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PUBLIC HEARING

before

SENATE STATE GOVERNMENT, FEDERAL AND INTERSTATE  
RELATIONS AND VETERANS' AFFAIRS COMMITTEE

To examine various issues concerning the implementation of the  
"Civil Service Act" and to review the progress of civil service reform

October 27, 1988  
Room 410  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Wynona M. Lipman, Chairwoman  
Senator Gerald R. Stockman, Vice Chairman

ALSO PRESENT:

Joseph P. Capalbo  
Office of Legislative Services  
Aide, Senate State Government,  
Federal and Interstate Relations  
and Veterans' Affairs Committee

\* \* \* \* \*

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**New Jersey State Legislature**  
**SENATE STATE GOVERNMENT, FEDERAL**  
**AND INTERSTATE RELATIONS AND**  
**VETERANS' AFFAIRS COMMITTEE**  
STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625  
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CHAIRMAN  
**GERALD R. STOCKMAN**  
VICE-CHAIRMAN  
**CATHERINE A. COSTA**  
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**C. WILLIAM HAINES**

**M E M O R A N D U M**

October 7, 1988

**TO: MEMBERS OF THE SENATE STATE GOVERNMENT COMMITTEE**  
**FROM: SENATOR WYNONA M. LIPMAN, CHAIRMAN**  
**SUBJECT: CIVIL SERVICE OVERSIGHT PUBLIC HEARING**

The Senate State Government Committee will hold a public hearing on Thursday, October 27, 1988, to examine various issues concerning the implementation of the "Civil Service Act" and to review the progress of civil service reform. The hearing will take place in Room 410 of the State House Annex and is scheduled to start at 10:00 a.m.

Anyone wishing to testify should contact Joseph P. Capalbo, Aide to the Committee, at (609) 292-9106.



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SENATOR WYNONA M. LIPMAN (Chairwoman): The purpose of this hearing is to discuss the implementation of the Civil Service Reform Act, and to question representatives from the Department of Personnel on its implementation, as well as various issues of concern related to it. We are going to discuss, Mr. McCaffrey, the following issues: Title consolidation; layoffs; elimination of provisionals; the Senior Executive Service; disciplinary action and appeals; pay equity; elimination of special services titles; tenure status of teachers and instructors in State institutions; and human resource development. Those are the subjects we will be discussing today. If you don't mind, we will begin with title consolidation, but Jim has a statement to make first. Senator Stockman is a little delayed in court, but he will arrive. He will be here shortly. Jim?

MR. CARROLL: (Senate Minority Staff) On behalf of Senator Cardinale, I convey his regrets that he is not here. He realizes that this is an important issue. He got caught up in a conflict, but he will try to be here later on today, if the hearing extends itself.

SENATOR LIPMAN: All right. Well then, shall we begin?  
C O M M . E U G E N E J . M c C A F F R E Y , S R . : Yes, Senator. I do not have a formal opening statement, but I have brought along the people whom I think you are interested in hearing from, who have been supervising the subjects that you have just enumerated in the implementation process. With me today are: Dr. Charles A. Nanry, who is the Director of the Senior Executive Service; Bob Hartman, Deputy Commissioner; Peter Calderone, whom you know, our Assistant Commissioner; Kerry Perretta, Chief of Staff; Kathy King, CWA (laughter)--

SENATOR LIPMAN: Oh, boy.

COMMISSIONER McCAFFREY: And at this time I would like to bring Judy Winkler forward, who will help you and me discuss title consolidation, with your permission.

SENATOR LIPMAN: All right; okay.

COMMISSIONER McCAFFREY: Judy, go ahead. Just tell them where we are, if you will.

J U D Y L. W I N K L E R: Where we stand right now with title consolidation is-- We started out with roughly a little over 12,000 titles. We are currently down to a little under 9000 titles. That's State, county, and municipal titles combined. How we are going about the title consolidation from here, what we have been involved in-- You may have heard about our questionnaires, where we have been surveying the employees, finding out exactly, you know, what they do, how they do it, what knowledge, skills, and abilities they need to do it. These questionnaires are directed to the employees and to their supervisors, to gather the information which we will be putting together, reviewing an automated format, and coming up with revised titles from that.

This is a massive project. We are surveying roughly 90,000 people. Of the 37 different occupational groups, we have completed 10. We have just finished up on the direct care group, which is one of the largest groups. Where we are heading from here is to the administrative and managerial group, around the first of the year; and the administrative and clerical shortly thereafter, around February. We should start seeing results from the questionnaires -- from the surveys -- somewhere in the first quarter of this coming year.

It is massive amounts of data we are looking to, to provide the underpinning for the system for the future.

SENATOR LIPMAN: You said you started with 11,000?

MS. WINKLER: A little over 12,000.

SENATOR LIPMAN: And you are now down to nine?

MS. WINKLER: Yes.

SENATOR LIPMAN: Nine thousand?

MS. WINKLER: Yes.

SENATOR LIPMAN: Okay. Can you, just for the record-- I think you sort of gave it in a general way, but what method was selected to assess these titles?

MS. WINKLER: Of the ones that have been eliminated, most of them were titles that did not have people in them; were titles that employers had determined they did not have a use for; or with our Department and the appointing authorities meeting, had determined could be consolidated into a smaller number of titles. The majority of the titles that were eliminated were the high titles. They were not clerical titles or direct care titles. They were, you know, your supervisors', your chiefs', your directors' titles. Your higher ones were eliminated.

That gave us the broad brush, you know. Now we are going very deliberately through all of the other titles looking very carefully at: What do people do? How do they do it? What knowledge, skills, or abilities do they need to do it? And we are comparing them.

SENATOR LIPMAN: So, you are soliciting employee participation in this step?

MS. WINKLER: Absolutely. Yes, we are. We are surveying 30% of the employees in every single title -- okay? -- plus their supervisors, which means that we are surveying almost 90,000 people regarding their jobs. We feel very strongly--

SENATOR LIPMAN: From the looks of this survey, you must have a massive staff to assist you.

MS. WINKLER: No, actually there are about six people doing this. We have had a great deal of cooperation from the appointing authorities and from the employees. We think it is terribly important to gather the information directly from the employees, because titles certainly have a major impact on their jobs and on their careers. We feel strongly that we need to go directly to them. (Senator Stockman arrives at this point.)

SENATOR LIPMAN: Senator Stockman, we have just been discussing how many titles have been eliminated -- from the top, not from the bottom.

SENATOR STOCKMAN: How much time did I miss?

SENATOR LIPMAN: Just about two minutes. That's about all you missed.

SENATOR STOCKMAN: I apologize.

SENATOR LIPMAN: Okay. Has title consolidation resulted in the compression of any titles?

MS. WINKLER: Not at all; not to date.

SENATOR LIPMAN: Not to date?

MS. WINKLER: No, not at all.

SENATOR LIPMAN: Do you think it may, when you get the results of this second survey?

MS. WINKLER: My best guess is no, but I do not know that. One of the difficulties with this project is, we gather information and analyze it. We really don't have any preconceived notions about it. You know, we are gathering the information from the employees, from their supervisors.

SENATOR LIPMAN: Excuse me. Would you repeat for Senator Stockman here, the first method which was used -- the broad brush method which was used first to drop these titles?

MS. WINKLER: We eliminated titles that did not have any people in them. We also eliminated titles that--

SENATOR STOCKMAN: That's an easy one for us to do.

MS. WINKLER: --the appointing authorities felt they would not have need for in the future. We also worked with the appointing authorities on consolidating, particularly high level titles -- bureau chiefs, directors.

SENATOR STOCKMAN: May I ask, through the Chairman, that second category, positions that department heads felt they would not need prospectively--

MS. WINKLER: Not positions, titles.

SENATOR STOCKMAN: Titles, rather. How many-- Do you have any rough estimate of what we are talking about there?

MS. WINKLER: No more than a couple of hundred. They were really titles that had been created for specific programs, where programs had gone out of existence, and the titles had just lingered.

SENATOR STOCKMAN: So that shouldn't be a source of much difference or dispute, I wouldn't think. That makes sense. What is the third?

MS. WINKLER: The third category was where we had worked with the appointing authorities on consolidating some of the higher level titles -- some of the directors, some of the bureau chiefs -- the very high level supervisors.

SENATOR LIPMAN: From the top.

SENATOR STOCKMAN: Yeah, that gets tricky. Incidentally, how many titles were you able to eliminate of positions that were unfilled, that there was just nobody in -- roughly?

MS. WINKLER: My best guess is a few hundred, out of the 3000, but I don't have actual numbers. We can get them for you if you would like.

SENATOR STOCKMAN: This consolidating at the top-- How did you do that, or are you in the midst of that now?

MS. WINKLER: That is an ongoing process. We certainly started there because it seemed an appropriate place to start, but the real meat, I think, of the title consolidation is this very deliberate examination through the survey process with employee input, very massive employee input, on what they do, how they do it, and what knowledge, skills, and abilities they need to do it, which we can then analyze to see what tasks and what knowledge, skills, and abilities fit together.

SENATOR STOCKMAN: How many titles have you eliminated in that third category -- approximately now?

MS. WINKLER: What, through this questionnaire survey process?

SENATOR STOCKMAN: Yes.

MS. WINKLER: None.

SENATOR STOCKMAN: None yet. That is to come.

MS. WINKLER: Yes, it is. We have divided all of the titles into 37 occupational groups, and we have completed surveying approximately 10 of those occupational groups. We just finished administering the survey for direct care. We are doing that on all three shifts. We administer it at two in the morning and at seven at night and at eight in the morning. It is a very massive process all over the State, involving municipal and county government employees, as well as State employees.

SENATOR STOCKMAN: You don't get into authorities, I guess, or do you?

MS. WINKLER: No.

SENATOR STOCKMAN: Or school systems?

MS. WINKLER: No.

SENATOR STOCKMAN: Just with municipal governments, county governments, and the State government.

MS. WINKLER: Yes.

SENATOR STOCKMAN: What are you, about in the middle of that--

COMMISSIONER McCAFFREY: Senator, we do help authorities on occasion, but we have no--

SENATOR STOCKMAN: They are not part of this?

COMMISSIONER McCAFFREY: They are not part of this, nor do we have any obligation under the law to do that. But we have helped them. We helped the Atlantic City Expressway Authority with some testing procedures they needed from time to time, on a small contract basis.

SENATOR STOCKMAN: And you are about in the middle of this part of your effort, would you say, in terms of these higher position categories consolidation?

MS. WINKLER: We are in the middle of the review of all of them. Regarding the higher positions, that is part of this ongoing review also. I mention that specifically, because we had singled those out to work on right at the top -- in the beginning. These were non-bargaining unit titles. These were titles-- A lot of them were single-position titles. We are certainly not through our review and analysis of that. (Severe lawn mower noise from outside in the background; reporter unable to transcribe in some spots.)

SENATOR LIPMAN: I am worried about how we are going to conduct this hearing right now. The Commissioner has a limited amount of time. The group I think most vocal and interested in title consolidation is the Communications Workers of America. Mr. McCaffrey has suggested that this representative speak now. The one who is to speak about-- Who is going to speak about title consolidation from the CWA?

SENATOR STOCKMAN: Before we get to the CWA, Madam Chairman, may I just ask a couple more questions of Judy?

SENATOR LIPMAN: Yes, but we have all of these to run, too, before he leaves.

SENATOR STOCKMAN: Oh, all right. I thought he was going to back off. But you want to hear from--

SENATOR LIPMAN: No, he's not. He is going to stay there.

MR. CAPALBO: (Committee aide) The Commissioner will be leaving about 11:30.

SENATOR LIPMAN: All right, then we do have a little time to spend with him. He suggested that--

SENATOR STOCKMAN: That we hear from the CWA.

SENATOR LIPMAN: Yes. Just title consolidation is the subject then.

COMMISSIONER McCAFFREY: Senator, I don't know whether this is--

SENATOR LIPMAN: What?

COMMISSIONER McCaffrey: I think we should mention at this point, and just for the knowledge of the Committee, that there has been filed an unfair labor practice charge by the CWA, as to job reevaluations and titles. That is a pending matter now. That is for the benefit of the Committee. You ought to know that.

SENATOR LIPMAN: All right, just so we know. Do you want to pull this chair over for her, or take one of the others -- right at the end of the table? Okay. Please sit down. Pull the microphone toward you.

EVELYN LIEBMAN: Members of the Committee, my name is Evelyn Liebman. I am a State worker with the New Jersey Board of Public Utilities, currently on leave as a staff representative with CWA Local 1037. We are based in Newark, representing about 6000 workers, mostly in the 13 northern counties. I would like to thank you for this opportunity to bring to this Committee our concerns about the Civil Service Reform Act. Specifically, I am going to address our concerns about title consolidation.

I have a prepared statement, and after that I would like to address several of the comments that Ms. Winkler has made concerning the Department's efforts.

Bargaining wages and other terms and conditions of employment are a fundamental right of workers through their unions. Title 11A -- the Civil Service Reform Act -- specifically recognizes this right both in its declaration of policy and at 11A:12-1, which states: "This title is not to be construed either to expand or to diminish collective negotiations rights--"

Yet, for the last several years, the Department of Personnel -- DOP -- has been working on a project called "title consolidation," which will impact wages and other terms and conditions of employment for State workers, without negotiating with the union representing these workers. The State claims



they don't have to negotiate with the union because of Title 11A.

We are not here to argue whether or not Title 11A gives the Department the authority to establish, consolidate, and/or abolish titles -- for it does. Nor are we here to argue that title consolidation is inherently wrong or insidious, for we agree with the general premise that there are too many titles -- approximately 12,000 in 1987. However, it is interesting to note that over half of these titles had three or fewer incumbents, and over one-third had only one incumbent, at least in 1987. We believe these must be by and large management titles. For example, there are certainly more than three clerk/typists in State government. However, we do not believe that the Department, or any other agent of the State, should have the right to unilaterally abolish, create--

SENATOR LIPMAN: Ms. Liebman, in the interest of time, could you just summarize your statement. We have it in front of us, but just run down it and summarize your comments, if you can.

MS. LIEBMAN: Well, I think our major concern is that this -- as the Department has testified -- is an enormous effort. While they claim there are only six people in the Department who are working on this, it must be taking up the time of other people and other appointment authorities. If you are talking about surveying 90,000 or 100,000 people, it is a massive effort.

SENATOR STOCKMAN: May I stop you? The figure, 90,000-- That's State employees, right?

MS. LIEBMAN: State and local government workers.

SENATOR STOCKMAN: I thought just State. I thought there were close to 90,000 State employees in New Jersey now.

COMMISSIONER McCaffrey: The figure usually comes from Treasury. I think it is closer to 70,000, Senator.

SENATOR STOCKMAN: Oh, all right. But if you dip down -- and I don't want to interrupt you -- to county employees and municipal employees, you're talking about far more than 90,000, no?

MS. WINKLER: Ninety thousand is the number we are going to be surveying. All totaled, there are about 180,000 or so.

SENATOR STOCKMAN: All right, okay. So that is the figure Ms. Liebman is using.

COMMISSIONER McCAFFREY: We are dealing with almost 200,000 people in bodies, but not all of them classified.

SENATOR STOCKMAN: All right. Ms. Liebman, I am sorry for the interruption, but I wanted to be sure we were on track with what we are talking about.

MS. LIEBMAN: Okay. So, it is a massive effort. If we are talking about a situation where we are going to cut in half, if not more, the number of titles, I think it is important for this Committee to understand the impact of -- or the potential impact of title consolidation. One issue is obviously what we call "out-of-title" work. Currently, workers have a job description. They know what that job description is, and they are required, and expected, to do that work. If we then find ourselves in a situation where we have what we refer to as "generic titles," what happens to out-of-title work? Does the person then have to do the work of what would have been the work of three other positions?

Another issue we are concerned about is promotional opportunities and career ladders. Right now, for example, I started as a rate analyst with the Board of Public Utilities. When I started, I knew there was basically a career ladder in that agency. I could go from a rate analyst trainee, which I started as, up the ladder to a one, two, and three, up to a supervisory level, and then up to bureau chief and so on. Now, if my title all of a sudden is changed to something called an "economic analyst," where are my career opportunities?

We have other issues -- seniority and layoff and recall rights. Right now, I accrue seniority in my title. If there should be a layoff in the Board of Public Utilities, right now I would have what are called "lateral or demotional" bumping rights, into titles that are related to mine, and I could then bump out workers who have less seniority. We have the seniority system in this State. It has been here for years. If my title is all of a sudden genericized, what happens to my bumping rights? Where do I go?

The Department, I know, will claim that nobody is going to lose seniority rights, but our problem is, we have not seen any rule or regulation proposed by this Department, in the midst of all the hundreds of thousands of rules they have proposed, that actually puts in stone that no one will lose seniority rights as a result of title consolidation.

Obviously, our biggest problem with this whole project is the question of our pay -- our salaries. Right now, as a rate analyst, I am paid at a certain range. Let's say it is a range 21, just for purposes of example. Now, it is very possible that under this scheme, my title could be consolidated with titles that are a range 19, a range 25, a range 17, or a range 16. From what we understand, it is very possible that the new generic title that is created could be established at a range 18, three ranges less than my current title.

Now, the Department will tell you, "Well, you are not going to lose any money." They are not going to take, for example, my \$10,000 and drop it down to \$8000, but they are going to freeze my salary through a process called "red circling." What that means is, I don't get any yearly increments, which I would have expected considering my performance was found to be satisfactory, nor will I receive my negotiated salary increase that my union has negotiated with me with the State at the bargaining table. They would just say: "You are not going to get any more money until all of those

workers' salaries that have been consolidated with yours move up. And as far as we are concerned, that is an absolute attack on our contract. We did not negotiate a contract to give an across-the-board increase to everybody but those people whose salaries have been red circled by the Department of Personnel.

SENATOR STOCKMAN: How long do your contracts run? I guess they vary.

MS. LIEBMAN: Currently, three years.

SENATOR STOCKMAN: The longest would be three years.

MS. LIEBMAN: Yeah. Our current contract is up next year.

When this project first started, the Department contacted us-- Well, not when it first started. They contacted us last summer, and asked us to come to a presentation, to explain to us this whole effort. We said, "Okay, we would like to hear what you are doing," because, as I said, we are not generically opposed to title consolidation. When we got there, they gave us an overall presentation, and they asked us to help them on this project. We said, "Okay," in good faith. We provided, initially, three people, full-time, for 10 weeks, at our expense. I was one of those three people. They indicated to us that they wanted our input, and these three people, myself included, would be those to provide input into the Department.

When we got there, we were pretty surprised because we found out that they had actually already been working on this for two years; that they had already categorized all the 12,000 job titles into eight broad job categories and 37 sub-categories; and that they had already established the methodology by which titles would be consolidated, including the questionnaire, including how it would be administered, to whom it would be administered, and how the data would be analyzed. Obviously, those are the major substantive issues to be decided when approaching this kind of a project.

So we said, like, "Well, if you have already done all that, what do you want us here for?" It turned out they wanted us to help write their questionnaires. We said, "All right, we'll see what you're doing." We were grouped into-- There were about 18 people that the Department had asked to come and help them set up in teams. Our job was to take a group of -- a portion of the 12,000 titles, take a look at the job specs, take a look at any evaluations that had already been done, take a look at similar questionnaires that had been done for similar titles by the State of Massachusetts, which, by the way, took 11 years to do a project of this type-- And we were then given something called a "List of Action Verbs." I am bringing this up only to come back to the point of the Department's statement that they don't have any preconceived notions about how this is going to turn out. We were told that we were supposed to write questions which would describe what people do. For example, in the couple of days that I was there, we were working on people who do recreation work -- people who work in our parks, people who do recreational therapy, that type of thing. We were told that we had to, say, develop questions, which they would then answer on this questionnaire. What do you do? Do you rake leaves? Do you coach teams? Do you show people how to play basketball? Whatever it might be. We were told that we had to use these verbs.

We noticed that these verbs all had numbers beside them, and we also found out that they were actually numerically ranked in terms of their level of difficulty or responsibility. Like, copy might be ranked a one -- a low verb -- where calculate might be ranked an eight -- a higher verb. We were told not to necessarily worry about the rankings; just to be familiar with the definitions, because these verbs had to be used so there would be a standardized language.

We said, "Okay." So, we were working on this recreation title, and it turned out that the person who would

be doing this particular job was going to have to act as an umpire. Now, we didn't have any verb for umpire. We were told that we couldn't add verbs or delete verbs or change the definitions of verbs. We had to use these verbs. So much for a lot of input, right?

So, we were looking and looking and looking, and finally the only verb we could find was "mediate." We said, "Okay, we'll say 'mediate disputes.'" It was the closest thing we could find to umpire. We looked on the list. There it was. It seemed to fit, it was the closest we could find, and all of a sudden a member of my team, who was an analyst with the Department of Personnel, said: "Oh, no, we can't use mediate. That's a management verb." We said, "Wait a minute. What do you mean we can't use mediate? If that is the closest verb we have, and you tell us we can't use any other verbs, but now you tell me I can't use it because it is a management verb and it is ranked high-- What are you talking about?"

Well, soon it became very clear. I mean, the State's system of evaluating jobs to come up with the salary is called the "New Jersey Evaluation System." A job spec is reviewed and it is given points for the amount of know-how that is entailed in that job; the amount of accountability that is entailed in that job; and the amount of problem-solving skills entailed in that job. It seemed fairly clear to us that these rankings went along with this evaluation system.

So, if there is no preconceived notions about the outcome of this whole project, why were we being told that we couldn't use a management verb in the creation of this questionnaire? Well, it became very clear after two days that we were not going to have any input. This was an incredibly tedious task that they asked us to do, and an incredibly time-consuming task that they asked us to do. It seemed to us that they just wanted us there for grunt work, free labor, and the ability to try to coopt our union. When these

questionnaires come out, and people are concerned about them, the Department can certainly say, "Well, look, the CWA worked on them. They don't have any problem with them. Don't worry."

We're worried. One of the reasons why we have demanded negotiations over this project is specifically because of this impact. Our contract has a provision which states that when the State makes major changes in its classification plan, the impact of those changes must be negotiated with the union. The Department claims that they cannot negotiate with us. The Governor's Office of Employee Relations, which is designated to negotiate with us, says, "Well, we'll think about your request after the whole project is done," and they are getting ready to do something. That is just too late. After-the-fact negotiations are just too late, because at that point they will have completed this whole project; they will have collected this massive amount of data with which to justify their demands; they will have spent all of this money, all of this time; and it will be incredibly difficult for us to then go back and say, "Well, wait a minute. Maybe your data is not exactly right because of the way this has been developed."

As a result, along those lines, as Commissioner McCaffrey just mentioned, we asked for information on this project -- some technical information on the methodology. We asked for this back in July. At that point, the Department said, "All right, we will give you some meaningful input." We said, "Okay. When we see the information, it will give us what we need to have meaningful input." Weeks went by, months went by, and the response was, "Don't worry, we're working on it. It will be in the mail. Don't worry; don't worry, it will be in the mail."

Finally, about three weeks ago, we got the response, which was no response. They did not give us anything we asked for that we didn't already have.

So, that is where we are. Those are our concerns. We think we have a right to negotiate things like this project. We want to negotiate it now.

SENATOR STOCKMAN: What--

SENATOR LIPMAN: Go ahead.

SENATOR STOCKMAN: Through the Chair, what do you think we can do?

MS. LIEBMAN: Well, we think the Civil Service Reform Law, as it was passed and as it has been enacted, has several provisions which protect the collective negotiations process. We think this Committee needs to reaffirm that right, and give some direction to the State Department of Personnel, or OER, or whoever it is, that, yes, the State must negotiate the impact of this project with us.

SENATOR STOCKMAN: Do you think that a statement from us to the Commissioner that he should negotiate with you over this project, would really take us anywhere?

MS. LIEBMAN: It doesn't have to be the Commissioner who has to negotiate, or it is Judy Winkler who has to negotiate. The Department of Personnel and Commissioner McCaffrey represent the State, our employer. The State needs to negotiate over the impact. If the State decides that they are going to pick Commissioner McCaffrey to negotiate, then that is who it picks. We do not necessarily care who it is, but it has to be someone who has the authority, and who understands that, yes, negotiations will go forward, and that we will work this out within that context, because input has not worked out. I mean, if the Department's concept of input is to give us a set of action verbs and throw us into the basement of some building for 10 weeks, saying, "Here, write these statements on these questionnaires--" That is not input.

SENATOR STOCKMAN: Madam Chairman, could we hear from the other-- I hate to say the other side. We're all together in this, but--



COMMISSIONER McCAFFREY: Yeah, I feel that way, and I mean that. That is one of the reasons that the CWA was asked to come into this process. Judy will get into the specifics of what happened when they got together. The basement situation just happened to be that we have very poor facilities.

SENATOR LIPMAN: Were they really in a basement?

COMMISSIONER McCAFFREY: Well, we had the Sears building at the time, right?

MS. WINKLER: Yes.

COMMISSIONER McCAFFREY: It was the Sears building, and my employees have been there for years. Fortunately, we are out of there now. Hopefully, we will be in another building yet, but that is another matter. But I can tell you what the thrust was from my seat to Judy and others who were dealing with them. What Ms. Liebman speaks of as having an accomplished fact before them when they arrived was, in my opinion, nothing more than getting the meeting started with an agenda -- something to begin with. All labor organizations were invited in to not only help us to prepare the questionnaire, but to also critique whatever we put before them, as a starting point.

So, with that, I will just throw the ball to Ms. Winkler and ask her to take it from there. She was involved in the process.

MS. WINKLER: As the Commissioner said, we did ask all of the labor organizations to participate in the design -- with the development of the questionnaire from the standpoint of, this is the instrument we are using to gather all of the information from the employees and the supervisors, on which we are going to base the foundation for title consolidation and titles.

We all know that what questions you ask, you know, depend on what information you receive. We had representatives from all of the various sections of our Department, from

Examinations and Classification and EEO and Local Government. We also asked representatives of reporting authorities to participate in this process, and we invited representatives of labor to participate in this process, as well. Yes, you know, we had done some homework. We had taken titles and established a framework. I mean, the Legislature in Title 11A charged us with the responsibility to look at our classification plan and to do some serious study and revision of it.

One of the difficulties we see with our current titles, and I am sure if any of you have come across some of our job specifications you will see it yourself, the same thing is described in different ways, so it sounds as if people are doing different things. Sometimes that is the case; sometimes it is not. We decided we needed a standardized vocabulary and way to refer to things.

SENATOR STOCKMAN: Through the Chair--

SENATOR LIPMAN: Yes?

SENATOR STOCKMAN: Ms. Winkler, let's say on this classification-- There were 11 broad categories that you settled for?

MS. WINKLER: There are actually 37 occupational groups. I can provide you with a list of them, or give you a sample, if you would like.

SENATOR STOCKMAN: I don't think that would help much. What I want to ask you is this: It was a predetermined kind of a decision. You explained that we charged you with the responsibility to do that. But when these unions came in -- the CWA, for instance -- did you give them an opportunity to look at those 37 categories and tell you whether they thought, "Well, wait a minute. It really should be 41 because of this," or, "Wait a minute. You don't need 37. It should have been 34"? Was there any expression of willingness to have input from them at least to challenge a question that--

MS. WINKLER: Well, we are doing that as part of an ongoing process, as well. We not only provided labor with the categories and the definitions -- which, by the way, are based on the Federal "Dictionary of Occupational Titles;" they are not something that we made up out of old cloth -- but each questionnaire, before we administer it, as we fine-tune it, we sit down with the unions, provide them with a list of the titles, you know, that are in that category, and have, in fact, made modifications, have moved titles--

SENATOR STOCKMAN: Based on some input they have--

MS. WINKLER: Absolutely. We made modifications to what categories titles belong in; also modifications on the survey instrument itself.

SENATOR STOCKMAN: How about these verbs? Apparently there was a set of verbs that was developed.

MS. WINKLER: Yes. We had to start out with a vocabulary.

SENATOR STOCKMAN: Did you give them a chance to say, "Your vocabulary is deficient. There ought to be three or four extra words," or, "These two words ought to be--"

MS. WINKLER: Unfortunately, they left before then. The CWA participated for, it was either two days or three days, of what went on for 12 or 14 weeks or so. They just left, walked out, about a week-- In fact, we got a call saying they were sick. About a week later, we found--

SENATOR STOCKMAN: So, you're saying that when they tell us here today that they were given a fait accompli of verbs which were fixed and unchangeable, and they had to work with them or else forget it-- You're saying, "Wait a minute. That wasn't so." You were prepared to listen and maybe add two or three verbs, or subtract one, or modify them, but they walked out.

SENATOR LIPMAN: They left.

MS. WINKLER: In fact, there have been those modifications and changes. I think what we are dealing with is the beginning of a process. You know, I don't see the whole thing as terribly black and white.

SENATOR STOCKMAN: It is easier for me -- through the Chair, if I may -- to get specific. Let me go back, if I may, to Ms. Liebman. Ms. Winkler says, "Wait a minute. It wasn't: This is it, we don't want to hear anything about any changes." You walked out. What do you say to that?

MS. LIEBMAN: Well, all I can say is, from my perspective, being there those several days as one of CWA's representatives, that is not what happened, and that is not the information I received. It went so far as-- I was told that there were blacklisted verbs, verbs which I couldn't even consider recommending be added to this list of verbs.

SENATOR STOCKMAN: But, who told you that you could not modify, or have input into trying to persuade the Commissioner and his staff to add some words, or change some words? Who was the individual who told you that?

MS. LIEBMAN: It was a representative from the Department. I don't have his name with me right now. I can provide it. I think it was the person who was in charge of the job evaluation section.

SENATOR STOCKMAN: See, this isn't like a trial. I have to be careful. I am a trial lawyer. But, on the other hand, when I am presented -- and I am speaking only for myself -- with people coming from two different angles, one way is at least to say, "Well, who was it?" Maybe he is here in this audience. Maybe we can clear it up, and maybe you can go back and get that straightened out. (both witnesses speaking at once here)

SENATOR LIPMAN: Just a second.

SENATOR STOCKMAN: Better go through the Chair.

MS. LIEBMAN: Okay. May I also add-- I mean, the other issue is, we--

SENATOR LIPMAN: We haven't finished talking about this issue.

SENATOR STOCKMAN: You ought to get us the name of the person in Civil Service who told you that those verbs were it, and that there would be no modification of those verbs in this process. We would like to know that name. We are going to then ask, frankly, Ms. Winkler whether that is true or not. If not, we will try to get that straightened out.

SENATOR LIPMAN: Yes.

SENATOR STOCKMAN: It is a small part perhaps of the whole picture, but--

SENATOR LIPMAN: We might be able to straighten out a little misunderstanding.

V I N C E N T T R I V E L L I: This didn't happen yesterday. The Department has heard our concerns about this before. If they had felt -- and we have sent letters and asked them to negotiate about this -- in the last year that they were going to be flexible, and we have misunderstood that it was a fait accompli, why didn't they come to us and say, "Let's sit down and negotiate and work this through," instead of saying, "You left, and that's it"? The point is, there was no meaningful input in negotiations about the development of the plan, and then also Ms. Liebman was talking about how the plan was going to impact on our members down the road. A year has gone by. I can't imagine that if they felt we had walked out and we shouldn't have-- They could have said, "But there will be input," or, "You can change this."

MS. LIEBMAN: We have also asked specifically--

SENATOR STOCKMAN: Is it a year since CWA walked out?

MS. LIEBMAN: Roughly a year. We have also since, in writing, asked for a copy of the verbs, and a copy and explanation of the ranking. We have asked for copies of the

questionnaires. We have asked for a detailed explanation of the methodology, in writing, so that we could have an opportunity to review it; so that we could have our experts review it; so that we could make some meaningful contributions to this project. We have yet to get that.

SENATOR STOCKMAN: Have other unions participated and continued to participate to date in this process -- AFSCME and others?

MS. WINKLER: Yes. Additionally, the CWA has as well. I think it might be useful for the Committee to know that we have been meeting individually with each of the unions, including CWA, on each questionnaire. This has really developed into a monthly meeting. During the meeting, we provide the union with a copy of the questionnaire. We go over it. We make modifications to the questions; we clarify; we change words; we change verbs. We are doing that to ensure -- they are representatives of the employees -- that the employees will be able to understand, you know, what this means, that is clear. We do not provide anyone with a copy to take away. They are free to spend up to two days with us in full review. They have chosen to spend roughly a couple of hours with us -- there are normally three people there -- going over it, and making modifications to all of this, prior to our doing preliminary sampling, to ensure that the instrument is a valid one. Surveys are not something-- This type of instrument is not something that one goes and publishes. We would then have problems over its accuracy.

SENATOR LIPMAN: Commissioner McCaffrey, would you like to say something? I know you are--

COMMISSIONER McCAFFREY: Yes. Please don't be too concerned about my time. I will try to stay as long as I possibly can, because this is really important.

SENATOR LIPMAN: Yes.

COMMISSIONER McCAFFREY: I will try to stretch it out. I think at the -- not the core, but a very important part of this that is ongoing-- I want to get the message across that the Department of Personnel is an open Department to our labor organizations. I wouldn't want anyone to have the feeling that we aren't-- Ms. King, Mr. Pursell, Mr. Alexander are in and out all the time. There is constant dialogue on all levels, and in every way.

SENATOR STOCKMAN: You don't get that impression sitting here today.

SENATOR LIPMAN: No, you don't.

COMMISSIONER McCAFFREY: Well, that is why I made the statement. I spend a good deal of my waking time talking to CWA about CWA, or to CWA in some fashion or another, and so does my staff. I don't think anyone would say that that is not the case. There is an awful lot of dialogue all the time, and I can understand that. We spend a lot of time on this purposely.

But in some of their arguments, they will tell you that they feel that all of this should be a matter of negotiation. That is where we have, I guess, a legal problem. I am not an attorney. At this point, at any rate, the Office of Employee Relations is the designated negotiator for the State of New Jersey.

I have another charge, which is 11A, which sometimes runs parallel with that which OER is doing, or with what they are negotiating. There are times when you sort of fit, and then times when you don't. But at this point, I am not the negotiator for the State of New Jersey, nor should I be. I am talking as the Commissioner of Personnel. That is a good part of the dialogue here that is going on. What should be negotiable, and what shouldn't be? Vince uses the word "negotiation," and Bob Pursell has quite a bit, and I keep saying, "No, we don't negotiate." When we talk we are working

together. We are trying to solve problems and do things together, but I can't use the word "negotiate" in the sense that it is used in labor relations where I am. But we work together to try--

The effort to bring CWA into this matter was to try to get some consensus, to try to get something done, to try to get an agreement. Never, for one minute, did we ever think that we could get anything done without their cooperation. That is what we are working on.

MS. LIEBMAN: If I may just respond very briefly to the issue of us having these monthly meetings? Just to put it into a little bit of perspective, some of these questionnaires are over 2000 questions long. The Department feels that on average they might take up to three hours to complete. We have had reports from the field that sometimes they take over five hours to complete. So, they are very long, and they are very involved. As they are directly tied into the compensation system -- will be used to be tied into the compensation system -- they do require a great deal of review and analysis.

We do go to these meetings, because we do like to know at least what the next survey is that is coming up, and who is going to be affected by it. Sometimes we make comments; sometimes we say, "This question doesn't sound right. This doesn't seem to fit." The response we get is, "Well, we'll take it back to staff." We never know what happens to our input. We never know what the outcome is of our comments or our concerns. I mean, it is just, "We will take it back to staff, and we will decide."

The problem is, what do you mean by "input"? We don't necessarily have to call it negotiations. We don't necessarily have to call it discussions. We don't necessarily have to call it input. But whatever it is called, there has to be the result of a real negotiations situation, where there is that give and take. To date, we do not believe there has been that give and take.



SENATOR LIPMAN: How long have you been in this sort of survey? What is the time span, about a year?

MS. WINKLER: Yes.

SENATOR LIPMAN: How much longer before you finish?

MS. WINKLER: Before we finish?

SENATOR LIPMAN: Yes.

MS. WINKLER: It will be about another year before results occur. It should be the first quarter of next year. The Commissioner has made a commitment not to just the CWA, but to all of the unions, as well as the appointing authorities, that in analyzing the information we are gathering-- We are in the information gathering stage now. It is not our Department's intent, and it has never been, to take that information and say, "Here are the new titles; here are the new specs."

The intent of the whole process is to take that information, do some analysis, and sit down, you know, with labor, as representatives of the employees, and with the appointing authorities, and look at some of the impacts, and look at some of this, and work together to come out with a classification plan that is reasonable.

SENATOR LIPMAN: Jim, do you want to ask a question?

MR. CARROLL: Yes, a question for CWA. Has your union, in this process -- you are obviously dissatisfied -- proposed an alternative method, or developed some alternative that you would present to management?

MS. LIEBMAN: Not to date. We feel we haven't even reached that point. We are not necessarily even saying, at this point, that their methodology is terrible or bad. We just don't even know, because we can't get the basic information we need with which to come to that determination.

MR. TRIVELLI: We have asked on numerous occasions if they would provide the methodology, the verbs, and the explanations, but that has not been forthcoming. So it is very

difficult for us to say, "Well, this part of it is wrong, but we can change it over here."

MR. CARROLL: So you really haven't made up your mind yet whether it is right or wrong. I mean, your organization has experts in this field, I'm sure. It is a major-- They have dealt with this situation in other states perhaps.

MR. TRIVELLI: We would like to look at the methodology, look at how the system works, and then also talk about the impacts on people at the other end -- how this is going to be implemented, when the information is gathered.

SENATOR LIPMAN: What you would like to do is to be able to take the information out of the center, and have your experts analyze it. Is that what you're saying? You leave it there, don't you -- the verbs, and all like that, the changes? When they come in for two hours to look, or five hours, you don't take anything away?

MR. TRIVELLI: It's really being--

SENATOR LIPMAN: See, I can't quite understand--

MR. TRIVELLI: --a meaningful part of the process; really having meaningful input, seeing-- Maybe negotiations is not the right word, but it is talking things through, seeing a result at the other end when we offer suggestions and we offer a process of gaining information, so we can analyze what the methodology is. It is all of that, so that we have a meaningful process, not just going in at different points and offering a few words here and a few words there, and being the people who get hit with the results.

SENATOR LIPMAN: Obviously what you consider being an integral part of the project, and what the Commissioner considers being an integral part, are not in agreement here.

COMMISSIONER McCAFFREY: Well, Senator-- May I?

SENATOR LIPMAN: Yes, yes.

COMMISSIONER McCAFFREY: It would really be helpful if we could -- especially from the CWA's standpoint -- have some

designated persons to deal with in certain areas. The CWA has a lot of staff, and they have very qualified and very professional people. But from time to time, we are dealing with the same subjects with different people. I may be talking to Bob Pursell today on a subject, maybe Vince tomorrow, and Kathy King will come in the following day. You tend to be splintered a little bit, so you have to bring everybody together to talk about the same problem you are trying to solve.

There is another vehicle we have, which you put in the legislation, the Labor Advisory Committee. The CWA has a representative on the Labor Advisory Committee, and we meet with them on a regular basis to discuss rules, proposals, and so forth. So we have that piece, too. We are dealing in scattered ways all the time with different individuals, and sometimes we all get confused as to what problem we are supposed to be solving, or which one we are paying attention to this week, whether it is pay equity, whether it is title consolidation, whether it is compression, whether it is negotiation or non-negotiation. And then, in the middle of it, to have an unfair labor charge placed against one, when we really aren't quite sure what we are supposed to be doing, or who is in the particular argument--

It would be helpful if we-- I know you can never get one person who can speak for everybody, but it would be good if you could bring it down a little more.

SENATOR LIPMAN: Do you mean, Commissioner, that when Vince or Bob or Kathy come in, they are all attacking the question from different--

COMMISSIONER McCAFFREY: I certainly am not going to be presumptuous enough to tell them what they should be doing. I'm saying it would help in the entire process--

SENATOR LIPMAN: Yes?

COMMISSIONER McCAFFREY: --if we had an agenda that everyone agreed on, that this is what we are working on this week.

MR. TRIVELLI: Part of the problem is that there are a lot of things going on. We have our representative on the Labor Advisory Board here, who can testify to our position on how much input we are having through the Labor Advisory Board. We have appointed someone, and he has been the person who has gone to all of the meetings and has had the input through the Labor Advisory Board. We have designated people who work on-- Kathy King has been working on title consolidation, but we can redesignate that for them. I don't think the union comes out with different positions at different times, or that different individuals say different things. But we do have a gentleman who sits on the Labor Advisory Board who is here, and he is prepared to talk about input through that Board, if you would like.

SENATOR LIPMAN: Jerry, do you have any thoughts on how they should proceed?

SENATOR STOCKMAN: Whatever way they want to proceed. Where is this unfair labor practice charge pending, and where is it to be?

COMMISSIONER McCAFFREY: Well, I have a letter dated October 20, Senator, from Kathleen King to Mr. Edmund G. Gerber, Director, Division of Unfair Practices and Representation.

SENATOR STOCKMAN: Help me with the scheme of things in that regard. Is that under the Department of Personnel, or is that-- Where is that, what branch of government?

COMMISSIONER McCAFFREY: It is in PERC -- Public Employment Relations Commission.

SENATOR STOCKMAN: In the ordinary scheme of things, when is that likely to be resolved?

COMMISSIONER McCAFFREY: I don't know. Maybe Peter-- If you don't mind, perhaps Peter Calderone or someone can tell us what happens.

A S S T. C O M M. P E T E R J. C A L D E R O N E:  
Maybe Evelyn knows all of them. There are a number of unfair  
labor practice charges filed at PERC. The only problem with  
this proceeding is, PERC has had hearings on whether the  
Department is a co-employer, on whether the Department's rules  
and regulations do, in fact, violate the PERC Act. There are  
so many forums involved. Some of these issues are raising  
legal issues that are before the Public Employment Relations  
Commission. This isn't the only unfair labor practice. There  
is a series of them.

And, when are they going to rule on it? I can't tell  
you. They had hearings, I think, last Thursday, on some of the  
charges. Usually the Commission will issue a decision within a  
month following the hearing. These charges have not had a  
hearing yet.

SENATOR STOCKMAN: So, it is the union's position that  
arguably the Division of Unfair Practices and Representation  
could render an order mandating, or directing that you  
negotiate what you're doing with the CWA?

ASSISTANT COMMISSIONER CALDERONE: Perhaps. I am not  
sure.

K A T H L E E N A. K I N G: If I may?

SENATOR LIPMAN: Yes.

MS. KING: Thank you. I am Kathy King, from the CWA.  
I filed that charge. I would like to clarify exactly what we  
are getting at here. It's true, as Mr. Calderone points out,  
that there are other charges and matters going on.  
Specifically, the charge I believe that you now have relates to  
the fact that we requested information which has not been  
provided. We submitted a detailed information request, and we  
got responses, as Evelyn pointed out, that really told us  
nothing more than we already knew.

We filed the charge specifically in terms of that  
information; that we have not received the information we need

to receive. The charge itself dealing with that issue is very limited in scope.

SENATOR STOCKMAN: So it is a dispute about supplying information. You say, Ms. Winkler, that the information has been totally supplied, or essentially totally supplied?

MS. WINKLER: Yes, it has.

MS. KING: I think my response that apparently there is a problem is attached there.

COMMISSIONER McCaffrey: I have the correspondence here, Senator. Obviously, she did answer them, and obviously they are not satisfied with her answer. That's where we are.

MS. WINKLER: I received no correspondence saying that there was a problem or question with my response to them. The first notice was this unfair labor practice charge. I believed that I was responsive.

SENATOR LIPMAN: Yes, right. This is your letter.

SENATOR STOCKMAN: I don't want to belabor this, but there are what, 12 -- 12 specific points they requested.

MR. TRIVELLI: The letters define that, Senator.

SENATOR STOCKMAN: Would it do any good to read each, to see if we can grasp it -- ask each side what has been given and what hasn't, and why? Would that narrow the gap here? I mean, speaking for myself, I am having a difficult time grasping what my role in this situation should be. It's obvious we have a major union, representing a lot of State employees, at odds with the Department of Personnel on this delicate process of trying to implement a new statutory provision reform act.

I am trying to come to grips with some meaningful outcome to this hearing today. It is my style more to maybe want to go into this letter. Take paragraph 1, read it, think it through, analyze it, and then determine -- get some sense of whether it has been complied with or not. Is that--

COMMISSIONER McCAFFREY: Senator, the only thing I say is, that may be an option, but if you look at the list that Senator Lipman has to go through today, this is the first item, and I think there are 12 or 14 of them.

SENATOR LIPMAN: Yes, we have to discuss all of these.

SENATOR STOCKMAN: I am here at your pleasure, and I am not the Chairman, so I can't--

MR. TRIVELLI: If I may, you asked what your role is. The role of the Committee, as we perceive it, is-- As the Commissioner said, this is only one of many points. There are layoff rules; there is gain sharing; there is a whole list of things, many of which we believe were not intended when the Committee passed, and the Senate passed, and the Assembly passed, and the Governor signed the Civil Service Reform Act. We think a number of things that are outstanding-- A lot of the rules have already been adopted, but a number of things outstanding are inconsistent with the intent of that law. We are bringing to the Committee in a public hearing our demonstration of the fact that they are inconsistent and, as I say, we have layoff rules and other things to come.

SENATOR LIPMAN: If we are going to go--

MR. TRIVELLI: The Committee can now put under consideration the fact that they are inconsistent.

SENATOR STOCKMAN: I would then at least ask the Chairman to consider whether our staff ought to at least look at these two communications, review those items, and advise us as to their impression of whether the items that were requested have been supplied or not. Now that it has come up, we might as well not totally let it die. So, with your permission, maybe we can ask staff to do that--

SENATOR LIPMAN: Yes, absolutely.

SENATOR STOCKMAN: --and report back to us.

COMMISSIONER McCAFFREY: I only have one question on that, and this is the question-- Because I am not familiar

with the unfair labor charges, procedures, and what happens, but these are formal charges to a quasi-judicial board, and it is pending--

SENATOR LIPMAN: So, should you discuss it?

COMMISSIONER McCAFFREY: I am really asking the Senator if--

SENATOR STOCKMAN: My own gut reaction is, that doesn't preclude us, as a legislative body, in terms of trying to come to grips with an interpretation of the law and whether it is being properly implemented or not, to explore that. I think the parties may be at odds in another forum, but we have-- I don't think it is analogous to certain other situations, really true judicial proceedings.

If either side wants to suggest to our staff that they won't give us the answers, we will have to deal with that. But I am asking, through the Chairman, that our staff -- Joe -- read these requests for information that are in here (indicating packet of written material), go over them, get a sense of what they are, go over what has been supplied, and advise us whether in his opinion there has been compliance with all of them, some of them, or none of them, or not. It might be revealing as to really, you know--

COMMISSIONER McCAFFREY: That's fine.

SENATOR STOCKMAN: --where the truth lies and what is going on.

SENATOR LIPMAN: It is all right with me, certainly.

COMMISSIONER McCAFFREY: I would feel a lot better if they would withdraw the charge prior to us getting into that.

SENATOR STOCKMAN: Well, that is up to them. They may or may not do that, I don't know. But we will at least then be able to--

COMMISSIONER McCAFFREY: Then we may not be able to do it, Senator.

SENATOR STOCKMAN: All right.



SENATOR LIPMAN: Is this a charge that is handled like a charge in court, or is this in front of just the Commission?

SENATOR STOCKMAN: Look, my answer is, I have heard both sides before us today saying, "Hey, we want to do the right thing. This is important. We want to cooperate." And the other side saying, "Hey, we agree that what they are trying to do is great. We want to cooperate." Then I hear that material was requested, and one side says, "Hey, we gave it," and the other side says, "No, they didn't."

Now, I don't care about some PERC charge. I am speaking personally in my role as a Senator, as I understand it. I don't care about that. I am asking our staff to take that material that was requested, understand it, ask what was given, and get back to us.

Now, Commissioner, if your answer when Mr. Capalbo asks you for that is, "Our attorneys tell us we can't give you that," then we will have to decide whether we want to do something further about it or not. But we have gotten this far this morning. We are this much at odds, and I've got to tell you, I would like a little more reaction from it. So, if Joe would do that--

SENATOR LIPMAN: It seems like a big gap there.

COMMISSIONER McCAFFREY: I would just like to make this point without beating it to death. If CWA wants to discuss this thing further in detail -- I don't know the machinations of filing these things -- would it hurt to withdraw the charge and discuss it without any problems, and then file again if they are not satisfied after that? That is just a suggestion.

SENATOR LIPMAN: That seems reasonable. You can file it again if you are not satisfied.

MR. TRIVELLI: We will have to talk to our attorneys.

SENATOR LIPMAN: All right. You will have to be satisfied with that, Jerry.

SENATOR STOCKMAN: Sounds reasonable to me.

SENATOR LIPMAN: Sounds reasonable; it does.

SENATOR STOCKMAN: It always sounds reasonable to talk to your attorney. (laughter) All right, let's go on.

SENATOR LIPMAN: All right. Thank you very much, Ms. Winkler. Thank you, Ms. Liebman.

We are going to layoffs now. Who is your expert on layoffs?

COMMISSIONER McCAFFREY: Peter Calderone -- Assistant Commissioner Peter Calderone.

SENATOR LIPMAN: Who is your expert on layoffs, Mr. Trivelli?

MR. TRIVELLI: Senator, we have the gentleman who sits on the Labor Advisory Board, who was prepared to talk about the three outstanding rules that have not been adopted on the Labor Advisory Board, because there are problems, one of which is layoffs, the other of which is red-circling, and the third of which is the gain sharing. So he can talk about the Labor Advisory Board and the layoff rule.

SENATOR LIPMAN: Okay, who is he?

MR. TRIVELLI: Paul Alexander, President of Local 1038.

SENATOR LIPMAN: Okay. All right, Mr. Alexander will be here in just a second. (pause here; Committee members talk between themselves, and witnesses talk among themselves)

All those persons who are here on legislative campaign financing-- May I see who you are -- legislative campaign financing?

SENATOR STOCKMAN: Raise your hands. Campaign finance -- any people?

MR. TRIVELLI: A lot of them have left. I know Assemblyman Schluter was here, and others.

SENATOR LIPMAN: Yes, I saw him. We were going to ask you to check in with us again at 1:30, to see how we are doing with Civil Service reform. It seems as if we are going to run

into more time on this hearing, and I am not sure whether we will, today, get to the legislative campaign financing. That is why we have been having this little side bar discussion. Only one of us is a lawyer, right?

Let's proceed with layoffs. Does anyone wish to make an opening statement?

COMMISSIONER McCAFFREY: Yes, I would, if the others have no objection. If they do, they can stop me.

Mr. Alexander is a member of the statutory Labor Advisory Committee to the Commissioner of Personnel. We meet on a regular basis. He is very faithful and vocal in his attendance, and we have had some good meetings.

Talking about layoffs, the first item is, we came up, a long time ago, with our proposed layoff rule -- carpet proposed layoff rule. We put it before the Board and they shot it full of holes. Accordingly, we pulled it back, and went into deep discussion, which lasted for a long period of time -- six months or more. We asked them to come up with something of their own. They did, and we worked that over for a long time. I think we had our last meeting as of last week on layoffs. We are not together.

But, in my opinion -- and of course, Paul will advance his, and Peter his -- we have come a long way. We are ready with a proposed rule, which will be published soon. Peter will give you the details on that. That is just an entry into--

SENATOR LIPMAN: Oh, the consideration is ended. I mean, you said, Commissioner, that you had your last meeting--

COMMISSIONER McCAFFREY: Last week.

SENATOR LIPMAN: Last week?

COMMISSIONER McCAFFREY: Yes. That was a culmination of about a year of meetings on the layoff rule.

SENATOR LIPMAN: Oh, so the discussions are now past?

COMMISSIONER McCAFFREY: They are past for now. We have done-- All members of the Labor Advisory Committee have

agreed that we have come as far as we can with it. We still have disagreements on it. Paul will certainly give you those. But, we have come as far as we can come. We wrung it out as tightly as we could to get to the points of agreement, and the points of disagreement are still in disagreement. So, the rule is going to be published, and there will be comments to that, and then we will go from there. That is the point at--

SENATOR LIPMAN: About 60 days?

COMMISSIONER McCaffrey: Whatever the rules. Peter is my expert in that area. But that is where we are. That is just sort of a preamble to tell you that there has been a lot of work done on the rule. While we are not in total agreement, we have done our best to iron out as many of the several problems as we could.

SENATOR LIPMAN: All right. Do you want to add anything, Peter?

ASSISTANT COMMISSIONER CALDERONE: I would just add that we had a proposal that did go through the Advisory Board. We also have a board representing personnel officers in State government, and a board representing local officials -- local appointing authorities. All three boards have reviewed our proposal. One proposal had been through the boards, went through public hearings -- three public hearings in the State, in Newark, Pennsauken, and Trenton -- and had gone through the OAL publication and hearing process. We got hundreds and hundreds of comments. We went back to our Labor Board. The Labor Board asked that we withdraw the proposal, which we did. We then worked on a new proposal.

SENATOR STOCKMAN: Peter, may I stop you? That, in a way, is dead. One might argue that, you know, why even talk about it? But I think it would be helpful-- Are you going to summarize what it was? I know it was apparently something that, after all that time, you withdrew. What was it about it that apparently on reflection you realized was not correct?

COMMISSIONER McCAFFREY: If I may, Senator, and Peter can-- What got my attention was when Bob Angelo, from AFSCME, said to me at a meeting-- He said, "Commissioner, this particular proposal is so difficult for us, that it may have a detrimental effect on a lot of the good things that have been accomplished in the overall situation." With that comment, I said, "Okay, let's pull it back." Peter, go ahead and take it from there.

ASSISTANT COMMISSIONER CALDERONE: The original proposal was very important, because it drew comments -- an incredible amount of participation, more than any rule we have ever proposed, from all segments -- personnel officers, labor-- I think every labor union made recommendations, and we got -- as you can imagine -- some counterproposals from management. There is an argument that some of the provisions created a great deal of inflexibility for management -- labor. Many of the provisions, they felt, did not provide sufficient options and employment rights for employees who are faced with a layoff.

That is where the focus really was. Were there sufficient rights retained? When we have a layoff, there are things called emotional rights, transfer rights, reemployment rights. Were those rights properly spelled out, or were we taking some away from what employees had expected in the past? There was a great deal of discussion on mandatory alternatives to layoffs, so you could avoid a layoff, and pre-layoff activities before you could start a layoff were going to be presented in the rules.

The other key argument dealt with layoff units. How broad should a layoff be, especially in State government? Should it be required that a whole department go through a layoff, or could you have smaller units?

There were three areas of focus throughout the comment period on the original proposal. I can tell you, there were

excellent comments. They went to different areas, but I think we had a tremendous record, and of course, as the Commissioner indicated, it was his decision to withdraw the proposal, and to start over, based on the record we had developed during the original comment period. And we did. We went back to our three advisory boards to start the process again. We are at a point now where we will be submitting to the Merit System Board a new proposal for comment again -- public comment.

SENATOR LIPMAN: I think I made a comment on that while it was going on -- letters to the Commissioner from this Committee.

Well, have you any alternatives? Have you proposed any kind of language which would indicate still that employees may be demoted in lieu of being laid off?

ASSISTANT COMMISSIONER CALDERONE: There are really three types of options whereby an employee -- as we have in the current system -- would be retained under the new regulations: One is a lateral right, where you have more seniority on the same job at another location. The second would be a demotion right, where you would have an option to demote to a lower title in lieu of being laid off. And the third would be your special reemployment. Should the job ever open again, you would have the right to come back to your old title.

SENATOR LIPMAN: I see.

ASSISTANT COMMISSIONER CALDERONE: Those options are retained in the proposal that will be considered by the Merit System Board next week.

SENATOR LIPMAN: Oh, as early as next week. Have you any alternatives to minimize the number of layoffs which may occur?

ASSISTANT COMMISSIONER CALDERONE: The statute required the Board to come up with regulations on alternatives to layoff. The proposed regulation does, in fact, list some suggested alternatives to layoffs, such as a voluntary leave

with retention of seniority during that leave, some kind of job sharing, different proposals to avoid the economic impact that would force a layoff and maintain the work force.

In addition, in the proposal there was an important issue, which the original proposal did not provide, that the Commissioner of Personnel would review what alternatives and pre-layoff actions were taken prior to allowing the layoff notice to be issued. So there was a check there that our Labor Board felt was important.

SENATOR LIPMAN: Jerry, any questions?

SENATOR STOCKMAN: Well, one basic question I have is-- This change in the layoff ground rules, so to speak, is part of your obligation under the Civil Service Reform Act, I take it. There is not necessarily, or is there, a recognition that there are going to have to be layoffs as part of the Reform Act itself?

COMMISSIONER McCAFFREY: Oh, no, no.

SENATOR STOCKMAN: That does not follow at all. How many layoffs-- Just give me again a historical perspective. In the last five years, how many layoffs have occurred in State government?

COMMISSIONER McCAFFREY: A major layoff, of course, was just after I arrived in '82, when I think we laid off about 800 people to balance the budget at that point. I think 800 was what it worked out to. That was a major, major problem, as you recall -- a very unpleasant one.

The next one, I guess -- my friends will remind me if I am wrong, I know -- but I think Labor was the next layoff.

SENATOR STOCKMAN: The Department of Labor had some, yes.

COMMISSIONER McCAFFREY: Yeah.

SENATOR STOCKMAN: What numbers were involved there, roughly?

COMMISSIONER McCAFFREY: I don't know the numbers.

P A U L   A L E X A N D E R: Total numbers of people affected?

SENATOR STOCKMAN: Yes.

COMMISSIONER McCaffrey: I would guess there were about 83 or something like that, and that had to do with their losing some Federal moneys, and that kind of thing, because they were heavily funded in that area. So, if your point is, how often does it happen, we hope not very often. Those were the two times that it happened. The last one at Labor was a controversial one. That is why Peter suggested to the Labor Board that we build in something that will require all departments to show that they have done everything they can before they get into a layoff, and that the Department of Personnel monitor that.

SENATOR LIPMAN: Mr. Alexander?

MR. ALEXANDER: Yes, thank you. I had some prepared comments, which just went by the wayside, because I was prepared to talk about three aspects of the new regulations that remain unresolved -- layoff, gain sharing, and red-circling, or downward title reevaluations, as they are referred to.

SENATOR STOCKMAN: What was the second one?

MR. ALEXANDER: Gain sharing, which is part of the Senior Executive Service, but I can come back at another point when you are prepared to talk about that.

SENATOR LIPMAN: Yes, sure.

MR. ALEXANDER: I would like to be able to tell you that we feel as close to this proposal as the Commissioner does. We feel very far apart from this proposal. I think the word that best describes our last meeting was not "agreement," as much as it was "impasse." We agreed to disagree, I think, is what we basically did at our last meeting.

We are very concerned. Our organization feels that there is some, if not blatant disregard for the law -- the intent of the law -- there certainly are some gross oversights



in the adoption of this new language -- or the proposal of the new language.

Specifically, the law says that the employee shall be demoted in lieu of layoff whenever possible. I don't know how much interpretation there is within that language. It seems very, very clear-cut. The concern we have is that under the new proposed Chapter 8, it would allow Commissioner McCaffrey, or whomever is the Commissioner, to create a designated layoff unit. The problem with the creation of a designated layoff unit is that it severely curtails, and conceivably eliminates the ability of an employee to be demoted into another job title. I would like to illustrate the point by referring to an example that the Commissioner brought up, which was the Department of Labor.

Last year, the Department of Labor elected to have a layoff in the Division of Disability Determinations. Specifically, they decided to close the Camden office, which at that time employed about 120 people, give or take. As the process had begun, employees were being permitted to exercise their demotional rights and their lateral rights, and our understanding is that Commissioner Serraino -- Commissioner of the Department of Labor -- called Commissioner McCaffrey, and said to him, "You have to do something. We're afraid that, as a result of this bumping that is going to occur, you are going to wreak havoc in the Unemployment Insurance offices in South Jersey." The concern was that the people from Disability Determinations office would exercise their legal rights to bump in and displace people in other agencies.

The appeal was, for the sake of continuity of service, we have to protect these offices to some degree. Commissioner McCaffrey said, "Well, fine, we'll try to set aside some of the positions within these offices to lessen the impact of this layoff." When it was brought to our attention, we said, "Wait a second. You're in the middle of a layoff. You can't all of

a sudden change the rules. These people have to be allowed to exercise their legal rights." And that, in fact, happened.

Contrary to popular belief, there was no rioting in the streets; there was minimal disruption in service. People in the unemployment offices continued to get their checks. I would suggest that if you went into an Unemployment Insurance office today, you would not be able to distinguish between the people who had worked there and the people who bumped in there a year ago. Those people have been absorbed into that system. The system is up and functioning. And that really speaks to the point of not having designated layoff units. In its most simple form, it is very difficult to explain to someone who has been an employee of the State for 25 years, "You can be a clerk/typist in this agency, but you can't be a clerk/typist in this agency." That is the effect of a designated layoff unit. Your rights are restricted to bumping within the particular unit in which you are employed.

Additionally, the law demands that the Department of Personnel establish pre-layoff actions to lessen the impact of a layoff. I will read to you what the Department of Personnel is proposing:

Alternatives to layoff: a) Appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives. I don't know that it can be agreed upon that this is in compliance with the law. The affected labor unions had proposed concrete alternatives to layoffs. Specifically, we proposed: freezing on all hiring; returning employees to permanently held positions; separation of all non-permanent employees; and the creation of a voluntary retirement program. Not one of these concepts was incorporated into this proposal. We felt very strongly that if there had been strong pre-layoff action, you could substantially reduce the impact of a layoff. Our fear and our concern is, if you lessen the impact of the layoff on the employer, you actually make layoff a viable economic choice.

Currently, under the existing regulations, it is a cumbersome process, and it is agreed by all parties that it is difficult to go through this process. But there are some assurances there that if the employer is going to go through this process, they have looked into other alternatives, because that is not going to be their first choice. Our concern is that by creating a designated layoff unit system, and by not requiring stringent pre-layoff actions, you have made this a much more attractive alternative to the employer. That is the opposition we have to the current proposal, and I hope the Commissioner would agree, those are the areas in which we are not able to come to agreement.

SENATOR LIPMAN: Jerry?

SENATOR STOCKMAN: Well, let's hear from the Commissioner. I think I follow pretty clearly what you are talking about.

SENATOR LIPMAN: I think I do, too.

COMMISSIONER McCAFFREY: I understand CWA's problem with that. It is a question of when one would abuse that kind of a tool. The designated layoff unit, in my opinion, is something that is necessary for the public good; something you need if, God forbid, something happens where there is a layoff and you are going to be laying off in a critical area. A good example does not come to my mind. I guess nurses would be, you know, an area right now where if you were bumping in areas that would affect the loss of nurses in some sense in the system, at this point, then that certainly is not in the public good, and you would need to designate another area for a layoff unit where it wouldn't be bumping in that sense. It may not be a good example, but that is the general idea of a designated layoff unit.

SENATOR STOCKMAN: Just for my understanding, would these designated layoff units all be established at the outset, and then if there were layoffs you-- Or, would it be something that would be designated at the time that layoffs have to occur?

COMMISSIONER McCAFFREY: At the time.

SENATOR STOCKMAN: And, Commissioner, you would make the determination of what the designated layoff unit would be?

COMMISSIONER McCAFFREY: Right.

SENATOR STOCKMAN: By what criteria?

COMMISSIONER McCAFFREY: By the criteria submitted to me-- Peter wants to say something, but let me say this first. By the criteria submitted to me by the department head applying for the layoff. Under the new rule, of course, we would be monitoring that, and saying, "What have you done? Why are you doing it? Why do you consider that a proper designated layoff unit?"

Now, Paul and I disagree on a lot of things. We do not disagree on the labor thing. When CWA brought it to our attention, it was corrected. When they said, "This is a problem" -- it is really not the great problem they are alleging it to be -- "and you're into something here where you shouldn't be," it immediately happened. The argument on one side will be, "Well, why did you allow it to happen?" The answer is, we respond to people who tell us about things that are going on. It is that kind of a system that goes back and forth.

He makes a very good point about-- I'll make his argument for him. It concerns me, and it has to concern anyone who is handling these things. That is the point about two hospitals in Vineland, or something, where you have a woman working in an area here with more seniority than this one, but if I designate that one as a designated layoff unit, someone over here would go before-- She would go before someone over here who had much less time in the job.

SENATOR STOCKMAN: I don't follow you.

COMMISSIONER McCAFFREY: Okay. Let's say you have Vineland-- What are those two examples?

MR. ALEXANDER: Vineland and the Old Soldiers' Home, which are approximately a mile apart.

SENATOR STOCKMAN: All right.

COMMISSIONER McCaffrey: Theoretically, the Commissioner of Personnel, if he became a bit senile or whacky, could designate one of those as a layoff unit

SENATOR STOCKMAN: And not the other.

COMMISSIONER McCaffrey: --and not the other. That is a good example, a basic example of their concern. I say that the designated layoff unit has to be handled with care, and has to be handled with consultation with everyone involved. But I think it is a tool that we absolutely need to protect the public good, in the event of a major problem. And that is where we differ.

MR. ALEXANDER: I think it is very difficult, given the history of layoffs in this State, to demonstrate where the public good has been placed at risk by having a department-wide layoff unit, so that you don't run into a situation where you are saying to a woman with 25 years of service, "You cannot bump someone with two years of service." All right? And the abuses that occur are more than we would like to think.

At the same time they will be conducting a layoff in one agency, they can be hiring employees in other agencies, as opposed to retraining those affected employees and placing them in vacant positions.

SENATOR STOCKMAN: Historically, until now, the layoff unit is what, in the department?

MR. ALEXANDER: That is correct.

SENATOR STOCKMAN: There are 20 departments of State government. So, in the case of Labor, it would be all of Labor.

MR. ALEXANDER: That is correct.

SENATOR STOCKMAN: Anywhere in Labor. And, Commissioner, you're talking about giving you flexibility to restrict that more -- to limitations within departments.

COMMISSIONER McCAFFREY: Within departments, yes.

SENATOR STOCKMAN: It has never been thought, or suggested, that the layoff thing would have to span different departments, I guess?

COMMISSIONER McCAFFREY: No, no.

SENATOR STOCKMAN: That would really, I guess, create a problem.

COMMISSIONER McCAFFREY: That is where the argument lies at this point.

SENATOR STOCKMAN: What do other states do? Can we look to other states for--

ASSISTANT COMMISSIONER CALDERONE: One of the things we did early on with the Labor Board-- AFSCME did a nationwide survey through, I think, their Washington office, and we did a survey also. It was our judgment that New Jersey had the broadest layoff organizations -- if a layoff should take place -- of anywhere in the country. Layoff units are a typical type of organizational structure in these situations.

A key thing that was done after the comment that I wanted to add here -- after the comment period and working with the Labor Advisory Board-- The original proposal had layoff units would be decided by the Commissioner alone.

SENATOR STOCKMAN: Period.

ASSISTANT COMMISSIONER CALDERONE: The proposal provides that a department will be the layoff unit -- an entire State department -- unless a department head petitions for a different layoff unit, in which case notice has to be given to the employee representatives, and the Commissioner of Personnel has to create a record. The rule provides the criteria that the Commissioner has to review--

COMMISSIONER McCAFFREY: A good point.

ASSISTANT COMMISSIONER CALDERONE: --such as employee rights -- the effect on employee rights -- the need for a separate unit, and there are a number of criteria set out. The

key there is that there will not be an arbitrary decision, and if there is an arbitrary decision, it, of course, is reviewable. But there will be a record whenever you try to have a layoff unit smaller than the department.

SENATOR STOCKMAN: Historically, would either side agree that the kind of proposal that is on the table now -- which Peter just described to us -- would have been a more progressive and positive public policy in this area of layoff, if you had it to utilize, or not?

COMMISSIONER McCAFFREY: Oh, I think so.

SENATOR STOCKMAN: Looking back?

COMMISSIONER McCAFFREY: Oh, yes, I think so. Now, I understand where Mr. Alexander is coming from completely, and thank you, Peter, for bringing it up. That is an excellent point, and I forgot about it. That all came, by the way, from within -- this last period of time -- the Labor Advisory Board. That was part of the process that came forth from the first disagreement with the rule that we proposed, to the point where we are now.

SENATOR STOCKMAN: Namely that you set the department as the unit of layoff, and only in special circumstances with a record could you change it.

COMMISSIONER McCAFFREY: With a record, yes.

SENATOR STOCKMAN: I assume Mr. Alexander agrees that that is an improvement over the recommendation, but it doesn't go far enough. But my question was, with that kind of a proposal, if you look historically at what happened layoff-wise, would things have been much different or better had you had that--

COMMISSIONER McCAFFREY: Absolutely. In my opinion -- I don't know where Paul is on it -- I think it definitely would have been better.

SENATOR STOCKMAN: How? Spell it out for me. What would have happened?

COMMISSIONER McCAFFREY: Well, if I had had the tools, those tools -- not the tools, let me restate that -- the obligation under the rule to do that which the rule says I shall do, if this rule is--

SENATOR STOCKMAN: Right.

COMMISSIONER McCAFFREY: The labor layoff would have been handled in a different way, because I would have been required to handle it in a different way.

SENATOR STOCKMAN: How so?

COMMISSIONER McCAFFREY: Because the criteria listed there were not the criteria required by law. I did not have to establish a record. There was no reason to go through the various steps under the old system.

SENATOR STOCKMAN: How would it come out differently? That is what I am getting at.

COMMISSIONER McCAFFREY: It would have come out differently because it is possible the things that the CWA brought to our attention later, would have been brought to our attention immediately.

SENATOR STOCKMAN: You would have narrowed the unit of layoff, or expanded it?

COMMISSIONER McCAFFREY: We probably would not have narrowed it as requested -- to the same extent.

SENATOR STOCKMAN: And it would have made a difference in who got laid off and how much--

COMMISSIONER McCAFFREY: Well, as it turned out -- as Paul indicated -- the problem was solved, but I don't think there would have been the problem had we had this rule.

MR. ALEXANDER: I am not sure that I would entirely agree, and I don't think the Commissioner is surprised to hear that. Part of the problem we have with the amendment that Mr. Calderone was referring to, was that, again, it is a move in a right direction, but it moves inches, when it should move yards. Okay? The original discussion that took place was--



When we were going over the last set of proposals, before this amendment was put into it, I had said at the time, "I am at a loss to understand why the department doesn't have to come in and maintain some minimal threshold as to why they need a smaller unit." The example I cited was, if we want to go into court, and we want to get a temporary restraining order, we have to be able to demonstrate some irreparable harm before we are going to get that.

Under the old proposal, the department didn't have to demonstrate anything. All they had to do was come in and say, "Look, for the sake of economy and efficiency, rather than having the entire department as the layoff unit, we would rather have the Vineland Developmental Center" -- which is an institution -- which is an ideal way to focus. There was some give and take. I agreed with those who said, "That is an interesting idea. We need to give that some thought," and we came back with some proposed language, which does touch on that concept.

But what it talks about specifically-- It says: "In making a determination with respect to a layoff unit, the Commissioner shall consider, among other factors in State service, the need for a unit smaller than a department." That can be restated to say: "It is automatically the department, and you have to be able to demonstrate how there will be some degree of irreparable harm by not allowing it to be the department."

COMMISSIONER McCAFFREY: I think we're doing that. I am sorry to interrupt, but I think we are doing that.

MR. ALEXANDER: Okay. I'm not sure that I read that that way. That may be the intent as it is understood today.

SENATOR STOCKMAN: Maybe we have just made a little progress here this morning. Maybe we could change that language, if that is what you're doing.

MR. ALEXANDER: I think in addition to that--

COMMISSIONER McCAFFREY: What do you think, Pete? Sorry, Paul. I would like to get his thought on this.

MR. ALEXANDER: Okay.

ASSISTANT COMMISSIONER CALDERONE: Again, this is a proposal that is going to go out. We have two other boards that we work with. They often take the opposite position from the Labor Board. They think the language is too restricting. What we are going to go through again is a public comment period. Whether the language should be changed-- We get some good feedback from the public.

SENATOR STOCKMAN: But it sounds to me as if there has been some healthy give and take. It sounds to me, Mr. Alexander, as if you are concerned about interpreting where the Commissioner and Mr. Calderone are, but it is not clear yet. What role do you see the Senate State Government Committee playing on an issue like this, at this moment in time?

MR. ALEXANDER: What I see the role as, in my mind, and I would appreciate being corrected if I am wrong-- The way I read the law, it is very clear to me. I am not at all sure that this language that is being proposed complies with the intent of this law. Somewhere there, I think this language can be reworked to more closely comply with this language.

SENATOR STOCKMAN: Except that you are in midstream. The difficulty is, we don't know where the Commissioner is going to come down yet. He has very frankly told us that he withdrew one set of proposals that were very offensive to the CWA, and he is in the middle of listening to other parties having input along with you. At this point, I am hard-pressed to see where we, as a Committee, can do much more than hear you out, as we have. So that you both understand, I assume there is nothing new being developed between you beyond--

COMMISSIONER McCAFFREY: Our meeting was only last week. This is very fresh -- the layoff rule. But let me say this: I think historically we have all learned something in

another matter we handled, where we put out something for public comment, and CWA, acting on what has probably been the norm in the past, assumed that any time you put out for public comment, it is over. They immediately went to court, and so forth. I am naive enough to believe that a public comment period means a public comment period, and you learn something from those things.

I sincerely believe that. That is what the public comment is. I am saying this for their benefit today, now, and for everyone. We are going to look at the public comments. It would be terrible if we both wanted to go in the same direction, but couldn't find a way to do it. That is what the public comment period will do for us. From that point on, they have their remedies; we have ours. We have come a long way since we scrapped the first rule, I think.

SENATOR STOCKMAN: Coming on beyond this designated unit, because I think that is an issue that has to evolve further--

MR. ALEXANDER: If I may be permitted-- One of the things we had originally considered, and I think it is still a very viable offer, in our minds-- We had thought, very early on, that if there were strict pre-layoff actions that were incorporated into the rules, and that if the employer could come in and demonstrate that they had done this, this, this, this, and this, that you would have a very strong case for the need to conduct this layoff, and then you would even have a stronger case to say, "Look, we have done all of these things, and we are still \$1 million, \$2 million, \$20 million in the red. We need to conduct this layoff, and for the sake of the public interest, we need to restrict it here, so as not to disrupt services throughout the rest of the department." I think you would have created a much stronger argument. Unfortunately, the proposal, as it is going out for comment, does not talk about strong pre-layoff actions. It doesn't talk

about any pre-layoff actions, other than that the appointing authority should consider-- The law says: "The board shall adopt rules for the preventative actions to lessen the possibility--"

SENATOR STOCKMAN: Through the Chair, if I may--

SENATOR LIPMAN: Yes, go ahead.

COMMISSIONER McCAFFREY: Peter, please?

ASSISTANT COMMISSIONER CALDERONE: One of the things it is important to realize is that we are dealing with upwards of 300 different jurisdictions -- State and local governments, counties, authorities. Making regulations that affect all of them is extremely difficult, because their situations are different. For instance, making a pre-layoff rule that says, "Every jurisdiction has to do job sharing, every jurisdiction has to fire every non-permanent worker--" What we have done, I think, is the responsible thing to make some understanding of what each jurisdiction faces. That is that the jurisdiction has to develop pre-layoff and preventive measures to avoid layoffs, and give them to the Commissioner -- their plan, what they have chosen to do, and what they have not chosen, since they cannot do it in that particular jurisdiction.

Making it mandatory that everybody does this, has always been a problem, and a particular problem for other boards. Rather, what the proposal has in it-- Again, this is a proposal that-- We are kind of presumptuous, because the Merit System Board has not sent it out for comment. They are going to review it next week. What this proposal does is lay out suggested pre-layoff and alternative layoff actions, and require that prior to approval to issue a layoff notice, these actions be documented to the Commissioner of Personnel. Some of the things in there are: The Commissioner of Personnel can reject the notice; can require additional preventive and pre-layoff actions; can send Personnel Department personnel out to the jurisdictions to work on other proposals. There is an

attempt here to provide the means whereby you can address local concerns.

SENATOR STOCKMAN: What about, Mr. Alexander, that answer; namely that the local units will be obligated to promulgate arguably the kinds of requirements that you are talking about, and submit them?

MR. ALEXANDER: I am a little taken back that Mr. Calderone would suggest that we don't have to comply with the law because it is difficult to do. All right?

SENATOR STOCKMAN: I don't think he said that necessarily.

MR. ALEXANDER: Okay. Hopefully, I misinterpreted what he said.

SENATOR LIPMAN: No, he didn't. He said--

SENATOR STOCKMAN: It seems to me that if local units of government based on the regulation he is talking about, do, indeed, come up with the very language you are talking about across-the-board -- every local government, every county government, every department of State government-- If they come up with that, not because they have written it in specifically, but because after they consider the problems they are going to have if there are potential layoffs, you have gotten what you want, and there has been compliance with the law.

Now, you may tell me, "We don't think that is going to happen," or you may tell me, "We don't think the Commissioner ought to wait for that. He ought to put it right in his regs," but at least it would seem to negate the contention that they are flagrantly violating the law by this.

MR. ALEXANDER: My concern is that, by accident or by design, this stuff happens. All right?

SENATOR STOCKMAN: What about their contention that if you try to put too many of these specifics in across-the-board, there are some settings or situations where they are peculiarly inappropriate?

MR. ALEXANDER: I think there is recognition of the fact that local government is different from State government. If you read through this -- all right? -- there are several references to the differences between State and local government. If local government, by nature of the work they do, needs a greater or a lesser degree of flexibility, I don't know that there is a prohibition from writing that sort of thing in. If you look through this, you can go page after page where it will say, "in State service," and it will define this. And then, in the very next paragraph, it will say, "in local government."

So, you can either have it one way or the other way, but you can't say we don't have strong pre-layoff actions because it is too difficult for local government, when down here we give local government the option of creating the size of the layoff unit that they want to create. Which way is it?

SENATOR STOCKMAN: Well, it sounds like it is a question of judgment, or degree. I don't know whether there is room for further movement by the Commissioner. Again, we are still in that -- as I understand it -- nit stage, where arguably the Merit Board, or others, or on reflection of what was said here at this hearing today, they may ultimately come out with a regulation that comes close to or, in fact, suits you. I don't know what we, as a Committee, can do further on this issue today.

SENATOR LIPMAN: It's a problem. I think there are a couple of people who took the day off especially to come down to speak on this issue. So, we are going to allow Mr. Don Philippi, of Local 195, Mr. John DeGregory, and Ms. Marian Rambough-- Are you still here? Will you please stand up so I can see you? (affirmative response from audience) I think we will give them time to express their thoughts on this subject, beginning with Don Philippi, Local 195.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Professional and technical engineers.

COMMISSIONER McCAFFREY: Senator?

SENATOR LIPMAN: Yes?

COMMISSIONER McCAFFREY: With your permission, I would like to be excused. I have, I think, enough people here to answer any questions you may have.

SENATOR LIPMAN: All right. We may have to suspend this hearing, Commissioner.

COMMISSIONER McCAFFREY: Pardon me?

SENATOR LIPMAN: We may have to suspend this hearing until another time.

COMMISSIONER McCAFFREY: Because I am leaving?

SENATOR LIPMAN: Yes, because you're leaving. No, because we have another hearing.

COMMISSIONER McCAFFREY: Oh, okay, fine. I would hate to think I was the sole cause of the suspension.

SENATOR LIPMAN: Oh, sure, you're the sole cause. We are going to put it on you. No, it is because these topics under discussion have taken such a length of time, and it is quite proper that we should spend the amount of time on each one of the subjects that we have listed. We may not have time to do that today, because a number of people came on the other issue we propose to hear today, and we have to give them some sort of consideration.

So I think-- Did I tell you? I didn't tell you, did I?

SENATOR STOCKMAN: Oh, that's all right.

SENATOR LIPMAN: I'm sorry, Senator. You were busy talking. We may have to suspend this hearing at lunchtime. After these people who especially took the day off to come down to testify have testified, then we are going to have to choose another date to finish Civil Service.

SENATOR STOCKMAN: Oh, I just love that.

SENATOR STOCKMAN: We have to go to the legislative campaign contributions, in view of the fact that legislators came down here today especially to talk about that, too. I can't ignore them either.

All right, Mr. Philippi, are you ready to go?

COMMISSIONER McCAFFREY: Senator, are you going to get the SES today, or do you think that will be another time?

SENATOR LIPMAN: I think that will be another time.

COMMISSIONER McCAFFREY: Okay, fine. Then I will reserve any-- I was going to leave a comment, but if that is the case--

SENATOR LIPMAN: You were going to comment on the Senior Executive Service?

COMMISSIONER McCAFFREY: I was just going to leave a one-statement comment -- a one-sentence comment -- but if you are not going to get to it, then it is not really important.

SENATOR LIPMAN: That is a very important area.

COMMISSIONER McCAFFREY: Yes, okay. Thank you very much for your courtesy.

SENATOR LIPMAN: I'm sorry we will not get to it today, but we will keep you advised.

COMMISSIONER McCAFFREY: Fine.

SENATOR LIPMAN: You know, Commissioner, it is very difficult for us to arrange a hearing date that suits the Committee and suits the Department. But we are going to try awfully hard--

COMMISSIONER McCAFFREY: Sure.

SENATOR LIPMAN: --to finish this.

COMMISSIONER McCAFFREY: Okay.

SENATOR LIPMAN: Yes, Ms. Rambough?

M A R I A N R A M B O U G H: (speaking from audience) I would appreciate it if the Commissioner could please stay, because-- (remainder of statement indiscernible; no microphone)



COMMISSIONER McCaffrey: I don't understand that. Is it something my people can't handle?

SENATOR Lipman: She wants you to hear her statement.

COMMISSIONER McCaffrey: I have everyone here, Ms. Rambough. My Deputy Commissioner is here. Everyone who possible could-- They will bring back to me in detail anything that you have to say concerning the problem.

MS. RAMBOUGH: Okay.

COMMISSIONER McCaffrey: I can assure you of that.

SENATOR Lipman: This hearing is being recorded and will be transcribed, Commissioner, and you will be able to read Ms. Rambough's testimony.

Okay, Mr. Philippi.

D O N A L D R. P H I L I P P I: Thank you, Madam Chairman. My comments have to do specifically with the layoff rule. This is the most serious change that has taken place. It really involves the loss of seniority for all the State workers. If this rule is implemented, we can throw out seniority under our contracts, because it will no longer exist.

I'll give you an example: If they close Trenton State Hospital, those employees -- and it is designated as a layoff unit, those employees have nowhere else to bump. Right now, under our contract, they could probably bump to 32 other institutions -- State hospitals, schools for the retarded -- all under the Department of Human Services. You have eliminated all of their bumping rights and their seniority. They have nowhere to go. That is what this rule says. That is why it is so serious, and that is why the unions have unanimously -- as Paul said -- on the Advisory Board, of which I am a member, opposed it. It takes away all of our seniority.

Now, presently we have a contract with the State. Under that contract, the regulations and the language say that if our people are going to be laid off, it is department-wide. Who the hell are they to come in, in the middle of a contract

-- and they sat and agreed to it -- and say, "We are now going to change the rules"?

You heard what the representatives of the CWA said here this morning. They are some of the things that are happening. We have things in the contract, we have things that are past practice, and they come in and are unilaterally making changes that affect our contract -- a contract that the State has agreed to.

Now, when we sat down with the State and negotiated our last contract, the understanding was layoffs would be by department, and that is the way it should be continued. That is what we agreed to, not to have Civil Service come in and propose a rule, in the middle of a contract, completely wiping out seniority rights for the employees. That is why--

SENATOR LIPMAN: Just a second.

SENATOR STOCKMAN: Through the Chair, what about that issue, Peter? Is it something that could be grandfathered? In other words, if these changes are going to impact, as Mr. Philippi is suggesting, could it provide that that only be applicable for contracts negotiated hereafter?

ASSISTANT COMMISSIONER CALDERONE: His contract ends July of '89. This process will probably--

SENATOR STOCKMAN: Be done by then?

ASSISTANT COMMISSIONER CALDERONE: --still be going on by then. One of the things about the contract, I think in fairness, Don, is that the contracts, in many respects, do nothing more than write out our Department of Personnel rules. The prior Civil Service rules are repeated in the contract. They are not negotiable items. Title 11A charges the new Merit System Board and the Commissioner of Personnel to write new regulations.

SENATOR STOCKMAN: So, any new negotiated contract would allude to any regulations that are promulgated under Title 11, no? I mean, I don't see really--

MR. PHILIPPI: But that is the time they should be negotiated, not proposing the rules in the middle of the contract.

SENATOR STOCKMAN: Well--

MR. PHILIPPI: What if they come in and-- Another thing we agreed to. What if they come in and say they are going to change the vacation rule, and make it less than we currently have? I mean, the PERC law says that there is a zipper clause. All right? When you sit down to negotiate a contract, those things that are in the contract are protected. He can't come in in the middle of the contract and say they are going to make these changes, when they have been agreed to.

SENATOR STOCKMAN: Well, Mr. Philippi, if they can't, there is a very simple procedure applying in the court. If you are right legally, a court would deal with it that way. I am not so sure you're right, in my understanding of the law -- but I may be wrong -- but if it is a violation of the contract, then it is a matter, it seems to me, of enforcing the contract in the courts.

MR. PHILIPPI: Well, the point is, we don't want it to reach that stage. You sat here and asked before, "What can this Committee do?" We're telling you, you can stop State workers, many in your district, from losing their seniority rights. That's what you can do. That is what this rule does. It wipes out their seniority rights. They have no place to bump.

SENATOR STOCKMAN: How can I do that? How can I do that?

MR. PHILIPPI: By telling the Commissioner that that is what the rule does.

SENATOR LIPMAN: Is it a matter of interpretation or legislation, do you think? Amending the legislation, or seeking a better interpretation of the present law?

MR. PHILIPPI: No, I think on that section it says that they can make the rule. We might need a bill that says, layoffs must be by department-wide.

SENATOR STOCKMAN: Well, if you are lobbying for a bill that says that, fine. We can talk about that. But I--

MR. PHILIPPI: No, you asked what this Committee could do.

SENATOR LIPMAN: Yes, we want to know.

SENATOR STOCKMAN: That's right. But this Committee isn't the Legislature in concert with the Governor. My recollection and understanding -- and you know it better than I -- is that it takes 21 Senators and 41 Assemblypeople and the Governor signing, to do what you are talking about. That is not this Committee. If you want sponsorship for a bill that would provide that layoffs -- that the units will be department-wide, period, if you think the Governor would sign that, and that the Senate and the Assembly would pass it, we can talk further about that. I have some real doubt about it, but that is a little different than the question of this hearing and what we can do in it.

MR. PHILIPPI: No, I think you are asking for an oversight of things that we feel are a matter with the law and the rules being implemented. We are saying that this is one rule we feel is being unilaterally implemented, which has serious implications of wiping out our senior rights.

SENATOR STOCKMAN: I hear you.

MR. PHILIPPI: You have the concern of all of the unions in the State, you know, some 70,000 State workers. Nobody wants to lose their bumping and seniority rights. That is what the implementation of this rule will do. That is why we oppose it so strongly. There is no need for it. Why shouldn't somebody have the right to bump to the other institutions within his department? Why would you want to take that away?

The answer is, they want to make layoffs easy for management. That is the answer. Normally, when we had layoffs in the Department of Transportation in the '70s, I mean, some of the layoffs involved 300 or 400 employees. It took probably three months to do them. They don't want to go through that -- management -- to give the employees their bumping rights and their demotional rights and to follow a list and locations of work. That is why they want the rule made for the layoff unit; to make it easier. They name the unit, and only those employees in that unit can bump to other jobs. Nobody can go anywhere else. They can complete that layoff very shortly.

SENATOR STOCKMAN: I hear you.

SENATOR LIPMAN: Yes.

MR. PHILIPPI: That is the reason they want it. Don't let anybody tell you any different. That is the reason we oppose it.

Now, there have been some other things stated here today and some questions about the reallocation of titles and the organization of titles. Just for the record, we also oppose that. We say, too, that that is a unilateral type action. We think the PERC law says that hours, wages, terms, and conditions of employment should be negotiated with the bargaining units. They talk about reducing compensation. It's a term and condition of employment. That is your wages. Naturally, that should be negotiated.

Our position is, too, that there has been very little input by the unions in that whole process. All right? We have heard the statements up here, and you asked the question: "Has there been input from the unions?" The answer is, there hasn't been any input from the unions, except they showed us some of the things in the survey, asked for our comments, and then sent them out. That is really all that has been done.

I thank you very much.

SENATOR LIPMAN: Mr. Philippi, let me just ask you a question. In your opinion, the manner in which the input -- as we are calling it now -- has been taken from labor groups, is not satisfactory?

MR. PHILIPPI: That is correct.

SENATOR LIPMAN: So you agree with CWA?

MR. PHILIPPI: I agree with CWA, absolutely, especially on that issue. You know, I have worked with Paul Alexander on the Labor Advisory Board to fight this move, because we know what it means to the workers. They are going to lose their seniority rights. That's what it means. No matter how long you have worked for the State, if there is a layoff, your job is in jeopardy. They always had bumping rights before to other locations within a department. I think that probably you heard Assistant Commissioner Calderone say they probably had more testimony and more mail on this issue-- I think the Legislature--

SENATOR LIPMAN: If we had the time--

MR. PHILIPPI: --and the Governor are going to get more mail on this issue than any other thing that has come up.

SENATOR LIPMAN: All right. Thank you very much.

MR. PHILIPPI: Thank you very much.

SENATOR STOCKMAN: Thank you.

SENATOR LIPMAN: Okay, Mr. John DeGregory. Are you representing someone?

J O H N D e G R E G O R Y: No, I'm not.

SENATOR LIPMAN: Okay; all right.

MR. DeGREGORY: Just myself.

SENATOR LIPMAN: Do you mean you don't have 6000 people whom you represent?

MR. DeGREGORY: Really, the interest of a public servant, and a taxpayer in the State of New Jersey.

SENATOR LIPMAN: Have a seat, Mr. DeGregory.

MR. DeGREGORY: Thank you very much. I appreciate your time in allowing us to speak to you this morning, realizing that we do have jobs that we really belong to. I had to take a vacation day today, but I am enjoying the warm light and the openness. I have a responsible position in State government, and I would like to give you a little background on that before I start a little bit of what I would like to speak about.

Ms. Marian Rambough is a fellow employee with me. We both work in the same area. We are professionally titled people. We are State Auditors in the Division of Taxation. I want to make it perfectly clear that we are here today, or I should say I am here today, in particular, to stress myself and the taxpayer with regard to the implementation of this new Civil Service Act. That is really getting into the heart of the matter.

When the responsibility that I hold, and that is what I want to elaborate a little bit on-- I have been in the Division of Taxation for 12 years now, and I have been involved with the disbursing and the assessing of taxpayers' accounts over the course of the 12 years, dealing with the trust funds; the big trust funds, in particular the corporation tax, the sales tax, and the gross income tax. There are very social and economic areas that get very involved at times. Just to give you a rough idea, as I am trying to explain my background, I have a caseload now of about 42 cases, just done this month. Approximately a million and a half dollars, I have in my hands to disburse with, or make the decision whether or not I am to hold back and deny them a refund with regard to sales tax, or whatever.

It is an extremely responsible position, because I have to administer these taxes in a fair and equitable way. I have to interpret the laws very closely. That is just to give you a little background in my area. I have, too, with me --

which I mentioned to Joe earlier (referring to Mr. Capalbo, Committee aide) -- some packets that I have been meaning to give to both of you in particular, and I am glad you are both here. Joe, as I indicated earlier, these are detailed packets involving the issues that I am going to be speaking about in particular. But that is for later on. I would like a response, if I may, from you later on.

The insight to the problems given and relating to the implementation of this Act is what I am concerned with today. That is what I would like to talk about.

SENATOR STOCKMAN: Mr. DeGregory, excuse me, through you, Madam Chair-- How many people like you are there in the Division of Taxation, approximately?

MR. DeGREGORY: Approximately how many auditors? It is my understanding that there are approximately 400 of us.

SENATOR STOCKMAN: Okay.

MR. DeGREGORY: In the field, as well as in the office.

SENATOR STOCKMAN: All right. I just wanted to know.

MR. DeGREGORY: Now, I am concerned with the results of the implementation of this Civil Service Act. My concerns are those of a taxpayer, who demands from New Jersey Taxation auditors a high standard of performance in monitoring taxpayers' accounts to assure proper compliance with the New Jersey tax law. Title 11A:4-1, part a, references announcements and administration of exam, coinciding with the premise of testing and knowledge required to satisfactorily perform the title in serving the public. Yet, how clear is an interpretation and applicability when left unchecked?

What appears to be disturbing is the not-too-clear line of demarcation satisfying pending exams versus no exams, between the break-off point of the old Act versus the new Act, left to the discretion of the Department of Personnel, with no monitoring to ensure proper compliance. This not-so-smooth transition was left at DOP, with no concern given to the State



employee who is caught in the middle, unaware of a new direction that would be initiated by DOP, and what impact it would have as a result to the taxpayer in this State. One might be aware of the credibility of professional people, in particular State Taxation auditors, under these new game rules.

I would like to cite just a few examples with regard to promotional exams. They are PS8538U and PS8956U. They are examples of what I will be getting into.

SENATOR LIPMAN: Mr. DeGregory?

MR. DeGREGORY: Yes?

SENATOR LIPMAN: Are you aware of the fact that we cannot handle individual complaints here?

MR. DeGREGORY: Yes. I am trying to give you--

SENATOR LIPMAN: It must be tied into a larger issue.

MR. DeGREGORY: Right, right, that is what I am trying to get to.

SENATOR LIPMAN: A general issue.

MR. DeGREGORY: That is what I am trying to get to, basically, with regard to the testing, because the three errors I am concerned with, that I would like to touch upon today, are: the examination and the appeal process and the retroactiveness of this new Act, as far as the implementation of it is concerned, and how -- giving you examples and insight -- it might have a social and economic impact to the end result, not just my end of it, but the taxpayer, who has to be looked upon in a very candid fashion when we dispense and make these decisions with regard to these big trust fund moneys.

I think it is a very important issue, and that is what I am trying to get at. Basically, I am trying to get into some of the examples which have developed and been implemented by Civil Service in being tested, not on an entry level position, but on a promotional mastery level position. That is what I am concerned with, because of the ramifications -- the social and economic impact it has.

Now, I have dispensed a million dollars. I have charged \$20,000 or \$30,000 to businesses or people. Basically, that is a tremendous amount of responsibility to exert on the public, if you are not knowledgeable and do not have expertise in the field you are administering. When I sit down to take a promotional exam, and I see that I am generically tested, it is very disheartening because no one is checking the credibility of the knowledge I need to have to do my work.

Now, this is what has developed under this new Civil Service Reform Act. We have been trying inside, through the appeal process, and through other areas, especially your areas, to bring this particular problem to light, because of the severity of what is occurring. Frankly, Senator Stockman, when you go to court with a particular client, you would like a decision being rendered by an individual who is basing his knowledge not on some aptitude ability. That is why you went to law school. That is why we have been exposed, training-wise, in the tax field. When we sit down, and we just take a general aptitude test for English, for math, it's not right. It really isn't right. It really hampers those people -- the taxpayers -- on the end result, who are relying totally on our judgment.

SENATOR STOCKMAN: Through you, Madam Chair--

SENATOR LIPMAN: Yes?

SENATOR STOCKMAN: Mr. DeGregory, trying to follow-- I understand you're telling us you are not coming in here with anything specific in the way of a problem you personally have, although that may be symptomatic--

SENATOR LIPMAN: Yes, that's true.

SENATOR STOCKMAN: Is there a department- or division-wide problem, and what about your union? Is your union in agreement with you on this in terms of what you're-- I am having a hard time staying with you.

MR. DeGREGORY: Okay. The problem with the unions -- and you have to understand them, too -- they are in a situation where they have to weigh various parties. A lot of times -- and I will get specific -- if we are not talking about a revenue issue--

SENATOR STOCKMAN: Let me, again-- In other words, what you're telling me is, your union does not necessarily agree with you on this, or at least they are not-- Your complaint is that these tests with regard to auditors are not sharp enough, are not well-designed to get quality people for promotion. They are like a--

SENATOR LIPMAN: Just a generic type.

SENATOR STOCKMAN: This is a problem that grows out of the Civil Service Reform Act?

MR. DeGREGORY: Yes.

SENATOR STOCKMAN: In other words, it was not a problem three years ago?

MR. DeGREGORY: No, Senator, it was not. I was very happy to be tested, because when I sit down and review cases, I have to deal with lawyers from IBM, U.S. Steel, and all the big 10, and I better know my job, and I better know the laws, the ramifications, the complexities with our changing society, and how our court system -- our judicial system has acted in response to some of these revisions.

SENATOR STOCKMAN: Is Ms. Rambough of a similar-- Is hers an overlapping, or a similar question?

MS. RAMBOUGH: It is similar, and I would like to ask one question. When you asked Mr. DeGregory why wasn't his union represented, that is another issue that I would like to answer for you. I went to the unions which represent the -- what do you call--

MR. DeGREGORY: Promotional.

MS. RAMBOUGH: --the promotional thing, and their comment to me was, they could not represent me on this, because

they had people who have passed, and they had people who didn't pass, and they didn't want to take us in. My answer to them was, "You're taking my dues; you represent me." But that, you know, is another thing.

SENATOR STOCKMAN: You are not here on a personal, specific problem you have. You are here rather to share with the Committee information about the implementation of the Civil Service Reform Act?

MS. RAMBOUGH: Yes.

SENATOR LIPMAN: And you say-- You finish, Senator; go ahead.

SENATOR STOCKMAN: I was just going to say, you're saying that their testing procedures are unfair and unreasonable because they don't really test for aptitude or competence to do this kind of job, but rather test in some general sort of way.

MS. RAMBOUGH: I feel that in particular tests within the last year or two, they were giving what they call "generic testing." Generic testing is saying-- If I came out of high school -- and I have been out of high school for a number of years -- or college-- Let's say college. You are generally well-versed on everything -- auditing, statistics, everything. But if I was coming to get a job in Taxation, say, I would have the knowledge and skills. They would say, "Do you have the knowledge and skills to do this job?" and on an entry level, I would say, "Fine." But after I have been there -- he said 12 years -- it would be fair to think that they were going to test me again on the same knowledge that I had when I came out of college. There is no way I should be tested on that same knowledge. If I am studying tax laws, I should know about taxes.

SENATOR STOCKMAN: Now, are you an auditor yourself in the Division of Taxation?

MS. RAMBOUGH: I am an auditor.

SENATOR STOCKMAN: How long have you been there?

MS. RAMBOUGH: I have spent 20 years with the Division of Taxation.

SENATOR STOCKMAN: Now, is there something that has happened? What, it's a promotional problem?

MS. RAMBOUGH: Yes.

MR. DeGREGORY: Yes, promotional.

SENATOR STOCKMAN: Now, you're seeking a promotion--

MR. DeGREGORY: We are not talking about entry level.

SENATOR STOCKMAN: --and you are going to face taking a test. But your argument is that the test you are going to be given, or have been given, is a generic test; that anybody could come along, with nowhere near the experience you have, do better than you, and jump over you, whereas you have a lot of expertise you have gathered which really will make you a better person for that promotion, but you are getting-- And this flows from the Civil Service Reform Act?

MS. RAMBOUGH: This is what was expressed in one of the answers back to one of the appeals. They said, "This is law. Generic testing under Title 11A:4 has become law."

SENATOR STOCKMAN: What union is your bargaining unit?

MS. RAMBOUGH: The CWA.

SENATOR STOCKMAN: You're saying that the CWA does not share your position.

MS. RAMBOUGH: They will not take a stand.

MR. DeGREGORY: They will not take a stand.

SENATOR STOCKMAN: All right. Well, I don't know where we go from here, other than perhaps to hear from a representative of the Commissioner where this would fall.

MS. RAMBOUGH: Okay. One thing. What I was trying to do was-- We went through what they call "the process of appeal," through Civil Service.

SENATOR STOCKMAN: Are you talking about your own-- You took a test and you didn't get the promotion, and you went through an appeal, right?

MS. RAMBOUGH: An appeal, correct.

MR. DeGREGORY: There are three levels of appeal. There is also a rehearing and reconsideration--

SENATOR STOCKMAN: Right.

MR. DeGREGORY: --that come into play.

SENATOR STOCKMAN: Right.

MR. DeGREGORY: We have been all through that.

SENATOR STOCKMAN: Right.

MR. DeGREGORY: Now, that was another area we were going to touch upon, because it is a very disturbing area with regard to getting some sort of proper answers, and not using that type of an appeal process to create collusion between departments, and basically keeping their own point of view in mind, not really wanting to look at your point of view, or establishing documentation to go along with it.

SENATOR STOCKMAN: Let's take one thing at a time, and let's be aware that you have created a delicate question. I'm staying with you, but you know, and we know, that we are not here to deal--

MR. DeGREGORY: That's true.

SENATOR STOCKMAN: I mean, there are 80,000 employees. We are not here to deal with your specific failure to succeed on that promotional test, but rather with your contention that we ought to be looking at this in a broader context.

MR. DeGREGORY: That is correct.

SENATOR STOCKMAN: Who from the Department can really give us-- (response from audience) Would you please identify yourself?

D E P U T Y C O M M . R O B E R T J . H A R T M A N :  
Yes. My name is Bob Hartman, Deputy Commissioner. Let me just relate to the generic testing concept. It is not a product of Title 11A and, in fact, generic testing actually goes back as far as 1973, where single tests were developed--

SENATOR STOCKMAN: Can you speak into that mike, because we are trying to record for a transcript?

DEPUTY COMMISSIONER HARTMAN: --to test a variety of knowledge and skills and abilities, which essentially spanned anywhere from 10 to perhaps as many as 50 titles, and could be used to assess the knowledge, skills, and abilities of those particular titles. That is how generic testing originally took its form.

Approximately six years ago, there came about in the field of psychometrics, or tests and measurements, what was called "generalized testing," which essentially was generic testing, which became widely used nationwide in merit system types of agencies. And basically what it did was the same thing. It added an additional dimension by saying that in those situations where you had particular basic-level skills tested at one level, there was not necessarily a requirement, or should not be a requirement to retest those same basic skills at the next level or higher levels.

What this did was develop another form of generalized test, which essentially said, only test those skills at the higher levels which have not been previously assessed or tested for. This could have been in the way of a promotional examination, for example, and I have to admit that I do not know anything about the specifics of these individual tests. But, for example, an Auditor II, who had served for a period of time as an Auditor II, and perhaps had been tested as an Auditor II to get that job, and even an Auditor III, had gone through the same thing, that it would not necessarily be necessary to test those KSAs, or those knowledge, skills, and abilities that were germane to the technical aspects of an Auditor I's position. They had been assessed. The individual had been functioning in them.

In a promotional situation, they are also competing among their peers. They are not competing with the outside

world. The object of looking perhaps at an Auditor I would be, only test those skills which are now in addition to Auditor II, or Auditor III somewhat. That would be supervision, management, those types of things. It would not necessarily get into the individual specifics of looking at the everyday technical aspects of the job.

But essentially, generic testing has not been, and is not a product of the reform legislation. It has been around for quite some time.

SENATOR STOCKMAN: Mr. Pursell wanted to speak. Is there someone from--

J O H N W I N E L A N D: Yeah. John Wineland, CWA, Local 1033. With regard to our position on the subject here, which is generic testing, I am not prepared to indicate we can share that it grew out of Title 11A or its adoption. I would like to indicate that the CWA, in general, has opposed the spread of kinds of generic testing. As Ms. Rambough pointed out, in this particular instance, it gave rise to their testimony today. We always have to assess it when we have our bargaining members on various sides of a given situation.

But in general, we do agree with the testimony of Ms. Rambough and Mr. DeGregory, in the sense that we have processed many appeals to the Merit System Board level regarding our testing. We feel that what occurs with this spread of generic testing is, we get into a situation where you are testing general skills, and a lot of times the person most adept and most experienced at test taking is rewarded, and they are getting away from the type of testing which is based upon the job content of specific jobs. Within Taxation, we just recently had a test that was conducted other than generic for a title called Tax Counselor. The feedback we got from the employees who took the test, whether they failed, passed, or were ranked where they wanted to be or not, was that they felt it was very fair because it was job-related. Now, in instances



of tests they have taken, we have gotten opposite complaints, although there were relatively few individual appeals. Overall, people felt that it was not unfair to test generally.

So, as I said, our position would be that we don't necessarily see this as coming from the adoption of Title 11A, except to point out that at the time that Title 11A was adopted -- and the CWA did have alternative bills being considered by the Legislature -- we were pushing very hard to stress the function of the Department of Personnel in terms of its examination conduct -- the development and the giving of examinations relative to the job. We wanted to see that element emphasized in all of our bills. In one case, I think we said it should be almost their exclusive job. Unfortunately, 11A, as it was adopted, did not focus in on that.

One last thing: With the title consolidation process, as was explained earlier this morning, you are going to see a wider spread of generic testing, because there are three main objectives to title consolidation. As long as we put data in the computer and the numbers are crunched, they are going to come out and they are going to rewrite every person's job spec, reevaluate every title's salary level, and then also be able to develop generic tests with a certain formula they will use, based on the rewriting of the job specifications themselves.

So you will see more of it and, in general, our organization does oppose it.

MS. RAMBOUGH: May I say one thing? What he said is correct. I had no problems with generic testing, as long as it was generic testing based on taxes. I have no problems with the way they are administering the tests. I have a problem with the fact that they took a survey already. The same survey on reclassification they are talking about doing now, they did five or six years ago.

MR. DeGREGORY: Right.

MS. RAMBOUGH: I was a product of that survey; I lost a title under that survey. They said they were going to wipe out a department. They gave another test which was similar to what they gave -- a generic test. I questioned it at that time. They told me that because there was a disparity between the titles and the work you were doing, it wasn't a fair-- "The only fair test we can give you is the basic skills and knowledge test." Fine, I took that test. Then they came around and said, "Okay, the whole department is going to reorganize, and you will be able to go in." They reorganized, they did all this here, and they said, "Okay, now you're doing your auditing. We got you set down." They still gave another test.

SENATOR STOCKMAN: Ms. Rambough, you see, you are getting very specific. There are 100,000 and some employees. We, as a Committee, can't deal with that historic, incidental, perhaps injustice done to you personally.

MS. RAMBOUGH: Okay. I know what you're saying. I was trying to get at something, and I was getting off the track. What I am asking you to do, or to get me to do -- I don't care which way it goes-- I feel that the Department of Personnel, the Merit System Board, is not using their powers correctly. I feel they are hiding behind Title 11A. I feel this. If someone can prove to me that they are not, I would have no problem with it. I would love to believe they're not.

I have gone through the proper appeals. I have gone to every avenue the State has allowed me. I went to my union. They won't help me. I went through the Civil Service process. They won't help me. Nobody will help me. How can I get someone to check it and say, "Hey, what are you doing?" They don't even hear my appeal. They let analysts say, "This does not have merit." Nip it in the bud. You know, this is the stuff that is going on, and nobody hears about it. What are we supposed to do?

MR. DeGREGORY: If I may interrupt for a second, with regard to what she's saying-- There was a very derogatory memo that we got a hold of that put a damper to all of this.

SENATOR STOCKMAN: Okay.

MR. DeGREGORY: Let me just say one further note with regard to the Division of Taxation. There was a file memo that was put out. There it specifically indicated, by management, that even in a generic test, tax questions should be present. And that was not the case with regard to the auditor positions that the Department of Personnel was saying were under the new form of Civil Service that they were getting into.

SENATOR LIPMAN: All right. Thank you so much for bringing this kind of information to us. You know, we-- Yes, Ms. Rambough?

MS. RAMBOUGH: I want to know how we go about getting someone-- This Department has no checks and balance. I am not even talking about the issues. I'm saying--

SENATOR STOCKMAN: The auditors?

MS. RAMBOUGH: No, not the auditors. I am talking about the Merit System Board. How do we know-- How can we get some kind of -- from the legislators-- You say there are 21 of them. How do we go about initiating that they come up with a committee? You are given the power to do things, but who--

MR. DeGREGORY: Monitors. Who monitors the watchdogs?

SENATOR LIPMAN: I think it starts here, Ms. Rambough, with this Committee. When we get a quorum, and when we discuss the matter, then perhaps we can make a statement that we feel maybe the legislative intent is not there.

MR. DeGREGORY: And carry it out.

SENATOR LIPMAN: And maybe other points that can be found. What we are trying to find out now, the reason for this hearing is-- We are trying to find out if the Civil Service Reform Act is being implemented correctly. You have given us, and Mr. John DeGregory has given us, insight into the facts about what is happening with the Merit System Board.

Now, I don't want to sound like the Department of Personnel, but I really don't have a quorum here to meet and decide. We are taking the testimony accurately, and the other members who are absent can read the testimony. When we take this hearing up again, which will follow probably our next scheduled Committee meeting-- We don't have a schedule now from the President of the Senate about meetings, but this will probably-- The rest of this hearing will occur probably at our next scheduled Committee meeting, which would be the end of November or the beginning of December. We will reflect on the two parts of the hearing, and will have to see what follows from that.

We can't sit here and give you an exact answer right now. But what you have complained about -- I gather, since I had to leave the room for a minute -- is that the Merit System Board is not acting properly under Civil Service form. So, your point is well taken. We will examine it, and you will be hearing from the State Government Committee. Okay?

MS. RAMBOUGH: Okay.

MR. DeGREGORY: We appreciate that.

MS. RAMBOUGH: I would still like to know about checks and balance. Can there be a committee to come up and say--

SENATOR LIPMAN: I see.

MS. RAMBOUGH: --a committee that can check behind it?

MR. DeGREGORY: That was the main goal of speaking this morning, because we realize, as you were indicating--

SENATOR LIPMAN: All right.

MS. RAMBOUGH: And one more thing.

SENATOR LIPMAN: Go ahead.

MS. RAMBOUGH: At their level of permission, you know, when they have the merit system, if they could have our independent legislators-- Everything is done through their Department. There is no outside person able to come in on these hearings. I am talking about the general hearing

process. I am not talking about an individual. When you go to a hearing--

SENATOR LIPMAN: I am not sure I understand what you're saying. Oh, I see, the Commissioner is in charge of the Appeals Board, as well as the Department. He has two hats. The Commissioner of Personnel has two hats.

MR. DeGREGORY: That is correct.

SENATOR LIPMAN: And you are asking us to create an Appeals Board which he is not in charge of?

MS. RAMBOUGH: He could be there, but make sure--

MR. DeGREGORY: That there is representation.

MS. RAMBOUGH: --if a person puts in an appeal, the appeal should-- For instance, on a reappeal, I had-- We would like an independent person like a Senator to make sure it is heard. I am not saying that--

MR. DeGREGORY: Some monitoring to be sure that compliance is being upheld.

SENATOR LIPMAN: (consults with Senator Stockman) Do you want to comment on that?

SENATOR STOCKMAN: No, I don't think there is anything to say right now. We will have the transcript.

SENATOR LIPMAN: All right. Thank you so much. Your points are well taken. We will consider them -- promises, promises, promises -- as we go through these hearings. You know, we have to finish all of the points. The Department of Personnel does not look too happy right now.

I can't really give you the time, because the other group will be arriving, and we do have to get a bite of lunch before coming back for the other hearing. I really can't give you a date, because no one has given us a date. I know we are in recess until November 28. Our dates were abruptly canceled by the President of the Senate. So, depending upon whether that is a session date or a Committee hearing date, we will-- I think this is a very important hearing. Do you want to say

something about the hearing and that you think we should still continue it? You do?

SENATOR STOCKMAN: Absolutely.

SENATOR LIPMAN: There are some very important points which we have still not discussed, and still must consider. I think we are getting extremely knowledgeable from sessions such as today's. All right?

Thank you so much. We are going to break for lunch now. This hearing is presently suspended. Thank you.

**(HEARING CONCLUDED)**

## APPENDIX





Bargaining wages and other terms and conditions of employment is a fundamental right of workers through their unions. Title 11A - the Civil Service Reform Act -- specifically recognizes this right both in its declaration of policy and at 11A: 12-1 which states this "title is not to be construed either to expand or to diminish collective negotiations rights ..."

Yet, for the last several years, the Department of Personnel, (DOP), has been working on a project called title consolidation which will impact wages and other terms and conditions of employment for state workers without negotiating with the union representing these workers. The State claims they don't have to negotiate with the union because of Title 11A.

We are not here to argue whether or not title 11A gives the Department the authority to establish, consolidate and/or abolish titles -- for it does. Nor are we here to argue that title consolidation is inherently wrong or insidious. For we agree with the general premise that there are too many titles -- approximately 12,000 in 1987. (It is interesting to note that over half of these titles have 3 or fewer incumbants and over one third have only one incumbant. These must be, by and large, management titles: there are certainly more than 3 clerk typists in state government.) However, we do not believe that the Department or any other agent of the State, should have the right to unilaterally abolish, create and consolidate job titles held

by our members without first negotiating the impact of the changes effected by consolidation on the terms and conditions of employment. Nor do we believe that the legislature ever intended to give them this right under Title 11A.

Title consolidation is Personnel's grandiose plan to consolidate 6,000 to 9,000 of the existing job titles and to create new, generic job titles. We learned of this project only last summer when they invited us to a presentation. At that time we learned they had already classified all titles into 8 broad job categories and thirty seven sub-categories -- already they were well on there way to "genericizing" the classification system. Their plan is to develop 37 questionnaires to be administered to up to 100,000 state and local government workers -- over one half of the workforce. These questionnaires will be used to develop a data base to create work "profiles." Where "profiles" match -- titles will be consolidated.

During this presentation they asked CWA to join them in this effort; they claimed they wanted our "input" and they asked us to provide 3 people to work with them on a full-time basis for 10 weeks. Our Union, in good faith, accepted their offer. I was one of those CWA representatives on loan to Personnel. It took less than 3 days to realize that our organizations have vastly different ideas of what input is, that Personnel's definition of input is not substitute for negotiations, and that our good faith effort was to be met with a literal slap in the face.

During these few short days we learned, for the first time, that this project would affect our members salaries. In fact we found out that this project, as envisioned by the Department, would effect everything from job descriptions to exams, to promotional opportunities, career ladders and more. We were also informed, for the first time, that all substantive decisions concerning the methodology to be used to develop the questionnaires, to administer them and to analyze the data had been made. In other words, no real input from CWA was contemplated by the Department. What Personnel really wanted from CWA was help in writing their questionnaires.

Now, writing these questionnaires is time consuming and tedious - it took the State of Mass. 11 years to complete a similar project. Each questionnaire contains anywhere from 500 to over 2,000 questions which are designed to elicit from workers information about what we do, (for example how often a worker types letters or whether or not he or she files reports), However, just because this is time consuming and tedious doesn't mean that it involves a great deal of know-how or decision making, i,e, input. In fact, we were given a set of pre-defined verbs which we had to use in developing the questions. We were told we could not add, delete or even modify the verbs or their definitions and that one, and only one, verb had to be included in every question we drafted. In essence what the Department really wanted from CWA was free labor and an opportunity to co-opt the Union.

After 3 days of this nonsense we left and demanded negotiations over the impact of this huge undertaking which has the potential of significantly impacting the terms and conditions of every single CWA members terms and conditions of employment. This project will in all likelihood result in the red-circling (freezing) of salaries, downgrading of salaries, (a DOP reclassification survey completed just this year of Bergen County's Division of Parks resulted in 44% of that Division's workforce being downgraded in pay), will alter promotional opportunities, destroy career ladders, will probably alter the workweek and overtime entitlements of workers we represent and have an unknown, but potentially negative impact on seniority and layoff and recall rights of workers we represent.

The Union is not the only organization which recognizes the impact of this project. On April 12, 1988 the Assistant Commissioner of Management and Administration for the Department of Health told his staff, "I don't believe we can overstate the impact of a project of this magnitude. In addition to significantly changing our current classification system, it will no doubt have an impact on pending and future examinations, classification actions currently in process and potentially our compensation system ..."

Our demand for negotiations, a right established by law and as provided in our current contract with the State has been met with incredible resistance. The Department, which readily admits that

they may lower the salaries of our members, incredibly maintains that not only is it management's prerogative to do so but that they are mandated to lower the salaries of our members by Title 11A. Frank Mason, representing the Governor's Office of Employee relations, while not refusing to negotiate out right, suggested the State would entertain our demand AFTER Personnel completes its project.

Negotiations after the fact is unacceptable. After the fact means that the Department will have completed administering their questionnaires -- based on their design -- and will have a massive data base to use as a justification for their demands. This data base is one of the reasons why negotiations are long overdue.

The Department continues to pursue its plan with unprecedented zeal. This past Spring they published their proposed "Red-Circling" rule in the N.J. register for comment. This new rule, if adopted, gives the Department the authority to unilaterally lower our members pay as a result of title consolidation. Red-circling a worker's pay means that his or her salary is frozen -- no yearly wage increments and no negotiated salary increase. This proposal is a blatant attack on our contract. It will have the effect of robbing our members of wages provided for by collective negotiations. After all we negotiated a wage package with the State, a wage package to which they have agreed, for all of our members not just those whose salaries have not been

unilaterally red-circled by the Department of Personnel.

The Department, confronted with an ever more militant workforce agreed to table their red-circling proposal for the time being and to provide our Union with "meaningful" input into the title consolidation project. However, they have once again failed to live up to their commitment concerning input. In July of this year we requested information from the Department, information which we believe is essential to CWA's proper representation of workers impacted by the Title Consolidation Plan and necessary to the expansion of the dialogue between us. For months they told us they were working on our request, that the response would soon be in the mail. Several weeks ago we finally received their response. In essence they refused to provide our Union with the information requested thereby precluding any meaningful input. We have now filed an Unfair Labor Practice against the State for their refusal to provide this information.

We certainly did not envision that passage of the Civil Service Reform Act would mean the wholesale disruption of Labor Relations in New Jersey, or the gutting of legal contracts. We do not believe that the law established a mandate for the Department of Personnel to violate labor laws and contracts with its workforce in the name of "reform." We have brought these issues to your attention because we do not believe this is what the legislature envisioned, nor did the legislature intend for the law to have such an impact. The situation, if left unattended, will result in ever deteriorating labor relations and a disgruntled and

demoralized workforce. We ask that you investigate these problems and issue a report providing the much needed direction to the Department responsible for carrying out this law.

*mine*

# Communications Workers of America

10 RUTGERS PLACE • TRENTON, NEW JERSEY 08618

(609) 392-2771



October 20, 1988


Mr. Edmund G. Gerber, Director  
Division of Unfair Practices and  
Representation  
Public Employment Relations Commission  
495 West State Street  
CN 429  
Trenton, New Jersey 08625-0429

Dear Mr. Gerber:

RE: CWA v. State of New Jersey

Enclosed please find an Unfair Practice Charge filed in the captioned matter. If there are any questions, please do not hesitate to contact me. I certify that a copy of the within charge was sent today to Frank Mason.

Sincerely,

  
Kathleen A. King  
CWA Representative

vo

c: Robert W. Pursell  
State Worker National Staff  
State Worker Presidents  
Eugene McCaffrey  
Frank Mason  
Judy L. Winkler

Enclosures





STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
UNFAIR PRACTICE CHARGE

INSTRUCTIONS: File an original and 4 copies of this charge with the Public Employment Relations Commission, together with proof of the simultaneous service of a copy of the charge upon the respondent(s). NOTE: The charging party shall have the burden of proffering sufficient evidence to support a prima facie finding of unfair practice.

DO NOT WRITE IN THIS SPACE

DOCKET NO.

DATE FILED

1 CHARGING PARTY

a. Full Name (If employee organization, give full name, including local name and number):

Communications Workers of America, AFL-CIO

b. Address (Street and Number, City, State and ZIP Code):

10 Rutgers Place, Trenton, New Jersey 08618

c. Telephone Number

(609) 392-2771

d. Name and Title of the Representative filing charge

Kathleen A. King, CWA Representative

e. Telephone Number

f. County: Mercer

2 PUBLIC EMPLOYER AND/OR EMPLOYEE ORGANIZATION AGAINST WHOM CHARGE IS MADE

a. Full Name (If employee organization, give full name, including local name and number):

Office of Employee Relations

b. Address (Street and Number, City, State and ZIP Code):

134 West State Street, CN 228, Trenton, NJ 08625

c. Telephone Number

(609) 292-6180

d. Name and Title of Representative to contact:

Frank Mason, Director

e. Telephone Number

f. County: Mercer

3 STATEMENT OF CHARGE

Pursuant to the New Jersey Employer-Employee Relations Act, as amended, the charging party hereby alleges that the above-named respondent(s) has (have) engaged or is (are) engaging in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a), subsection(s) 1 and 5 and/or N.J.S.A. 34:13A-5.4(b), subsection(s) (list subsections), in that: (Provide a clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed. Use reverse side and additional sheets, if necessary.)

1. The Communications Workers of America, AFL-CIO, represents State employees in the Administrative/Clerical, Professional, Primary level and Higher level negotiations units.
2. The State of New Jersey, Department of Personnel, has for over a year been conducting revaluations of job titles represented by CWA. These evaluations will affect salaries and terms and conditions of employment.
3. On July 6, 1988, CWA submitted a detailed information request regarding the status of the Title Consolidation Project.
4. The State of New Jersey, Department of Personnel, has refused to provide the requested information.
5. Said refusal to provide said information is violative of Sections 5.4(a)1 and 5 of the Act.

Indicate whether additional sheets are attached:

Has a Notice of Impasse, Petition for Scope of Negotiations Determination, or Representation Petition been recently filed or filed simultaneously with this charge? Yes ☐ No ☐ If yes, indicate date(s) filed and docket number(s) assigned, if available:

**OATH OR CERTIFICATION (Complete one)**

STATE OF NEW JERSEY ☒  
COUNTY OF ☒

\_\_\_\_\_, of full age,  
being duly sworn according to law, upon his/her oath deposes and says that herein is the charging party above named, or its representative,  
and that herein is read the above charge and is familiar with its contents,  
and that the facts alleged therein are true to the best of his/her knowledge and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

I, \_\_\_\_\_, and subscribed to before me this \_\_\_\_\_

at \_\_\_\_\_, 19\_\_\_\_

I am the charging party above named, or its representative, and I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Kathleen A. King  
Signature

CWA Representative

Title

October 20, 1988

Date

# Communications Workers of America

10 RUTGERS PLACE • TRENTON, NEW JERSEY 08618

(609) 392-2771

13

October 20, 1988

Ms. Judy L. Winkler, Administrator  
Personnel Management Systems  
Department of Personnel  
Front and Montgomery Streets  
CN 313  
Trenton, New Jersey 08625

Dear Ms. Winkler:

On July 6, 1988, the CWA sent to your attention a detailed information request in regard to the Department of Personnel's Title Consolidation Project. We hoped at that point, to expand the dialogue between the Department and CWA. Most importantly, we hoped to obtain information that is essential to CWA's proper representation of employees impacted by the Title Consolidation Plan.

I am in receipt of your letter dated September 22, 1988. Your letter outlines the Department of Personnel's overall plan for the project. CWA is already aware of this information.

However, your letter is totally unresponsive to the substantive questions raised in our request of July 6.

Therefore, we have filed the attached Unfair Labor Practice Charge with the Public Employment Relations Commission.

Sincerely,



Kathleen A. King  
CWA Representative

VO  
Enclosure

# Communications

NEW JERSEY AREA OFFICE

(201) 750-5550



## Workers of America

(AFFILIATED WITH A.F.L.-C.I.O.)

1030 ST. GEORGES AVENUE  
AVENEL, NEW JERSEY 07001

July 6, 1988

Judith Winkler, Administrator  
Office of Personnel Management Systems  
Department of Personnel  
CN 317  
Trenton, New Jersey 08625

Re: Title Consolidation Project

Dear Ms. Winkler:

This letter will serve as an official request for information regarding the Department of Personnel's Title Consolidation Project.

In order to properly represent employees in New Jersey State and local government negotiations units, CWA requests the following information:

1. A complete and detailed schedule of the Department of Personnel's Title Consolidation Plan, including:
  - a) Dates on which employees in all occupational groups identified by the Department of Personnel will be pretested and surveyed using the Department of Personnel's title consolidation survey.
  - b) Dates by which the Department of Personnel projects survey results will be tabulated for each occupational group surveyed by the Department of Personnel.
  - c) Dates by which the Department of Personnel plans to implement title consolidation in each occupational category.

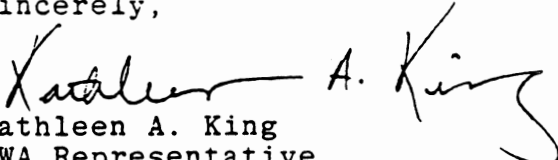
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2. A copy of the "Generic" section of the Department of Personnel's title consolidation questionnaire.
3. A copy of the occupational or non-generic section of the Department of Personnel's questionnaire for each occupational category.
4. A copy of the occupational code dictionary now in use by the Department of Personnel in its Title Consolidation Project.
5. A copy of the list of "approved action verbs" now in use by the Department of Personnel in its Title Consolidation Project.
6. A copy of the "Things Function Scale", Data Function Scale and People Function Scale now in use by the Department of Personnel in its Title Consolidation Project.
7. A written explanation of the "Automated Test Generation System" including all of its components.
8. A written explanation of the basis on which the Department of Personnel will analyze the title consolidation questionnaire responses, including:
  - a) What job factors are considered.
  - b) How "action verbs" are weighted.
9. A copy of any and all "wage translation" systems now under consideration by the Department of Personnel including a written explanation of how title consolidation survey results will be used to evaluate work.
10. A detailed written explanation of how the Department of Personnel Title Consolidation Project will conduct:
  - a) Job Documentation
  - b) Job Evaluation
  - c) Wage Translation
11. A list of factors other than the title consolidation questionnaire results which the Department of Personnel plans to consider in regard to title consolidation implementation.
12. The results of the survey of any and all occupational categories which have been surveyed as of this date.

CWA has attended a series of meetings in which we have been asked to comment for purposes of clarification on the title consolidation surveys. CWA has had no real input into the Title Consolidation Project. In addition, we have been unable to obtain meaningful information in regard to the project.

A complete response to the questions I have raised in this letter is requested within ten (10) days of this letter. If there are any questions, please do not hesitate to contact me.

Sincerely,

  
Kathleen A. King  
CWA Representative

KAK:ph

cc: Robert W. Pursell, Area Director  
Carol Gay-Fantini, Area Director  
Steven P. Weissman, District Counsel  
State Staff  
Public Sector Local Presidents

opeiu 153, afl-cio



## State of New Jersey

Eugene J. McCaffrey Sr.  
Commissioner

Robert J. Martmon  
Deputy Commissioner

Peter J. Calderone  
Assistant Commissioner

Kerry M. Perretta  
Chief of Staff

### DEPARTMENT OF PERSONNEL

FRONT AND MONTGOMERY STREETS

CN 313

TRENTON, NJ 08625

Judy L. Winkler, Administrator  
Personnel Management Systems

September 22, 1988

Ms. Kathy King  
Communications Workers of America  
1030 St. George Avenue  
Avenel, New Jersey 07001

Dear Ms. King:

This is to bring you up to date on the status of the job analysis project and answer some questions that have been raised. The survey is currently approximately 20% complete. We have administered the questionnaire to over 2,400 state and local employees in 7 occupational groups. A listing of each of the occupational groups and the titles included in each is attached.

Overall, the response has been quite positive. Employees have been pleased with the opportunity to explain their duties and responsibilities as well as KSA's and related job info through the questionnaire. Administration has entailed a tremendous training and scheduling effort spread amongst large numbers of geographical locations all around the State. Problems have been relatively few and have been resolved.

The next three occupational groups have been scheduled for administration over the next two months. They are direct patient care, cosmetology and medical services and encompass over 7,000 employees. Lists of titles in these groups are also attached, although it should be noted that the medical services list is still tentative at this point and will be firmed up by the end of the month.

During the months of November and December, makeups will be administered for all of the groups. For the new year, we plan on commencing the survey of the administrative occupational group near the end of January and the clerical one the end of February. These are our largest groups and encompass approximately 16,500 people in the sample. When title listings of these groups are available, they will be sent to you. This should be around the first of the year.

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Scheduling of the next groups is still tentative at this point. Schedules have been and will be adjusted to ensure the smooth administration with the least difficulty. As groups are added to the schedules you will be notified.

Analysis of the data is continuing. Although it was anticipated that it would be available for discussion with affected bargaining unit representatives and appointing authorities by now, it is not. Our initial projection has been thrown off by a variety of factors including computer problems, leave and other staffing issues. We are proceeding with great care in the analysis to ensure that all relevant information has been analyzed and the results are reliable and valid. As stated on many occasions, the analysis will be discussed with affected parties prior to implementation. It is not, and has not been, the plan of this department to take unilateral action on such a significant matter.

We will continue to meet with affected negotiations unit representatives and review the questionnaires prior to finalization of each. Some of you have been involved in this process already. Your input, as well as that of the subject matter experts and the employees who participate in our pre-samples, has been valuable in fine-tuning the questionnaires. While issues of confidentiality do not permit our providing copies of these questionnaires, we are willing to set aside as much as two days on each questionnaire to ensure you have sufficient time for review. In most cases, review has taken about half a day.

Your cooperation in this monumental effort to review our classification system is appreciated. We look forward to continuing cooperation and discussions throughout the administration, analysis and implementation phases.

Sincerely,



Judy L. Winkler, Administrator  
Office of Personnel Management  
Systems

JLW:mk

c: Peter J. Calderone  
Robert J. Hartman  
Eugene J. McCaffrey, Sr.  
Kerry M. Perretta

attachment



## TWO YEARS SINCE PASSAGE OF CIVIL SERVICE ACT

The Union was intimately involved in the process which led to passage of the Civil Service Act.

At that time we were experiencing the erosion of our collective bargaining rights by adverse court decisions. Our fear was that the Civil Service Reform Act could be used to further erode our collective bargaining right under the New Jersey Employer-Employee Relations Act.

We fought for and obtained amendments to protect ourselves from the abuse we feared could result from implementation of such a comprehensive law change.

Some of the major amendment written into the law to protect our collective bargaining rights included:

11A:1-2(e) It is the public policy of this State to protect career public employees from political coercion and to ensure the recognition of such bargaining and other rights as are secured pursuant to other statutes and the collective negotiations law.

11A:12-1 Inconsistent laws. Any law or statute which is inconsistent with any of the provisions of this title are to the extent of the inconsistency hereby superseded, except that the title is not to be construed either to expand or to diminish collective negotiations rights existing under the "New Jersey Employer-Employee Relations Act", P.L. 1941 c.100 (C.34:13A-1 et seq.).

We were given assurances that the Civil Service Act would not be used to abrogate our contracts.

We never would have supported the passage of the Civil Service Act if we had known that our contracts would be under attack for the next two (2) years. We feel there has been a breach of the good faith in which we negotiated with the legislature and the administration. I'd like to cite examples of the problems we've experienced over the last two (2) years and problems we continue to experience in the implementation of the Civil Service Act. Several other union representatives are prepared to elaborate on specific problems we've had with the title consolidation project, layoff rules and other compensation rules.

Our basic complaint with the implementation of the Civil Service Act centers on the disregard for the collective bargaining process over the last two (2) years. However, there have been other problems as well, such as the attempted wholesale reallocation of 8,000 workers into the non-competitive patronage division in November of 1986.

We continue to have a provisional problem. Despite Commissioner McCaffrey's claims in his 1987 report to the legislature that there were "only" 6,861 workers pending promotional and open-competitive examination. Our Union has received lists from the Department of Personnel that show 6,832 provisionals in the CWA represented bargaining units alone. It is likely that a much larger number of provisionals exist than the Department of Personnel claims. Since the CWA only represents 39,000 State Workers and there are nearly 200,000 Civil Service Workers, the number of provisional appointees is probably closer to 15,000. We believe an independent audit of the number of provisionals should be conducted to determine the actual number of workers who are provisional pending open-competitive and promotional exams.

It also needs to be pointed out that under the General Provisions of the Act 11A:1-2(a):

- a. It is the public policy of this State to select and advance employees on the basis of their relative knowledge, skills and abilities.

Not only are large number of provisionals employed in violation of this public policy since they haven't been tested, but the attempted wholesale reallocation of titles to the non-competitive division further violates the public policy in 11A:1-2(a). Non-competitive appointments are not selected based on their relative knowledge, skills and abilities but selected based on their basic qualifications - there is no ranking of non-competitive appointees.

The Constitution, at Article VII requires all appointments and promotions in the Civil Service to be made according to merit and fitness by competitive exam where practicable. Thousands of provisionals are employed in violation of the Constitution, the Department of Personnel would like to see thousands more placed in the non-competitive division where appointments are not made by competitive exam. In addition, thousands of special services workers continue to be employed in violation of the Constitution,

the Civil Service Act and Governor Kean's own Executive Order #145. Over 300 special service workers are employed at Greystone Psychiatric Hospital alone according to our officers there. There are as many or more special services nurses employed at the State Institutions than there are Career Service Nurses. In many instances, special service workers are hired at higher hourly rates than permanent career service workers. Michael Cole writes to us and tells us they are investigating and actively remedying the special services situation. However, two (2) years after the issuance of Executive Order #145 there continues to be thousands of special services workers employed throughout the State.

Of the thousands of provisionals employed by the State, many are employed in violation of 11A:4-13(b) which specifically and emphatically states that "...in no case shall any provisional appointment exceed a period of twelve (12) months". Not only are provisionals hired without competitive testing, they are employed in violation of the twelve month limitation in the statute. We argue that more resources within the Department of Personnel should be allocated in order to meet their constitutional and statutory obligation of competitive testing instead of the current allocation of resources which seeks to destroy the collective bargaining process.

Before I get into the assault on collective bargaining I'd like to touch on a few other situations where we feel the legislative intent has been ignored or at least not actively enforced.

Our Union fought long and hard against the use of fines as a form of disciplinary action. We argued and we maintain, that the use of fines is tantamount to involuntary servitude that workers are forced to work without being paid. In the final days leading to the enactment of Civil Service Reform, we agreed to compromise language which allowed the use of fines as a form of discipline but only as a form of restitution or in lieu of a suspension where the suspension would be detrimental to the health, safety or welfare of the public.

For the last year we have been fighting with the Department of Corrections and Department of Personnel over an attendance policy implemented by the Department of Corrections which mandates the imposition of fines for attendance related offenses. We brought this policy to the attention of the Department of Personnel in 1987 since we felt that the blanket use of fines violates the provisions of 11A:2-20. One can hardly argue that a clerk typist

in central office of Corrections should be fined instead of suspended for an attendance related offense because a suspension would be detrimental to the health, safety and welfare of the public. We were unable to get the Department of Personnel to render a decision on our appeal; instead, we were told that each individual case involving a fine would have to be appealed to the Merit System Board and a hearing would be conducted before the Office of Administrative Law. We reluctantly agreed to appeal all our fine cases and luckily the cases were all consolidated. However, when the day of the hearing arrived, Corrections dropped all of the charges and agreed to pay back the fines to all but one of the workers who had been fined. We are still waiting for an OAL hearing on the remaining fine cases. We argue that the Department of Personnel should have decided the fine issue based on an interpretation of their own enabling legislation rather than force us to appeal each individual case to the Merit System Board. The Merit System Board and the Department of Personnel should have had the courage to interpret their own statute and prevent the blanket use of fines.

There are numerous other problems in the way the law has been implemented over the last two (2) years. We could complain, at length, on the rule making process, where the Administrative Procedure Act has been used to wipe out the old Administrative Code and replace three (3) Chapters of rules and regulations with 10 Chapters of regulation. We could complain about the PERKS being offered to the Senior Executive Service. We could complain about how discrimination has been institutionalized into the performance assessment review program. We could complain about the use of Project Specialists and Confidential Agents/Secretaries. We will, however, focus ourselves on the general problem of the lack of respect for collective bargaining and the unilateral implementation of changes to the terms and conditions of employment without bargaining with the majority representative over the last few years.

We have previously pointed out the provisions of the Act which were designed to protect collective bargaining rights. Notwithstanding the clear, precise language, the Department of Personnel has consistently either proposed for adoption or actually adopted rules and regulations which either alter or affect our collective bargaining agreement.

The most notorious of the proposals which affect our contract is the title consolidation project which you will hear about in more detail from Evelyn Liebman, one of our local union representatives who is much more familiar with the subject than I am. It will be sufficient to say for now that our collective bargaining agreement has language which addresses the effects of title consolidation and the Department of Personnel has refused to negotiate with us over the impact the title consolidation project will have on the salaries of workers we represent.

Similarly, a proposal for merit pay has been advanced by the Department of Personnel - once again a unilateral proposal with no intention at this point, to bargain the impact of the pay plan with affected collective negotiations units. You will hear more about the merit pay proposal - cleverly called gainsharing from Paul Alexander, a union representative from Local 1033.

Earlier this year our union had to mobilize our workers around a proposal for earned sick leave. This proposal is interesting for two reasons. First of all it was proposed to the Merit System Board by the State Department of Labor. It's funny. When CWA proposes a rule such as one which requires the Department of Personnel to negotiate the economic impact of proposed rule changes we don't get a public hearing - our proposal is rejected administratively. But when the Department of Labor proposes a rule which abrogates not only the statute but our collective bargaining agreements - they get three (3) regional public hearings.

The earned sick leave proposal was put out for public hearing and published in the New Jersey Register despite the fact that 11A:6-5 provides that each employee shall receive a fifteen (15) day sick leave credit at the beginning of each year. Our contracts also provide for fifteen (15) days sick leave "credited in advance at the beginning of the year in anticipation of continued employment for the full year and may be used on that basis in accordance with established state policy...". It's bad enough that the Labor Department proposed this rule - you would think they - of all Departments - would know and respect what items are negotiable. It's even worse that the Merit System Board and the Department of Personnel put these rules out for hearing. Vast amounts of our energy had to be expended in fighting a rule that clearly is illegal under the statute. The rule clearly was intended to weaken our contract provisions which provide sick leave be credited in advance of the beginning of the year.

We apparently defeated the earned sick leave proposal. I say apparently because there has been no official notification to us or the public that the proposal has been rejected. I believe, however, it is safe to assume that the proposal was not rejected because it would have abrogated our contract or would have diminished our collective bargaining rights.

11A:4-16 provides for relocation assistance for State Workers transferred due to a phasedown or closing of State operation. We thought, since relocation assistance was an economic item, that the State would negotiate the amount of money to be provided for relocation assistance. Once again we were wrong. While the subject was brought up for discussion at a Labor Advisory Board meeting, the actual rule implementing relocation assistance was, as with all rules, implemented unilaterally over our objections. We have our representative to the Labor Advisory Board present today to discuss his perception of the role the Labor Advisory Board plays. He will also address what is happening with layoff rules which is another area of contention. I'll leave those subjects for him to address but I'd like to point out that the statute requires that the Merit System Board adopt rules for preventive actions to lessen the possibility of a layoff or demotion of permanent employees. The layoff rules proposed for adoption by the Merit System Board actually encourage layoffs rather than lessen the possibility of layoffs.

Chapter 3 of the new Administrative Code governs classification and compensation. Numerous rules have been adopted in that Chapter which directly affect compensation of State Workers. Whether it's a rule for lateral pay adjustments or pay adjustments for changes in anniversary dates, the rules were adopted unilaterally over the objection of the CWA.

The New Jersey Employer-Employee Relations Act was adopted in 1968 and declared that public employees shall have the right to bargain over the terms and conditions of employment. One of the most basic terms and conditions of employment is compensation. Whether it be a red-circling policy which freezes the salaries of workers or a gainsharing program which rewards cost saving techniques, compensation policies should be considered first and foremost a term and condition of employment subject to collective bargaining.

The legislature passed the Civil Service Act in 1986 with express provisions for protecting collective bargaining. If we succeed in pointing out to this committee today that the public policy provisions of the Civil Service Act have been ignored or abrogated we ask that remedial legislation be enacted to restore to us what the Merit System Board and the Department of Personnel have removed from us - our right to bargain collectively over the terms and conditions of employment.

We are bringing to this Oversight Committee our concerns with the hope that you will remedy this apparent flaw in the legislation.

I should point out however, that we have also initiated an Unfair Labor Practice Charge at the PERC, and we are seeking to have the Department of Personnel declared as the co-employer of State Workers when it seeks to implement rules affecting the terms and conditions of employment. This is a lengthy process which may eventually address our concerns about negotiation over rules which affect terms and conditions of employment.

We are also actively seeking to enact a new collective bargaining law which would address this same situation. We trust that we will have your support for a new collective bargaining law to address some of the concerns we have expressed today.

We believe there is much good that can be done under the Civil Service Act. Unfortunately, the focus of the Merit System Board and the Department of Personnel has been to enact rules and regulations governing terms and conditions of employment that should be negotiated. Instead, they should focus on their constitutional and statutory obligation to competitively test Civil Service Workers. To ensure that appointments and promotions are based on merit and fitness not arbitrary actions, personal favoritism and patronage. The focus should be on reducing provisionals, eliminating the special service employment category. While thousands of the workers have been employed in violation of their own statute and the constitution they have, through administrative fiat, abrogated our contract and reduced collective bargaining to a mockery. That is not what was intended of the Civil Service Act. The Declaration of Policy is the Civil Service Act should be strictly enforced. It is time for the legislature to so advise the Department of Personnel.

RWP/dd

PREPARED BY: Robert W. Pursell  
NJ Area Director







## MEMO

TO: Department Staff

FROM: Alfred T. Guido, Assistant Commissioner  
Management and Administration

DATE: April 12, 1988

SUBJECT: Future Classification Activities

We were recently advised by representatives of the Department of Personnel that they will soon embark upon a project of major magnitude intended to convert from the current classification system to one which will revolve around job category and level; for example, Manager II, Data Processing; Manager I, Finances, etc. The new system will not, at least initially, impact on the existing compensation plan.

Essentially, the new classification system will utilize 37 broad occupational groups which will be broken into two sub-categories each. It appears that they (DOP) would like to reduce the current 10,500 titles to approximately one-third of that level, in addition to utilizing a standard tool for classification, compensation and examination purposes. Beginning this month, DOP will be gathering information from individuals who hold titles in certain occupational groups. They will continue to do so at an increasingly accelerated rate until all titles are surveyed, approximately 12 to 18 months from now. The information will be gathered through a questionnaire which is quite lengthy and which will take approximately three hours to complete.

The actual administration of the project will fall to the Human Resources organization of each respective department. They (Human Resources) will act as liaison between DOP staff and resident Subject Matter Experts (SME); distribute brochures to affected employees, administer pre-sample questionnaires, and finally administer full sample. In any particular occupational group the sequence will run to a maximum of 25 days. The individuals to whom the questionnaire is actually administered will be selected randomly with distribution as follows:

- a. If there are less than 10 individuals in a particular title, all will be sampled.
- b. If the number of individuals in a particular title is greater than 10 but less than 30, 10 will be sampled.
- c. If the number of individuals in a particular title is greater than 30, 30 percent will be sampled.

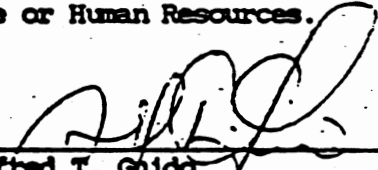
In all likelihood, we will be responsible for providing space, whatever orientation and training is necessary, and administering the actual questionnaires.

I don't believe we can overstate the impact of a project of this magnitude. In addition to significantly changing our current classification system, it will no doubt have an impact on pending and future examinations, classification actions currently in process, and potentially our compensation system and the distribution of individuals to respective bargaining units.

We have been informed and given reassurances by representatives of DOP that all decisions resulting from the administration of the questionnaire will be collectively made. They made it very clear that they will not be making unilateral decisions.

Even though this will have a significant impact on your staff and operations, I am requesting your full cooperation. In all likelihood, large numbers of our employees will not be affected until late summer/early fall, 1988. From that point on, I believe we can expect that at least some of our employees, by virtue of the titles they currently hold, will be affected on a monthly basis.

This is the best information available to us at this time. Unfortunately, I am sure that it will raise as many questions as it may answer. However, as additional information becomes available, it will be provided to you through either my office or Human Resources.



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Alfred T. Guido  
Assistant Commissioner  
Management and Administration