

## Merit Gets Passed Over

# Say 1-in-3 Rule Is Abused by Agencies

By REUVEN BLAU

Edward Price has passed the last three Associate Staff Analyst promotion exams held since the mid-1980s. Despite his impeccable work record and high test scores, each time the results have been the same: rejected without an interview or an explanation.

Mr. Price and numerous other highly qualified veteran Staff Analysts argued at a May 4 City Council hearing that they are proof that the city's 1-in-3 rule must be amended. They contended that candidates who are considered but not hired should remain on their agencies' rosters until the list expires. And each department, they maintained, should be required to interview the top three scorers and explain why they were not appointed.

### Three Strikes and Out

Under Section 61 of state Civil Service Law—widely known as the "1-in-3" rule—agencies can choose from among the three highest-scoring eligibles on a list when making appointments. An addendum to the rule allows agencies to remove candidates from further consideration after they have been "considered and not selected," or "CNS-ed," three successive times. Candidates who are knocked off the list by one agency can still be appointed by another agency.

The Council's oversight hearing was scheduled to better understand the hiring and promotion procedures under the 1-in-3 rule, said Civil Service and Labor Committee Chair Joseph P. Addabbo.

"I am very concerned about the workers' frustration, which causes a lack of productivity," he said. "There have been allegations by workers and union representatives that often qualified and experienced workers have been denied advancement and promotions, and some city agencies manipulate the civil service list or the 1-in-3 rule."

Most departments did promote staff members who passed the Associate Staff Analyst exam held in June 2001, testified Robert J. Croghan, chairman of the Organization of Staff Analysts (OSA). "In a few agen-

cies, however, every effort was made to avoid obeying

either the spirit or the letter of the civil service law," he claimed.

"Our problem is the misuse of discretion," Mr. Croghan argued. "When the agency has exhausted a list, individuals should be put back on the list before provisionals are hired."

### 'Some Violations'

The Department of City-wide Administrative Services audits the roughly 17,000 certifications it issues each year to make sure that the 1-in-3 rule has been followed, testified DCAS Director of Certification Stephen Dobrowsky.

"We do find sometimes that there has been a violation," Mr. Dobrowsky acknowledged. "What we do at that point is notify the agency that they have made an error in the appointment process and they are directed to rectify it. Corrective action is always initiated."

Mr. Dobrowsky declined to name the departments that had been cited for multiple violations, but assured Mr. Addabbo that DCAS would provide a summary of last year's audits to the Council.

According to the OSA, the Department of Transportation is the biggest abuser of the 1-in-3 rule. In all, 21 DOT Staff Analysts from the last list were "considered" three times but never appointed, OSA said. There were 25 provisionals serving in that title as of November 2003.

"The agency adhered to all civil service rules and regulations, and, in fact, has promoted 68 of 89 people from the most recent list—or more than three-quarters," contended DOT spokesman Tom Cocola. "We complied fully with the civil service selection process."

But Mr. Price, a DOT employee since 1977, disagreed. "I have watched the agency promote people provisionally who never took an exam to



**ROBERT J. CROGHAN:**  
'Discretion misused.'

Associate Staff Analyst because they were personally close to their commissioner, or belonged to the right political group," he charged. "I have seen others who failed to pass the promotion exam receive appointments to jobs for which I cannot even get an interview, list or not, despite my almost three decades of experience."

### Need Agency Help

DCAS officials pointed out that CNS-ed candidates can ask to have their names restored to the eligible list. "The decision to honor such a request, however, is purely discretionary on the part of that agency," Mr. Dobrowsky said. "The agency is not obligated to have the eligible restored."

For a veteran civil servant like Mr. Price, that option is of little consolation. "I think I have lost enough, for whatever unknown sin I have committed; and I would like to see others protected from a similar fate," he testified. "I am presently trying to put my son through college, and this lack of promotion adds to the financial sacrifice."