. All five proposals have languished as the City awaits a response from the SCSC.<sup>2</sup>

Given the magnitude of the SCSC's duties, its limited resources, and the size of the City's civil service system, it is not surprising that the SCSC cannot provide the City with the timely and comprehensive oversight currently required under law. The City's civil service system is unique among the local jurisdictions of New York State in its size and breadth of issues, which pose special challenges for the SCSC. The City's civil service workforce includes upwards of 230,000 employees, a figure no other jurisdiction in the State comes close to approaching.<sup>3</sup> The workforce of the entire City of Buffalo is about 2,800 employees, less than one-third the size of the workforce of New York City's Department of Parks and Recreation. The cities of Rochester and Yonkers have roughly 3,500 and 2,500 employees, respectively. Even with its best efforts, the SCSC simply cannot provide the very specific oversight to the City of New York that the Civil Service Law currently requires.



<sup>2</sup> The City submitted a proposal to create three new strategy-related titles on February 12, 2009; the proposal was updated on June 16, 2010; the SCSC has not issued a response. The City submitted a proposal to reclassify 12 information technology titles on June 9, 2009; the SCSC has not issued a response. The City submitted a proposal to reclassify four temporary Citywide titles into the non-competitive class on July 14, 2009; the SCSC has not issued a response. The City submitted a proposal to reclassify 15 Police Department titles into the competitive or exempt classes, including NYPD's Chief of Staff and several Deputy Commissioner titles, on August 6, 2009; the SCSC has not issued a response. The City submitted a proposal to reclassify 27 Department of Environmental Protection titles into the non-competitive class, including Executive Chief of Staff and several Deputy Commissioners on May 13, 2010; the SCSC has not issued a response.

<sup>3</sup> DCAS is charged with administering the provisions of the New York State Civil Service Law for approximately 230,000 employees working in various capacities in City agencies and in several other public entities. The City's total workforce exceeds 300,000 employees, as the Department of Education's pedagogical staff and employees at the City University of New York, the Health and Hospitals Corporation, and the School Construction Authority are not within DCAS' jurisdiction.



The SCSC is charged with reviewing the civil service actions of 100 municipal civil service agencies, including 57 counties and over 35 cities, regions, towns and public entities. The SCSC simply cannot keep pace with both the City's demands and the demands of other jurisdictions. In recognition of the resources needed to fulfill these responsibilities, State law requires the City to pay the SCSC up to \$600,000 a year to review our proposals and initiatives. Nevertheless, the SCSC still takes years to respond to requests, if it responds at all.

Without the approval from the SCSC currently required by law, the City's efforts to streamline and modernize its system for hiring and managing employees have stalled. In addition, the City's requests for approval actions from the SCSC have grown even more critical in light of the 2007 Court of Appeals decision in the case City of Long Beach v. CSEA. The Long Beach decision emphasized that it is unlawful to retain provisional employees beyond nine months. The State passed a statute authorizing the City to develop, in conjunction with the SCSC, a Five-Year Provisional Reduction Plan. The Plan, developed by the City and approved by the SCSC, contains a number of elements that would help to streamline and modernize civil service. However, most of the elements must also be individually approved by the SCSC prior to implementation, including reforms like moving certain titles out of the competitive status and broadening some job titles. All five proposals the City has sent to the SCSC since June 2009 seek to effectuate these changes. While the City has responded to every request for information from the SCSC, not a single decision has been issued.

Most of the City's proposals require relatively little scrutiny. For example, the City seeks to make the New York City Police Department's (NYPD) Deputy Commissioner for Counterterrorism an exempt civil service title, which means the position may be filled without competitive examination. The Deputy Commissioner for Counterterrorism is responsible for the NYPD's large complement of detectives assigned to the Joint Terrorism Task Force and the Department's counterterrorism training and programs, including the Lower Manhattan and Midtown Manhattan Security Initiatives. As befitting such a position, the current and previous Deputy Commissioners for Counterterrorism have been selected from the top echelons of the nation's law enforcement, military, and intelligence communities. Given the weighty and unique responsibilities and security issues of this singular job, competitive examination is inappropriate for hiring into the position. The City submitted the proposal impacting this and several other NYPD positions over a year ago, but the SCSC has not responded. As a result, these confidential NYPD titles remain in the competitive class.

Other proposals submitted by the City include reclassifications of key information technology titles and confidential strategy positions. The lack of responsiveness and direction from the SCSC on these proposals leaves the City with no feedback or guidance to indicate which proposals are likely to be approved and which approaches to reclassifications the City can adopt going forward. Consequently, the titles that are the subject of these proposals, and the titles that had been intended for future reclassification, remain in the competitive class. If the City must develop and administer unnecessary exams, it will waste valuable resources needed for crucial exams in other titles.

The Task Force has concluded that the elimination of SCSC oversight would be in the best interest of the City and its workforce, and therefore recommends that the Civil Service Law be amended to eliminate SCSC approval authority over the City. For the City and its workforce, autonomy in managing its civil service system would allow us to implement much needed reforms to hiring practices, job titles, promotions, and performance standards. The change would relieve the SCSC of the overwhelming duties related to overseeing the City's Five-Year Provisional Reduction Plan and our many other routine but substantial submissions, freeing it to focus its

resources on the demands continuously presented by other municipalities across the State. This needed reform will enable our civil service system to reflect new technologies and realities of public service, while in no way diminishing the importance of merit and fitness.

**Recommendation 2: Empower the New York City Transit Authority and the Triborough Bridge & Tunnel Authority to administer their civil service systems**

Under State law, the City is required to administer civil service on behalf of the New York City Transit Authority (NYCT) and the Triborough Bridge & Tunnel Authority (TBTA). The Mayor's Office of Labor Relations (OLR) plays no role in negotiating their collective bargaining agreements, nor does the City administer their payrolls. Nevertheless, under current law, the City spends \$4 million annually developing and administering exams on behalf of the NYCT and the TBTA. With over 40,000 civil service employees combined, these two authorities are among the largest public employers in the State and are capable of and eager to administer their own civil service systems.

The Task Force recommends that the City, the NYCT and the TBTA jointly seek, and that the State enact, legislation allowing the City to be relieved of its civil service responsibilities for these authorities and for them to act as their own civil service commissions. The two authorities have expressed a keen interest in leaving the City's civil service jurisdiction and assuming civil service jurisdiction over their employees as this will give them greater operational control to set their own classification and examination priorities. For the City, this will enable us to focus our limited resources on the important universe of City civil service titles remaining in our jurisdiction.

There is precedent for this kind of split. In 1979, State legislation was enacted authorizing the City University of New York (CUNY) to leave the jurisdiction of the City's municipal civil service commission and to create its own municipal commission. The split has been successful for both CUNY and the City. In 1997, State legislation was enacted authorizing the Roswell Park Cancer Institute to create its own civil service board. Other entities with comparable autonomy include the New York City School Construction Authority and the New York City Health and Hospitals Corporation. Effectuating a similar split for the City and these two authorities would be in the best interest of all parties.

## II. Hiring Flexibility

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The New York State Constitution provides “appointments... in the civil service... shall be made according to merit and fitness.” The provision goes on to say that, where practicable, merit and fitness should be ascertained by competitive examination. This simple yet powerful principle—that all employees should be hired based on talent and not favoritism—has guided City government since the late 19<sup>th</sup> century.

While the State Constitution establishes a clear and important principle for hiring, its interpretation over time has led to myriad unnecessary and inflexible rules and restrictions on hiring. As a result, both prospective and current City employees are deprived of job and promotional opportunities, and agencies lose valuable workforce talent.

As noted in Chapter 1, under existing State civil service law, City job titles must be classified into one of four types. With respect to appointments to titles in three of those classifications – the exempt, non-competitive and labor classes – the Civil Service Law entrusts agency heads to evaluate applicants’ merit and fitness, allowing for broader recruitment of individuals with specialized qualifications. For appointments to titles in the fourth, and by far the largest classification – the competitive class – the City must evaluate the merit and fitness of candidates through competitive examination alone. Today, over 185,000 City employees serve in over 1,000 job titles for which competitive exams must be administered.

State law requires the City to rank candidates for competitive class title positions based on a single criterion—their exam results. Once the rank-ordered list is established, agencies must offer jobs in order of exam results; an agency seeking to fill a job opening may only interview the top three eligible candidates from the list and, if the agency wishes to fill the vacancy, must appoint one of those three candidates.

The Task Force recognizes that appointments and promotions must be based upon merit and fitness and respects the principle that merit and fitness should be ascertained by competitive examination to the extent practicable. Yet, over the years, this has come to mean that a candidate’s merit and fitness is evaluated, to a large degree, by how he or she performs on a competitive exam. Many valuable attributes, such as levels of professionalism, experience and maturity are not captured by such an exam.

For prospective employees, this process deprives them of a real opportunity to be considered for a position based on their full range of qualifications. For existing employees, the implications are even more troubling. Under today’s civil service rules for promotion into competitive class titles, it does not matter if an employee has excelled in his or her position; on-the-job performance is completely ignored if a candidate is not among the three highest scorers on an exam.

For agencies, this means they have very little discretion to select the best possible candidates for a position. Moreover, agency operational needs are not always timed to the life of a civil service list. A civil service list is generally established for a period of four years. As eligible candidates are appointed off the list in rank order using the one-in-three rule, the highest scorers are chosen first. Should an eligible candidate be chosen in the third or fourth year of the list, that eligible candidate will be chosen from the lower portion of the list, as all high-ranking eligible candidates would have already been considered or appointed. Moreover, some eligible candidates may no longer be available for hire as they may have accepted other jobs in the four years since they took the exam.

For residents and other taxpayers, this means that the City is providing and paying for an inefficient service, with serious practical and fiscal consequences. With over 1,000 competitive titles, the City must be prepared to regularly administer over 1,000 exams. Yet the average time required to conduct a job analysis, administer the traditional paper-and-pencil exam, and produce a rank-ordered list of eligible candidates is 16 months at an average cost of \$98,000 per exam. As a result of the time and expense involved in this process, the City is only able to administer 100 to 120 exams per year. At this rate, it would take almost ten years and over \$100 million to administer each required exam once.

This problem is further exacerbated by the fact that, for some job titles (such as information technology or 'IT' positions) the skills required change so quickly that by the time a competitive exam can be developed, administered, and a list established, the technology related to those examined skills is already outdated, and therefore so are the skills. This situation has been particularly problematic for the Department of Information Technology and Telecommunications (DoITT), which has almost 500 employees in competitive class IT titles and must design and implement major Citywide projects, including data consolidation and 911 system modernization. In other cases, developing exams for job titles held by very few employees, such as the Stenographer title, which includes a mere three employees citywide, wastes resources.

Finally, even assuming that the City could regularly administer all 1,000 exams, it would have to administer each of those exams much more frequently in order to keep up with agency needs. Because lists get old, necessary job skills change quickly, and administering exams and establishing lists can take months, it is especially challenging for agencies to staff special projects or new and immediate needs. This inefficient, time-consuming and expensive reality has encouraged agencies to contract out work to the private sector or hire provisional employees.

The City has already undertaken some key initiatives to address these matters. In addition to developing a series of civil service title reclassification proposals pursuant to the Five-Year Plan, they include the establishment of two computerized exam centers and increased use of alternative exam formats. While these are important steps, the City remains at a critical juncture and the need for reform has never been more acute.

All of the Task Force's recommendations seek to strengthen and revitalize the principle of merit and fitness—and the methods for evaluating merit and fitness—through much-needed change to our hiring practices. The recommendations for hiring flexibility focus on three key areas: 1) Job Titles and Classification; 2) Exams and Scoring; and 3) Staffing Needs.

### **Job Titles and Classifications**

#### **Recommendation 3: Move certain titles out of the competitive class, including all senior management and executive titles**

Currently, more than 1,000 competitive class titles require a civil service examination to fill those positions on a permanent, non-provisional basis. Yet, for many positions, hiring through a competitive examination is impracticable because the required skills are unique and difficult to give exams for, such as with the IT titles discussed above, the Office of Emergency Management's (OEM) emergency preparedness specialist title or the Police Department's (NYPD) three counterterrorism-related titles. In addition, other titles—such as 'occupational therapist' and 'public health nurse'—needlessly require competitive exams, even though these candidates have already passed State licensing exams that deem them qualified; repetitive government exams add little value.

The Task Force recommends that all competitive titles be reviewed and, where appropriate, be moved to the non-competitive or exempt class, including all senior management and executive titles. The civil service system already recognizes that top officials, such as agency heads, are appointed or replaced at the discretion of the Mayor. As such, titles like Commissioner are sensibly placed in the unclassified service. Nevertheless, discretion to hire top managers is extraordinarily limited. All senior-level positions should be non-competitive or exempt.

**Recommendation 4: Broadband and consolidate existing titles**

The Task Force recommends the City undertake expanded efforts to broaden the tasks that may be performed in a single title (broadbanding) and to consolidate one or more rungs on a current promotional ladder (consolidation).

Broadbanding titles is a process that “horizontally” combines two or more titles with comparable salary ranges that require similar knowledge, skills and abilities. Several years ago the City broadbanded six civil engineering specialty titles, including ‘Civil Engineer Building Construction’ and ‘Civil Engineer Highway Traffic’ into the single title of ‘Civil Engineer’, thereby eliminating the need to develop and administer six separate competitive examinations.

Consolidating titles, by contrast, “vertically” combines separately classified titles with increasing responsibilities into one classified title with several assignment levels within that one title. For example, earlier this year the City consolidated three separate Air Pollution Inspector titles into a single title with three assignment levels.

By combining titles either horizontally or vertically, both elements of this recommendation serve the purpose of reducing the unmanageable number of competitive examinations the City must administer. Moreover, reclassifying incumbents into consolidated titles, where an analysis supports such action, will allow managers to use their judgment when assigning employees within one title to assignment levels of increasing responsibility. Streamlining such titles through both broadbanding and consolidation broadens the skill-sets required for each title and eliminates the need to administer largely duplicative exams for substantially similar positions.

**Exams and Scoring**

**Recommendation 5: Increase the use of education and experience exams for competitive titles**

For the titles that remain competitive, the City should utilize additional examination methods and formats where appropriate. In particular, the City should expand the use of Education and Experience exams (E&E), particularly for positions in which evaluation of merit and fitness may be established through higher education degrees (such as a Masters or PhD) or a license or certificate (such as emergency medical technicians or architects). Last year, over 5,000 people took E&E exams for 25 titles. E&E exams rate applicants based on a defined set of criteria and may be administered more frequently through the City’s new Online Education and Experience (OLEE) portal. OLEE has been used for two certified IT titles where applicants were not only able to take the exam online, but also instantaneously receive their scores and file online appeals. This pilot program should be expanded to additional competitive titles recommended by agencies.

### **Recommendation 6: Adopt band-scoring methodology where possible**

Current civil service rules restrict agency hiring decisions to a choice of the three highest-scoring candidates pulled from a rank-ordered list. The Civil Service Law and City Personnel Rules, however, do not prohibit, and, in fact, envision the possibility of ties among candidates. As a result, the pool of individuals with the three highest scores (all of whom can be considered when making an appointment to a vacancy) can be quite large. Ties can be literal: If ten candidates all score 85%, they are obviously tied. However, exam-developers and statisticians also recognize that different raw scores clustered together in certain patterns can represent statistical ties. For example, in the latest examination for Principal Administrative Associate, a candidate who scored an 87.5 might have a list number that is almost 600 positions higher than the candidate who scored an 86.25, with only one additional question answered correctly. After a statistical analysis, it could very well turn out that two scores represent a statistical tie. These clusters of scores are termed “bands” or sometimes “zones” by examination experts and the process of identifying these clusters of statistical ties is termed “band-scoring”. On a competitive examination, all candidates who scored from 96 to 100 might constitute a single “band” and as a result they would be equally ranked on the civil service list. A similar band would be created for candidates scoring from 91 to 95 and so forth.

The appropriate use of this scoring method is already authorized by the Civil Service Law and City Personnel Rules. The SCSC also already uses band-scoring for some State titles. The Task Force recommends that, where psychometrically sound and consistent with the City’s rules, the City adopt band-scoring to ensure that candidates who have demonstrated equivalent merit and fitness in their raw examination scores are treated similarly, thereby maximizing the pools of qualified candidates and maximizing the opportunity for a match between job candidate and hiring agency.

### **Recommendation 7: Give credit for high performing provisional service on exams**

Although the City is reducing the number of provisional appointments under the Five-Year Plan, at times a provisional appointment must be made for a certain period of time, such as when a list is not immediately available. Today the City employs approximately 26,000 provisional appointees, many of whom are doing excellent work. Nevertheless, the City is not able to provide credit on civil service exams to high-performing provisional appointees, which means that agencies lose talented employees who have demonstrated a clear interest and ability to do work.

High-performing provisional appointees should be acknowledged for their on-the-job service. The Task Force recommends that State civil service law be changed to allow agencies to give top provisional appointees credit toward their rankings on civil service lists for excellent provisional service rendered lawfully.

### **Recommendation 8: Increase the appropriate use of selective certification in hiring**

Selective certification is used by agencies when filling positions that require special or enhanced skills, such as language abilities. It allows an agency to request the names of only those candidates on a list who have stated they have these enhanced skills. For example, the NYPD uses selective certification to hire officers with fluency in languages such as Creole, Pashtu and Farsi—an invaluable skill that helps keep communities with large numbers of non-English speakers safe. Other agencies use selective certification to hire motor vehicle operators with commercial drivers’ licenses. Increased use of selective certification would allow agencies to seek out specific skills

required for a vacant position. The Task Force recommends that, when developing civil service examinations, DCAS assess with agencies whether selective certifications might help agencies identify and select candidates possessing special skills.

**Recommendation 9: Eliminate Test Validation Boards and reform the process for challenging competitive civil service exams**

State law mandates that the City establish a Test Validation Board (TVB) for each civil service examination administered to review challenges by exam takers. Under the law, three members are appointed to each TVB - a City appointee, a union appointee, and a jointly-appointed City employee who works in the title being tested. This law is unusual in two respects. First, the law does not require that TVB members possess relevant examination expertise. This lack of expertise is problematic given 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. Second, whereas all other civil service jurisdictions, including the New York State government, may unilaterally develop their own procedures for reviewing challenges, the City alone is still required to create TVBs.

Another issue is the high cost associated with the current TVB process. The City could achieve substantial savings if DCAS were able to purchase licenses for exams created by exam development companies for comparable positions in other jurisdictions. However, exam companies have been unwilling to sell their exams to the City because the City, unlike other jurisdictions in the State, is required to publish answer keys. Publication could undermine the integrity of a company's exams. As a result, rather than modify an existing exam given in another jurisdiction, the City must continue to develop all of its own exams, a process which is duplicative and inefficient, and as noted above, takes 16 months and costs an average \$98,000 per exam.

The Task Force recommends that State law be changed to eliminate the requirements for TVBs and answer key publication. With guidance from exam experts, the City will develop a new review procedure for challenges by exam takers. This would place New York City in the same position as all other jurisdictions in the State while still ensuring that candidates have the opportunity to obtain appropriate review of the scoring of their answers.

**Staffing Needs**

**Recommendation 10: Streamline processes to enable employees to move across functions and use Rule 6.1.9 more effectively to transfer titles and employees between agencies**

Citywide Personnel Rule and Regulation 6.1.9 allows a permanent employee in the competitive class who meets all the requirements for another competitive title to be permanently transferred to that title, and thereby effectively move across functions. For example, an employee serving in the 'Fraud Investigator' title was able to move across functions to serve in the 'Management Auditor' title without additional examination, providing the agency and employee with the flexibility to address workforce needs.

Unfortunately, the flexibility provided by this rule appears to be underutilized by agency managers. In almost two years, fewer than 300 employees have changed titles under Rule 6.1.9—a very small number in relation to the size of the City's workforce. The Task Force recommends that DCAS work with City agencies to take full advantage of this rule and provide guidance and assistance where necessary.

**Recommendation 11: Extend the maximum period for temporary appointments to three years to address situations such as grant funding and time-sensitive special projects**

In discussions with agencies, the Task Force found agreement among senior managers from across the City that under certain circumstances greater flexibility is needed to hire a discrete number of staff, many of whom have scientific or technical expertise, to work on short-term initiatives. However, State law only allows for temporary appointments from one year to 18 months, depending on the job titles required. Due to the timing and limited duration of these projects, it would not be practicable to hire permanently for positions that will disappear at the conclusion of such projects, since developing and administering an exam takes over a year.

An example of this problem occurred at the Department of Health and Mental Hygiene (DOHMH). DOHMH recently received federal stimulus grants totaling over \$35 million for its Communities Putting Prevention to Work program for public health initiatives, including obesity and tobacco control. Existing rules for temporary appointments could not address the agency's hiring demands since employees were needed for the entire two-year grant period and current civil service law limits such temporary appointments to up to 18 months. As a result, DOHMH is paying almost \$3 million of the grant award to the Fund for Public Health in New York, a non-profit organization, to administer the grant—including the personnel function—on behalf of the agency. If the maximum period of temporary appointments were longer, this money could have been used to fund direct services to improve New Yorkers' health, rather than unnecessary administrative overhead.

If Recommendation #1 of this Report is enacted, then the City would have the ability to reasonably define positions outside the competitive class relating to grant and special project implementation for which competitive examination is impracticable. However, in the absence of such enactment, civil service law should be amended to extend the temporary appointment timeframe to allow appointments to be made to align with projects of up to three years, regardless of the existence of eligible civil service lists. The City would establish and implement safeguards to monitor and ensure that agencies make temporary appointments appropriately.



### III. Organizational Excellence

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For the City's over 300,000 employees to deliver programs and services to the public successfully, a first-rate operating organization is essential. How the City manages, trains, and rewards employees is critical to its success.

Professional, experienced and dedicated employees abound in City government. Yet to enhance the overall quality and effectiveness of our collective efforts, much reform is needed. This chapter provides the Task Force's recommendations for strengthening our government in three critical areas: 1) Managerial Development; 2) Employee Empowerment; and 3) Workforce Management. Together, these three areas touch on the fundamental issues regarding how the City can succeed as an organization and consistently deliver high quality services to millions of New Yorkers.

#### **Managerial Development**

New York City government's managers are charged with significant responsibility and oversight. Managers undertake myriad weighty tasks, from directing strategy, designing programs and services, establishing policy, overseeing operations, allocating budgets, and managing staff, to responding to an ever-changing set of public demands and emergencies. The City's success depends on our ability to give managers the authority and training necessary to run City government effectively and efficiently. The recommendations in this section seek to address the needs of managers while holding them accountable for organizational performance.

#### **Recommendation 12: Amend laws to establish a reasonable and appropriate definition of managers**

In order to maximize the successful relationship between managers and the staff they lead, managers' roles and responsibilities must be clearly and accurately defined. Under State Civil Service Law, City employees are considered managers if: (1) they formulate policy or assist directly in the preparations, negotiations or administration of collective bargaining agreements or personnel administration; or (2) they are "confidential" employees who assist and act in a confidential capacity to the managerial employees described in the first category. Although these definitions may seem broad, recent union challenges and excessively narrow interpretations of this law have blurred the line between managerial and non-managerial staff.

Over the last two years, municipal unions have challenged the managerial status of various civil service titles through representation proceedings at the Office of Collective Bargaining's Board of Certification (BOC). The BOC is a three-member body that determines appropriate bargaining units, certifies unions, and determines whether titles or employees are excluded from bargaining. Some recent BOC decisions have resulted in more than 1,500 employees from 40 agencies losing their status as managers, in part due to a statutory presumption that public employees are eligible for collective bargaining. The BOC has applied a narrow interpretation of State Civil Service Law, ignoring the reality of the actual work being performed. As a result, a surprising number of high-ranking leaders of City government are not considered managers. School principals, precinct commanders, many Assistant Commissioners, one-star uniformed chiefs, and some agencies' chiefs of staff have all been deemed non-managerial. At the Fire Department (FDNY), for example, deputy fire chiefs oversee approximately 1,000 employees, yet none of these chiefs are managers under State law. Out of approximately 62,000 uniformed

employees working at the Police, Fire, Correction and Sanitation Departments, only 90 uniformed employees, or 0.15% of the uniformed workforce, are classified as managers.

<b>Management Levels Among Uniformed Personnel</b>			
<b>Agency</b>	<b>Total Uniformed Head Count</b>	<b>Managerial Uniformed Head Count</b>	<b>Percentage of Uniformed Headcount</b>
Police	35,008	33	0.09%
Fire	10,964	26	0.24%
Correction	8,393	21	0.25%
Sanitation	7,041	10	0.14%
<b>Total</b>	<b>61,406</b>	<b>90</b>	<b>0.15%</b>

The operational impact of the current, narrow definition of "managerial" is significant. First, multiple conflicts of interest arise as employees who are actually managers are placed in the same bargaining units as the staff they supervise, discipline, and review for time and leave approval. Such conflicts are further compounded as employees who truly are managers continue to represent the City in high-level situations involving sensitive matters such as budget cuts, layoffs and performance standards; nevertheless, these individuals may be members of unions that could be impacted by their decisions. Second, since collective bargaining agreements generally require that union members be compensated for working any period of time beyond their established minimum hours, the City's overtime costs increase with the number of employees considered non-managers, particularly in instances where employees often work long hours due to the nature of their positions. As a result of certain BOC decisions this year, overtime costs are projected to increase by \$15,000,000 over the next five years.

The Task Force believes it is critical that the Taylor Law (Article 14 of the State Civil Service Law) be amended to refine the legal presumption that public employees are eligible for collective bargaining and to re-define the universe of employees who are deemed to be managerial. With such a redefinition, City managers would be appropriately designated; they would not be limited in their ability to assume supervisory roles and thus be held accountable for implementing public policy.

Federal law, for example, incorporates broader standards that appropriately classify and designate those employees who qualify as managers. The federal National Labor Relations Act defines "supervisor" more expansively than New York State law and factors in the concepts of individuals having authority to "hire, transfer, suspend, lay off .... promote ... assign, reward, or discipline other employees, or to adjust their grievances.... requir[ing] the use of independent judgment." In interpreting this statute, courts have crafted tests that have resulted in a far more reasonable assessment of who is and who is not "managerial".

The Task Force recommends that the State law be amended to define managers more consistently with definitions used in other laws.

**Recommendation 13: Enhance managers’ training and exposure to best practices**

Today’s managers face significant challenges as they balance a variety of agency needs and oversee important services. DCAS runs the successful Management Academy, which each year exposes 25 new and emerging leaders to best practices and the processes that drive City government. The Task Force recommends

that the City expand this program and develop new means of communicating with managers to give them the tools they need to lead. This could 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. This would provide City managers with a much-needed forum to exchange ideas and to build upon the successes of their own programs and agencies.

**Recommendation 14: Implement a “Best Places to Work” program to measure employee satisfaction and encourage managerial accountability**

Employee satisfaction is a key driver of organizational performance and attracting and retaining a talented workforce. Yet, the City has not systematically assessed agencies on how well they empower employees or create a culture of excellence. The Task Force recommends that the City embrace a new measurement standard for employee satisfaction by adopting a program similar to the “Best Places to Work in Federal Government” rankings. Under that program, the non-profit Partnership for Public Service and American University’s Institute for the Study of Public Policy Implementation analyze survey responses from federal employees to rank agencies on overall employee satisfaction. In addition to the satisfaction rankings, agencies are scored in ten workplace categories, including effective leadership, employee skills/mission match, pay, and work/life balance.

The results of such surveys have important implications for federal agencies and their leadership. Under the federal program, rankings have been used to create incentives for agencies to focus on workforce issues and provide leaders with a way to measure and improve employee engagement. Data from the surveys can also provide early warning signs for agencies in need of strengthening employee satisfaction and encourage improvement in agency leaders’ management skills.

The Task Force recommends that the City develop and distribute a comparable survey to all employees. Survey results and agency rankings should be promoted and broadly disseminated to foster healthy competition and encourage the City’s leadership to prioritize employee satisfaction.

**Employee Empowerment**

Recognizing and rewarding merit has always been the fundamental goal of the civil service system. However, what constitutes merit and how to reward it have evolved since the system was first implemented more than 100 years ago. The Task Force believes that an employee’s merit is not static, and not captured only through civil service examination or seniority. To the contrary, an employee’s merit is dynamic; it can rise and fall over time, and is successfully measured largely through on-the-job performance.

The Task Force finds that the City has been unable to consistently measure and reward excellent on-the-job performance. Some public sector jurisdictions and private sector employers recognize, encourage and empower high-performing employees through robust performance evaluations and reward programs.

One successful federal government program operates at the Naval Air Warfare Center Weapons Division at China Lake, California. The goal of this program, initiated as a demonstration project in 1980, was to help recruit and retain civil personnel, many of whom are highly skilled engineers, physicists and other scientists, and administrators, for significant research.

Intended as a five-year pilot, the project became a permanent civilian management program in 1994, and continues to thrive today. Outcomes include a simplified position classification system that allows more job mobility and greater retention of high performers, in part through a performance-pay link, flexible performance plans focused on actual work output, and employees who have more input into performance plans and increased feedback from supervisors. According to Naval Air Warfare Center personnel with whom the Task Force consulted, the critical elements in the ongoing success of this performance-based program are the commitment of individual managers and supervisors to identify specific work unit and employee performance measures, and collaborating with employees in the performance appraisal process on a regular and consistent basis.

The City has lagged in embracing these best practices, and in some instances is prevented from doing so under current law and collective bargaining agreements. The recommendations in this section seek to honor the original goals of civil service by empowering City employees to be their best and ensure that those who are high performers get the acknowledgment and opportunity they deserve.

**Recommendation 15: Redesign the City’s performance evaluations to identify and reward high performance at the individual and work unit level**

Under existing City personnel rules and collective bargaining agreements, most non-uniformed permanent employees are supposed to be formally evaluated once a year using documented tasks and standards related to their civil service titles and responsibilities. Employees can score in individual categories generally ranging from “Outstanding” to “Unsatisfactory,” or in instances where an employee has been performing a task for fewer than three months, “Unratable.”

Agencies indicated to the Task Force that their current evaluation systems are not satisfying the needs of their employees or organizations. The agencies cited several reasons for this failure. First, some agencies lack the expertise to develop appropriate metrics to evaluate high performance. Second, very few agencies have implemented evaluations at the unit level, which would offer a strong indicator of organizational success. Third, agencies would like to develop 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 often cannot do so due to laws or rules. Finally, many agencies would like to conduct more frequent and less formal evaluations but find the administrative aspects of executing and collecting these evaluations cumbersome.

Nevertheless, some City agencies have made major strides toward effectively measuring performance. For example, the Human Resources Administration (HRA) successfully implemented evaluations at both the employee and unit levels through JobStat, a system that uses 35 indicators to measure performance of front-line employees and managers working at local Job Centers. Fifty percent of each employee’s evaluation is based on statistical performance within the indicators, and the other fifty percent is based on qualitative judgments by supervisors. Managers who oversee each Job Center are evaluated based on historical performance and results are compared by region and citywide. Since the evaluation program began, HRA has seen performance rise across almost all indicators, resulting in reduced wait times, reduced error rates, increased customer employment and program completion.

Similarly, as a result of new State legislation for which the City advocated, the Department of Education (DOE) is creating a new annual performance evaluation for teachers in which forty percent of a teacher’s evaluation will be based on student performance. The remaining sixty percent will be based on principals’ and

assistant principals' classroom observations pursuant to a set of rubrics negotiated by DOE and the United Federation of Teachers.

While HRA and DOE have been progressing with their initiatives, other agencies are seeking guidance to develop comparable programs that address their unique missions and organizational needs. The Task Force recommends that the Mayor's Office of Operations and DCAS work with City agencies to develop a new set of guidelines and standards for agencies to measure performance at the employee and unit level. This effort should begin with piloting templates and standards within a set of agencies with diverse missions. After the pilot results have been evaluated, every City agency would be required to adopt approaches consistent with the findings.

How to effectively use the results to encourage and reward high performance is a real challenge. Non-monetary rewards, such as specialized training, challenging assignments, award ceremonies and public announcements are currently permissible and should be utilized more extensively. Some efforts are already under way in this area, including the annual Customer Service Week Award and Recognition Ceremony, which recognizes individuals nominated by their agencies for excellence in customer service.

Under existing law, certain rewards for high performance are deemed "monetary"—including promotional opportunities, one-time bonuses, and choices in shift assignments. Monetary rewards must be collectively bargained as a term and condition of employment. The Task Force recommends that OLR and the Mayor's Office of Operations work with agencies and the municipal unions to develop criteria and procedures for determining eligibility for certain monetary rewards. In conjunction with the pilots described above, the City should target some of the pilots for different kinds of rewards, both monetary and non-monetary, to assess which are most effective for employee and unit success.

Finally, collecting and analyzing data around performance evaluations can be burdensome for many agencies, especially as the Task Force recommends more frequent, informal evaluations in addition to the annual review. As such, the Task Force recommends that the City's future Human Resources Shared Services Center, which is in development since being announced in July 2010, include within its administrative support functions the deployment, collection and data analysis of performance evaluations. Each agency should determine how to evaluate and use its performance evaluation system, but the Shared Service Center can and should offer considerable administrative support.

**Recommendation 16: Extend and reform employee probationary periods consistent with revised performance evaluation programs**

Civil service appointees generally have probationary employment status for one year. City rules require agencies to conduct performance evaluations of probationary employees every three months. Each evaluation must contain a recommendation that the probationary employee either be retained for an additional three-month period or terminated.

The Task Force recommends that the City extend the probationary period whenever a DCAS review and assessment determines that a longer, more actively-managed period would benefit employees and agencies. Both parties would have greater opportunities to evaluate shared expectations and performance standards, and such a change would ensure that the employment arrangement is beneficial to both parties. The Police and Sanitation Departments already have probationary periods that exceed one year to allow more time for employee training

and evaluation; the Task Force recommends that this approach be utilized by more agencies to the extent practicable and deemed necessary.

### **Workforce Management**

Just as the City must develop new ways to recognize, encourage and empower high-performing employees, the City must also address the problems associated with low performers. Certain laws and union contracts are out of sync with these important workforce reform objectives. A protracted, inflexible disciplinary system and rigid seniority rules fail to protect our best employees and the best interests of the public.

The Task Force's recommendations in this section focus on how to reform disciplinary procedures and downsizing policies consistent with high performance standards.

#### **a. Discipline**

Every organization has problematic employees. However, unlike most employers, the City is especially constrained in its ability to address this issue because of existing civil service law and long-standing provisions of collective bargaining agreements. As a result, managers lack some important tools they need to run their agencies most effectively, and performance and morale decline.

#### **Recommendation 17: Establish less burdensome processes for disciplining civilian employees**

The vast majority of City workers adhere to very high performance standards, the results of which are evident in the excellent services they provide every day. Yet the City's commitment to a workplace culture that values and rewards a high level of performance is threatened when those who have engaged in misconduct, including egregious acts resulting in criminal charges, are allowed to quickly return to the workplace or do not face appropriate consequences for their transgressions.

New York State Civil Service Law limits the period an employee may be suspended without pay prior to a hearing to thirty days. However, given the steps imposed by law on the disciplinary process, it is virtually impossible to complete a disciplinary hearing and obtain a decision from a hearing officer before the expiration of the thirty day period. As a result, employees who have engaged in misconduct, which the employer believes warrants immediate removal from the workplace and termination, must be allowed to return to work while awaiting hearing and decision. Often the employer struggles to find work that the employee can do that will not jeopardize operations or cause disruption to the work environment. Providing employers with the ability to suspend employees who have engaged in serious misconduct until decisions in their disciplinary cases have been rendered addresses this problem.

In addition, the penalties, short of termination, that may be imposed on civilian employees under the civil service law are outdated, discourage employers from taking necessary and appropriate action and demoralize hard-working employees, who see certain colleagues underperform without consequence. The current penalties start with a reprimand, followed by a \$100 fine, suspensions of up to two months, demotion, and eventually termination. The requirement that employers serve employees with formal charges and proceed through an evidentiary hearing simply to issue a reprimand to an employee denies managers the flexibility and opportunity to react in an appropriate manner to misconduct or performance issues that may not warrant suspension, demotion or termination.

The Task Force recommends that the appropriate laws be amended to provide managers with the tools to keep employees with the most serious disciplinary charges out of the workplace and to offer an appropriate range of flexible sanctions that may be imposed both without a hearing and after a hearing.

**Recommendation 18: Partner with unions to increase the efficiency of the arbitration process**

Pursuant to collective bargaining agreements, permanent civil service employees who have been charged with misconduct or poor performance by their agency may, in general, choose to contest the imposition of penalties either through binding arbitration or a hearing at the Office of Administrative Trials and Hearings. Several agencies reported to the Task Force that they experience delays in scheduling arbitration sessions, which require the attendance of the agency representative, the employee, an attorney from OLR, a union representative or lawyer, the arbitrator, and any witnesses. Since January 1, 2009, employees in disciplinary cases filed 222 requests for arbitration; approximately 65% of those cases remain unresolved to date. While a variety of factors contribute to the delays in resolving these disciplinary matters, the availability of arbitrators and other scheduling issues play a significant role. By law and by rule, the City and the union express their preferences in a process that generally results in the selection of a mutually agreed upon arbitrator by the Office of Collective Bargaining. The number of arbitrators that are selected as a result of this process is small. In addition, most arbitrators also handle disputes for non-City entities, thus further crowding their calendars. As a result, arbitrators often schedule several days of hearings for a matter in one month and if the hearing is not completed within that time, schedule another set of hearings for several months later.

Delays in arbitrations can have significant operational impacts to agencies, in addition to the disruption caused in the lives of impacted employees. First, as cases await resolution, memories fade and witnesses may have left City service or moved out of the City. Second, if an employee is terminated, the City accrues back pay liability if the agency's decision is reversed. Third, if the arbitrator orders reinstatement, the agency must find a position for the employee even if she or he has been replaced in the interim. Neither employees nor the City are well-served by delays.

The Task Force recommends that, rather than selecting arbitrators and scheduling hearings on an incremental or ad hoc basis, the City and unions create a standing panel of arbitrators to handle misconduct and competency cases. OLR and unions would agree upon a set list of arbitrators and pre-select hearing dates months in advance. The agencies and unions would agree that they will not veto whatever arbitrator has been selected to serve on specific cases, and arbitrators must hear the case on their calendar unless there is a true conflict.

In addition, the Task Force recommends that the City implement an electronic case management system that will allow the City to measure timeframes from the request of arbitration through the final decision. This system and the data it will collect may further highlight ways the City can improve its process for quickly resolving disputes between agencies and their employees.

**Recommendation 19: Establish an appropriate standard of review for arbitrators' discipline decisions**

Arbitrators in City disciplinary disputes currently apply a standard within labor law known as progressive discipline, which requires the employer to provide employees with notice that their conduct is inappropriate or violates employer standards, first through verbal warning, then by written notice and finally through formal charges. Under progressive discipline, employees are generally not penalized with termination unless they have

committed acts of violence or engaged in other serious illegal activity while at work or have a significant history of disciplinary infractions for which they already received progressively harsher punishment. However, the standards for tailoring discipline to the infraction are too abstract; individual arbitrators too often conduct what is in effect a “de novo” review of the agency’s action, substituting their own judgments for those of agency managers. As a result, whether or not an arbitrator will uphold an agency’s decision is highly unpredictable. This represents a significant disincentive to managers to impose discipline at all.

Unreasonably high standards of review make it even less likely that a manager’s decision will be upheld once a termination case winds its way through the system. For example, arbitrators have refused to terminate employees who have clearly committed acts of gross misconduct. Individuals who have misappropriated City funds, gone absent without leave for months on end, or made inappropriate sexual comments to students have all kept their jobs as a result of arbitrators’ misguided decisions. The standard for arbitrators should be more reasonably set so that an arbitrator must sustain an agency head’s disciplinary decision except in rare circumstances of truly excessive discipline.

The Task Force recommends mandating, by law or through collective bargaining, a standard of review by which an agency’s determination will be upheld unless the decision is shown to have been made in bad faith, is arbitrary and capricious, or is contrary to law.

**b. Downsizing**

Downsizing is an unfortunate reality for many organizations in difficult economic times, and City government is no exception. Budget cuts and reorganizations have compelled some agencies to lay off employees. However, existing civil service law and collective bargaining agreements have prevented the City from adopting a more strategic and sensible approach to downsizing that would keep the highest performing employees in place to the extent possible and allow agencies to best carry out their missions.

**Recommendation 20: Change State law to authorize the Department of Education to retain the most effective teachers during downsizing**

Under current state law, teacher layoffs, like layoffs involving other types of permanent civil service employees, must be made in order of reverse seniority, regardless of their performance. “Last in, first out” is a quality-blind approach that can force principals to lay off excellent teachers while retaining others who are less effective. If teacher layoffs were to become necessary, the current laws would do the greatest harm to low income and high-needs schools, which often have a higher concentration of more junior teachers. Under “last in, first out”, any layoff would trigger a chain reaction in schools across the City as teachers whose jobs are eliminated can “bump” less senior teachers at other schools and take their jobs.

The Task Force recommends that existing laws be changed to address teacher layoffs by using criteria that include, but are not limited to, consideration of on-the-job performance, unique professional skills, and contributions to the school community.



**Recommendation 21: Enable agencies to organize groups of personnel to avoid significant operational disruptions during downsizing**

As noted above, currently all permanent civil service employees must be laid off in reverse seniority order. Seniority is determined by comparing the lengths of tenure of employees holding the same or similar positions within an entire agency. For example, if a permanently-appointed administrative staff analyst in an agency's human resources department has ten years of experience, and another permanently appointed administrative staff analyst in the agency's collections department has seven years of experience, during a layoff the analyst with more seniority can "bump" the less senior analyst, regardless of whether they are doing very different work or have different skill sets. In instances where the City has provisional employees in a title, a permanent employee in the same title can "bump" a provisional employee working anywhere in City government, creating further ripples across multiple agencies.

This practice can have far-ranging impact. The Department of Housing Preservation and Development (HPD) recently needed to downsize one division as the agency restructured services to meet changing service demands. The elimination of positions in that division resulted in significant "bumping," with the unintended consequence of staff being laid off across the agency. Obsolete rules that limited the agency's flexibility resulted in layoffs in HPD's Budget, Code Enforcement, Development, and Asset Management divisions, areas of the agency that were not targeted for downsizing. Excellent employees with unique skills were laid off solely because they lacked seniority. In addition, approximately 25 HPD employees had to undergo internal redeployment and re-training at considerable time and cost with ensuing productivity losses.

A solution to this problem would be to enable agencies to subdivide groups of personnel based on the nature and type of work being performed. This approach would allow an agency to downsize based on seniority in a specific business area rather than across the entire agency. In the case of HPD, this reform would have allowed the agency to downsize within the Property Disposition Division without the ensuing agency-wide disruption and inherent inefficiencies associated with bumping, redeployment and retraining.

The City can utilize this tool for employees in the non-competitive and labor class without SCSC approval; however, for competitive titles, SCSC approval is required.

The Taskforce recommends that each agency begin working with DCAS immediately to utilize this tool for non-competitive and labor class employees where downsizing becomes necessary. If Recommendation #1 is enacted, then the City would likely have the flexibility to enable this policy within each agency for competitive employees, as well. However, in the absence of such enactment the City should submit such a proposal to the SCSC. This will allow the City to be more strategic when forced to downsize, and allow New Yorkers to continue to receive important government services.

**Recommendation 22: Establish a selective certification-type process for use in downsizing to retain employees with specialized skills**

As described in Recommendation #8, selective certification is an important tool already used by City agencies in the hiring process to give preference in appointments and promotions to candidates who possess specialized skills. There is, however, no selective certification analogue in the layoff process. The Task Force recommends that current law be amended to permit a selective certification-type process for use in layoffs. If a

process similar to selective certification were permitted in layoffs, then agencies forced to conduct layoffs within a unit would be able to retain an employee with specialized skills regardless of his or her relative seniority. This change will help ensure that agencies undergoing difficult downsizing transitions can maintain critical operations and better serve New Yorkers.

**Recommendation 23: Shorten the duration of preferred and recall lists to no longer than two years**

Once permanent employees have been laid off from an agency, existing laws, or in some cases collective bargaining agreements or civil service rules, mandate that the City give them special consideration for future hiring opportunities regardless of the changing needs of the agency. Permanent civil service employees in competitive titles who are laid off are placed on a “preferred list” which gives them the right to return to their own agency or any other agency if openings in their title occur within four years from the date of their termination. Employees in non-competitive and labor titles who are laid off are placed on a “recall list” which gives them the right to return only to their own agency if an opening in their title occurs within four years from the date of their termination.

The Task Force recommends shortening the duration of these lists to no longer than two years and in all cases, limiting the employee’s right to return only to the agency from which the employee was laid off. The workplace is constantly evolving as new technologies are developed, and former employees may no longer possess the right skills after a considerable break in service.

## Conclusion

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The challenges of providing local government services to over 8 million New Yorkers are enormous. They require dynamic leadership, a talented, skilled and diverse workforce, and well-crafted, creative public service strategies and programs. The management and operational processes within City government—and in particular how its resources are expended—are, and must be, continuously measured, evaluated and redesigned to ensure their support maximizes the efficiency and cost-effectiveness of the services being delivered.

That City government's most valuable resource is its workforce is undeniable. In examining ways to strengthen this most important asset, the Task Force has identified 23 concrete, achievable measures for transformative reform. Taken together, implementation of the 23 recommendations will streamline governance of the civil service system and strengthen personnel management, while at the same time upholding the standards of merit and fitness. They will remove redundant layers of government review while enhancing transparency. The recommendations calling for greater flexibility to hire and promote employees will modernize an outdated system, saving time and money without diminishing standards or opportunities.

With respect to organizational excellence, these recommendations have tremendous potential to improve day-to-day government operations. Managers will have access to more comprehensive training in the use of new and existing tools and to best practices for achieving and exceeding the performance objectives of their programs. Other employees, too, will be empowered with streamlined hiring and promotion practices, and greater guidance including a robust performance evaluation program to help them excel at their jobs and achieve success in their government careers.

Adoption of these much-needed reforms at this critical juncture will help the City achieve its full potential as a first-rate 21st century local government. Most importantly, it will strengthen the City's ability to more efficiently and cost-effectively deliver the excellent services residents, visitors and taxpayers need, pay for, and deserve.