# MUNICIPAL LABOR COMMITTEE

125 Barclay Street, Room 540, New York, NY 10007-2179 / 212-349-6280


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Uniformed Sanitationmen's Association, Local 831 IBT

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Executive Secretary
THERESA SIRABELLA


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**Contact: Jim Grossman 212-843-8085**

## Municipal Labor Committee Blasts Mayor's Workforce Reform Taskforce Report

The Municipal Labor Committee today handed Mayor Bloomberg a 16- page response blasting the report issued by his Workforce Reform Taskforce.

Noting the Task Force was totally comprised of city officials, with no union representation, the MLC report says the report proposes "sweeping and radical changes to "well-established New York State Laws, effectively removing all regulatory oversight of the City by the State." The MLC adds, "The Report, if adopted, would result in virtually complete abandonment of the merit and fitness system" set forth in the state constitution.

Harry Nespoli, Chairman of the MLC, said that of the 23 recommendations made by the City Task Force, the MLC is willing to sit down and talk about 6 of them, but the remaining 17 are unacceptable.

The most egregious recommendations in the report are #1 which calls for the elimination of the State Civil Service Commission's authority over the City, #12 which wants to amend the laws in a way to exclude certain supervisory personnel from collective bargaining, and #20 which would change State law with regard to the Dept. of Education laying off teachers. The MLC report says Recommendation 20 would be a "return to the bad old days of Tammany Hall politics when one's job depended on who you knew or your race, age or gender."

Among the recommendations the MLC is willing to discuss are #4 which calls for broad banding and consolidating titles, #10 which would enable the City to more effectively transfer employees between agencies, and #15, which would redesign performance evaluations to evaluate and reward high performance.

The introduction to the MLC's response provides a history of the necessity for civil service rules.

"As we have always been, the MLC is ready to sit down and discuss with the City proposed changes," Nespoli said. "But we are not going to be dictated to by persons trying to wreck the civil service system."

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*Note to reporters: A copy of the full MLC response to the City is attached.*

# MUNICIPAL LABOR COMMITTEE RESPONSE

**To The Mayor's Workforce Reform Task Force
Report and Recommendations**

**March 11, 2011**

## INTRODUCTION

The Workforce Reform Task Force, organized by Mayor Bloomberg and comprised entirely of City officials, recently issued a Report and Recommendations (the "Report") for the purported purpose of giving the City flexibility to empower and manage its workforce. The Task Force proposed sweeping and radical changes to well-established New York State laws, effectively removing all regulatory oversight of the City by the State. The Report, if adopted, would result in virtually complete abandonment of the merit and fitness system set forth in Article V, § 6 of the New York State Constitution. The City would return us to the days of Tammany Hall with jobs filled by patronage rather than through a system that attracts the most qualified candidates. In so proposing, the City further seeks to eradicate nearly all employee protections in favor of a system that permits the City to trample on the rights of public employees.

While times have changed since the 19th century implementation of merit appointment, the need for honest government has not. And, while some today want to use fiscal needs to strip labor of essential bargaining rights, that is not the New York we know – or, we believe, the New York that its citizens want. In the mid-1970's when the City similarly suffered from even graver financial woes, the Unions partnered with the City to achieve a solution, saving the City from bankruptcy. Now, the City seeks to make drastic changes without so much as consulting the MLC unions about the issues contained in the Report, much less benefiting from the input from labor that could effectuate appropriate efficiencies without sacrificing protections against government abuses and fundamental worker rights.

The destruction of the merit and fitness Civil Service system is fool-hardy. The Report seeks to throw out the proverbial baby with the bath water. It advocates overbroad changes to the Civil Service Law, solely to advance management, that fail to account for the important reasons why rights were bestowed upon public employees in the first place. The City attempts to fix its financial woes -- ones attributable to a variety of factors since the Wall Street-led financial crisis in 2008 -- entirely on the backs of the labor workforce. Under the Report, the workforce would be rendered powerless to challenge the City's personnel decisions and cronyism would again reign throughout the City's agencies, themselves much larger and more powerful than any of the 19th century merit and fitness advocates could have imagined. Further, the City's self-promoting changes would separate it from every other major municipality throughout the State if the State Civil Service Commission would be stripped of "watchdog" power to monitor New York City actions.

The main thrust of the Report thus should be rejected for several principal reasons. First, the Report ignores the touchstone of the Civil Service system: the merit and fitness clause of the New York State Constitution. Second, the Report, prepared by mayoral underlings, unsurprisingly seeks unfettered City authority over worker hiring and discipline (vested in no other mayor) at the expense of the checks and balances provided under the auspices of the State Civil Service Commission and current statutes. Third, the Report minimizes the major problems associated with a system that would end up laden with the type of patronage and corruption that plagued the 19th century spoils system, and still seeps into the current system (CityTime) when the Mayor turns to the private sector to provide government services. Finally, the Report ignores the

lessons of the City's prior pitfalls with respect to initiatives like the Talent Bank in the 1980's and the City's rampant problem with provisional employees. As of the end of 2010, there were some 26,000 provisional employees in City hire – individuals who had not taken the appropriate exam for merit hiring. Under the City's plan, that number would only grow.

## Merit and Fitness

Article V, § 6 of the New York State Constitution provides, in pertinent part, that "appointments and promotions in the civil service of the state and all of the civil divisions thereof … shall be made according to the ***merit and fitness*** to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive..." (Emphasis added). The purpose of this section was to replace the corrupt spoils system with a system based on merit, to protect the public and individual employees, as well as to guide civil service appointments (see Montero v. Lum, 68 N.Y.2d 253 (1986). This constitutional mandate "may not be blinked or avoided" (Board of Educ. of City of N.Y. v. Nyquist, 31 N.Y.2d 468, 472 (1973)). The merit and fitness clause of the Constitution is the foundational precept for our entire Civil Service system. The City's desire to "blink and avoid" this mandate is the springboard for this Report. In professing to look solely to the bottom line (ignoring the City's real attempt to denude workers of any effective workplace protection), the City is blind to the practical ramifications of abandoning the merit and fitness system.

## State Civil Service Commission

Section 6 of the New York State Civil Service Law provides that "[t]he state civil service commission shall… prescribe and amend suitable rules and regulations for carrying into effect the provisions of this chapter and of section six of article five of the constitution of the state of New York." Pursuant to the State Civil Service Department's website, it is the central personnel agency for New York State with the goal is to provide innovative, cost-effective and efficient solutions to ensure hiring and promotion based on fitness, merit and equality of opportunity. At present, the City is required to satisfy well set-out criteria to obtain revisions it may seek in terms of job reclassification and other related areas. The City proposes instead to remove State Commission oversight citing "time constraints." Its "solution," however, would leave public employees at the mercy of the City's every whim and expose them to abuse and arbitrary actions any time the City decided it wanted to confront labor.

## Corruption/Spoils System

The Report also fails to recognize the reason why a merit and fitness system was implemented in New York. Prior to the implementation of this system, corruption plagued New York politics and governmental agencies. In 1883, New York State became the first state in the nation to implement a merit and fitness system for recruiting, appointing, and promoting staff through competitive examination. This merit and fitness system, as set forth in the State Constitution, proved to be the foundation for effective government, and ensured for more than 100 years a program for public employees to be chosen on the basis of their competence. The expectations and hopes

of the Civil Service system's founders have been realized, and the value of such a system continues to inure to the benefit of the public who enjoy the effective services of state and municipal government, as well as to public employees who are entitled to fair treatment.

Returning the City to a system of patronage rather than one that objectively measures merit and fitness, would be returning to bygone days of Tammany Hall politics. Individuals invariably would be hired on the basis of political endorsement and support rather than on merit. Patronage conflicts with a merit system that dictates a separation of politics from the administration of government. The merit and fitness system ensures that hiring, promotion, and termination decisions are based upon ability and performance as measured against objective criteria.

Former New York Governor and then President Theodore Roosevelt was a firm proponent of and moving force in the establishment of the merit system both in New York and nationally. Indeed, Roosevelt maintained: "Government jobs belong to the American people, not politicians, and shall be filled only with regard to civil service." Further, as the Commissioner of the United States Civil Service System, his philosophy for a civil service system was to ensure opportunities be made equal for all citizens; only those who had merit be appointed; and public servants should not suffer for their political beliefs. The Roosevelt reforms have been and must continue to be applied to New York.

One of President Roosevelt's goals was the modernization, expansion and reform of the Federal government. As part of his administration, the Commission

drafted and implemented the foundations of the modern merit system. His reforms included:

- definitions for "just cause" for which an employee could be dismissed;
- requirements for stricter compliance of the restrictions against political activity by federal officials;
- regulations forbidding disbursing officers from paying the salaries of persons illegally appointed to civil service positions;
- the establishment of the modern job survey in the Federal service; and
- a position-classification plan based on duties.

In New York, the Department of Civil Service was ultimately established under Governor Alfred E. Smith to handle the functions of finding, developing and retaining the people best qualified to do the work of New York State's government. The needs then remain in place today.

**Commission on Government Integrity**

The advent of a civil service system did not foreclose all abuse. Over the past 100 years, there have been, on occasion, need for correction, making the City's present attempt to eliminate State oversight all the more inappropriate. One such lesson of history is found with the Commission on Government Integrity. This Commission was convened in 1989 pursuant to Executive Order of Governor Mario Cuomo, to conduct an investigation of certain personnel procedures and practices employed by the City of New York primarily from 1983 through 1986. Specifically, the Commission prepared a study of the influence of political patronage on certain City personnel procedures and practices. The Commission looked at the City's "Talent Bank," which served a referral

function designed to increase the placement of female and minority candidates in mayoral agencies. The Talent Bank, however, became corrupted and was instead used to place candidates with political connections, undercutting the intended objectives of the Talent Bank. As a result of this political patronage, the Commission found agency effectiveness impaired, employee morale eroded, and employees vulnerable to pressures to engage in improper conduct (including suspect hiring and promotion practices). The Commission made a series of recommendations as a result of its investigation, including a restructuring of the City personnel system to discourage patronage. The Commission recommended transferring authority to make personnel decisions from the Mayor's Office to the Department of Personnel. Following the investigation, strict legal requirements providing widespread notice of employment opportunities were implemented and the number of provisional employees was drastically reduced.

While the Talent Bank, like the Report may have had good intentions (again, being charitable), initiatives that eliminate the merit system are problematic and ultimately lead to corruption and patronage.

**City of Long Beach v. Civil Service Employees Association, Inc.**

The Report should also be rejected because it would allow New York City to commit the same abuses of the New York State Civil Service Law that have marked other municipalities. The City's suggestion that it needs less oversight is contradicted by its prior course of action.

In the landmark case, City of Long Beach v Civil Service Employees Association, Inc., Long Beach Unit, 8 N.Y.3d 465 (2007), the New York Court of Appeals found the City of Long Beach with "a number of competitive class positions [that] had been improperly filled with and retained by provisional employees; at least one for as long as 19 years." 8 N.Y.3d at 468. The widespread use of "provisionals" those hired outside the merit and fitness framework -- allowed "favored" individuals to be warehoused in sought-after positions at the expense of those truly deserving. In Long Beach, the New York State Civil Service Commission criticized the City of Long Beach for its poor control over provisional appointments in the classified service.

The Long Beach Court explained that the State Constitution requires that civil service appointments and promotions "be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive" (N.Y. Const., Article V, § 6). Further, the Court noted that with respect to provisional appointments "the Civil Service Law authorizes such appointments only when there is no eligible list available for filling a vacancy in a competitive class, and then only for a maximum period of nine months." The Court also pointed out that Civil Service Law § 65(2) requires that in the event a provisional employee has been in a position for one month, the jurisdiction must hold a civil service examination for permanent appointment to the position. The Court proceeded to explain that "[t]he failure to administer timely examinations prevents the identification and hiring of qualified candidates from eligible lists, as required by the Civil Service Law, and misleads provisional appointees into having expectations of continued employment beyond that permitted by law."

The provisional appointments rampant in Long Beach have similarly plagued New York City, with thousands of such workers remaining in "merit" positions for years. Without proper oversight by the State Civil Service Commission, the City will, as it has demonstrated in the past, only trample further the merit and fitness clause of the Constitution.

The Civil Service Law, as presently constructed, provides for the proper delivery of government services, free of corruption and cognizant of worker rights. As set forth in the following proposal-by-proposal analysis, City management is willing to risk a return to the corrupt ways of the past and evisceration of fundamental worker protection all in the name of efficiency. Yet, in truth, management has the tools it needs to operate appropriately, but needs to avail themselves of them, all in the framework of a long-established balance of management and labor rights. The MLC unions cannot, and will not, stand by and allow the foundational principles of the Civil Service system to be threatened. As the MLC unions have made clear and is reflected in the following discussion of the Task Force recommendations, they stand ready to work with the City to seek beneficial improvements, but such cannot occur if the City continues to freeze the unions out of any meaningful discussion.

## THE MUNICIPAL LABOR COMMITTEE'S
## POINT-BY-POINT RESPONSE TO THE TASK FORCE RECOMMENDATIONS

**Recommendation 1:** The Task Force Report recommends that the State Civil Service Law be amended to eliminate State Civil Service Commission authority over the City.

**MLC Response** – The importance of a civil service system free from political influence is greater now than ever before. The public has a right to know that the public servants they employ have been hired because they can do the best possible job. The State Civil Service Commission protects the integrity of the civil service system and acts as a buffer against unilateral actions by the City. There needs to be State oversight of the City personnel system because the failure of the system to work properly has such negative consequences on service delivery. The MLC unions are opposed to this because it would allow the City to establish as many non-competitive and exempt titles as they choose without approval from the State. The Civil Service Law states that a non-competitive title can be established if it is determined that it is not practicable to determine merit and fitness through competitive exam. Currently, the City has to prove why it is impracticable to give an exam. If this legislation is enacted it would no longer have to prove to the State Civil Service Commission why it is impracticable; they would only need to prove it to the City's Civil Service Commission which would be headed by the Mayor or Deputy Mayor. In addition, if this legislation is enacted, Personnel Rules of the City could be adopted unilaterally without any approval from the State.

**Recommendation 2:** The Task Force Report recommends that the Transit Authority and the Triborough Bridge and Tunnel Authority establish their own civil service commission. If this legislation was enacted, DCAS would no longer have authority over TA and TBTA civil service administration.

**MLC Response** – The MLC unions are opposed to this legislation because it would diminish the rights of our members who work in those Authorities. Currently, permanent employees who are laid off in these authorities can replace provisionals in other agencies. If this legislation was enacted, employees would no longer have that right. Second, if this legislation was enacted, the new TA/TBTA commission would be able to establish their own non-competitive titles that parallel current competitive class titles, setting different rates of pay. Third, this would be an unwarranted duplication of effort and waste of valuable resources.

**Recommendation 3:** The Task Force Report recommends that all competitive titles be reviewed to determine if they should be reclassified into the non-competitive or exempt class. This review would especially apply to senior management and executive titles.

**MLC Response** – The MLC unions opposed this because this goes to the very heart of our State Constitution's requirement that appointments be made on the basis of merit and fitness which should be determined, as far as practicable, by competition examination. Further, in the case of senior management and executives, this proposal would take away promotion opportunities. Moreover, if the State Civil Service Commission no longer had authority to determine such reclassifications, the City could decide this with virtually no oversight.

This in turn could result in patronage appointments and additional cost to City government. Scholarly studies and independent authorities have noted the importance of competitive titles and using "a set of objective criteria for public-sector jobs, and open competition for those jobs, with hiring, promotion, and termination decisions based upon ability and performance as measured against those objective criteria."

The City's assertion that it is unable to give exams is incorrect. If the City were to initially dedicate sufficient resources to exam administration, those examinations would pay for themselves and represent potential revenue for the City. Another investment which would save the City in the long run is to train its workforce to keep pace with current needs. Contrary to the City's assertion, current testing methods could allow the City to administer these technical examinations competitively and expeditiously. In a recent audit of the CityTime contract scandal, the City Comptroller demanded the revised contract have provisions to train city workers to maintain the system. We believe all contracts with vendors with "unique" expertise must include training city workers with the skills and knowledge to use and maintain the contracted service or technology. If examinations were administered as they can and should be, agencies would have no incentive to contract out.

Finally, the multiplicity of civil service titles was the result of the City's actions – not those of its workforce. It must not serve as an excuse not to administer competitive examinations. Instead, the City should sit down with the appropriate collective bargaining representative to review whether certain titles are antiquated or redundant.

**Recommendation 4:** The Task Force Report recommends that existing titles be broadbanded and consolidated.

**MLC Response** – There have been mixed results when these actions are implemented. The MLC unions are generally opposed to consolidating titles unless there are clear and objective standards to advance in levels. On a case by case basis, the City should negotiate with the respective unions involved.

**Recommendation 5:** The Task Force Report recommends an increase the use of education and experience exams for competitive titles.

**MLC Response –** The criteria for evaluating education and experience exams are subjective. Recent experience shows that it leads to band scoring and effectively eliminates ranked lists. This gives wide discretion to hiring officers that has a long history of abuse that can lead to cronyism and corruption.

**Recommendation 6:** The Task Force Report recommends adoption of band-scoring methodology where possible.

**MLC Response –** Band scoring means that clusters of scores between, for example 96-100, would constitute a single band and as a result, all candidates who score between those numbers would be equally ranked on a civil service list. This would mean that the one in three rule would apply to all candidates in that band. This increases discretionary hiring based on whomever the employer likes. Studying for an exam to get an extra point on a test works in the public interest by educating the workforce on the best practices in their field. Band scoring would diminish it.

**Recommendation 7:** The Task Force Report recommends giving credit for high performing provisional service on exams.

**MLC Response –** The law provides that provisional service may not be given credit on civil service examination. This is to ensure that illegal provisional appointments are not encouraged and rewarded and to provide all citizens an opportunity to demonstrate their merit and fitness for the position on a level playing field. The MLC unions oppose this recommendation.

**Recommendation 8:** The Task Force Report recommends increasing the appropriate use of selective certification in hiring.

**MLC Response –** The MLC unions are willing to discuss this on case by case basis.

**Recommendation 9:** The Task Force Report recommends eliminating Test Validation Boards and reforming the process for challenging competitive civil service exams.

**MLC Response –**The City may have forgotten that its support in the 1980's for a test validation board was to reduce the number of lawsuits that were filed against it by exam applicants who disputed their exam results. The MLC unions are willing to discuss alternatives but there must be a mechanism for validation and challenging exams.

**Recommendation 10:** The Task Force Report recommends streamlining the processes to enable employees to move across functions and use Rule 6.1.9 more effectively to transfer titles and employees between agencies.

**MLC Response** – The MLC unions support this recommendation as long as the processes are transparent and equitable, and are willing to discuss specifics on case by case basis.

**Recommendation 11:** The Task Force Report recommends extending the maximum period for temporary appointments to three years to address situations such as grant funding and time-sensitive special projects.

**MLC Response** – Current temporary appointments cannot exceed 12 months. The MLC unions oppose the proposed change because it subverts permanent appointments and in effect legalizes provisional appointment for three years. As an alternative, permanent employees should be given an opportunity to be temporarily assigned to these grant positions. Such a proposal would offer the continuity sought.

**Recommendation 12:** The Task Force Report recommends amending laws to establish a reasonable and appropriate definition of managers.

**MLC Response** – The City's purpose here is simple: to exclude from collective bargaining whole classes of employees which have been entitled to collective bargaining representation for the last 44 years. The proposal would do this by excluding from collective bargaining any employee who exercises, could exercise or effectively recommend any supervisory action. This is nothing more than an invitation to the City and other public employers to redefine job descriptions in a manner to make tens of thousands of public employees through the State purportedly supervisory even when they have never exercised any hint of supervisory authority. The current law provides a reasonable and appropriate definition of manager. The strict controls when properly used limit policy making and the power to hire and fire to the top levels of agencies. The current law also provides the City with uniformity to what would otherwise be an untenable process of negotiating terms and conditions for tens of thousands of municipal "managers."

**Recommendation 13:** The Task Force Report recommends enhancing managers' training and exposure to best practices.

**MLC Response** – The MLC unions support this and should be involved in the development phases.

**Recommendation 14:** The Task Force Report recommends implementing a "Best Places to Work" program to measure employee satisfaction and encourage managerial accountability.

**MLC Response –** The collective bargaining representatives of the city workforce are in the best position to communicate the needs and morale of the workforce. The MLC unions believe that the City's proposal may constitute improper direct dealing with union members on subjects which should be discussed with the unions.

**Recommendation 15:** The Task Force Report recommends redesigning the City's performance evaluations to identify and reward high performance at the individual and work unit level.

**MLC Response –** A negotiated performance evaluation that is fair and equitable would warrant consideration. Moreover, procedures and standards for the award of merit pay must be collectively bargained.

**Recommendation 16:** The Task Force Report recommends extending and reforming employee probationary periods consistent with revised performance evaluation programs.

**MLC Response** – Currently at the end of a one- year probationary period a supervisor has the ability to extend the probation of any candidate if he/she accepts. The alternative is termination or demotion, so the employee invariably "accepts." This allows the City all the discretion it needs to make appropriate decisions. The City has failed to show why the presumptive one-year period is insufficient for it to make the desired judgments. Management simply needs the will to evaluate the probationary employee during his/her first year. Extending the probationary period does nothing to ensure better service delivery.

**Recommendation 17:** The Task Force Report recommends establishing less burdensome processes for disciplining civilian employees. The Task Force further recommends legislation that would increase the time that an employee may be suspended without pay from thirty days to six months, and if such conduct, if proved, would constitute a crime, the suspension may extend to twelve months. In addition, a reprimand may be issued to any employee without a hearing upon the stated charges.

**MLC Response** – The thirty day period in the existing law reflected a reasonable compromise between the public employer's contention that there are some forms of misconduct so serious that the employee must be removed from the payroll immediately, prior to a hearing, and the recognition that the civil service system requires that employees be subject to the unconstrained authority of the public employer to the

minimum degree possible. That is why the public employer is required pursuant to the Civil Service Law to justify disciplinary actions and the public employee is granted the right to a hearing, in most cases prior to the imposition of the discipline. Managers know how to discipline a worker. The City has a training program for this. However, the City often fails to properly prepare disciplinary cases and review them critically in the early steps of the process. Longer employee suspensions would do nothing to make the disciplinary process more efficient or efficacious.

**Recommendation 18:** The Task Force Report recommends partnering with unions to increase the efficiency of the arbitration process.

**MLC Response** – The City's disinvestment in collective bargaining and lack of proper funding of OCB and OLR are the primary cause of the problem. That being said, the MLC unions have always been willing to work with the City to increase the efficiency of the arbitration process, but such efficiency cannot be found by undermining due process protections.

**Recommendation 19:** The Task Force Report recommends establishing an appropriate standard of review for arbitrators' discipline decisions.

**MLC Response –** This recommendation would eliminate due process. The arbitrator, in effect, would be required to apply the "arbitrary and capricious" standard which is extremely deferential to the agency head in the exercise of his/her discretion. This would turn the long-standing standard applied in disciplinary arbitration on its ahead. Once again, this is an attempt to restore the agency head to the unconstrained authority and discretion enjoyed prior to creation of the civil service system. There is a long-established standard based on Civil Service Law requiring just cause with the preponderance of evidence presented.

**Recommendation 20:** The Task Force Report recommends changing State law to authorize the Department of Education to retain the most effective teachers during downsizing.

**MLC Response** – This State law was passed because layoffs of teachers that first occurred in 1940's were done arbitrarily and unfairly. Repeating this practice, which is what would invariably occur if the DOE were not constrained by objective criteria, is not good for schools, unfair to teachers and harmful to children – a return to the bad old days of Tammany Hall politics when one's job depended on who you knew or your race, age or gender. Recent news reports regarding findings by the DOE's own Office of Special Investigations documents unsatisfactory ratings to Teachers based on the arbitrary criteria of individuals with personal agendas without regard to classroom performance. There are instances where the application of inadequate criteria led only

to a fine. As the Civil Service Chief has reported, "this case is as damning an indictment as you can get of DOE's contempt for Teachers' rights, and by itself is all the evidence needed to decide that it is appropriate to have a fair and equitable seniority system for layoff purposes. Layoffs that occurred in the 1975 fiscal crisis were devastating to the school system and took a generation to recover. All stakeholders should be working together to prevent them at all especially since Gov Cuomo and his budget director have said they're not required."

**Recommendation 21:** The Task Force Report recommends enabling agencies to organize groups of personnel to avoid significant operational disruptions during downsizing.

**MLC Response** – This proposal would enable the City to target specific workers by narrowly or broadly defining the layoff unit without objective criteria. The MLC unions oppose this because it eases seniority rules in layoff situations. Setting up smaller layoff units within an agency for layoff purposes for competitive class employees must be done through Personnel Rule changes. Setting up smaller layoff units for non-competitive class employees is provided for in the Citywide contract.

**Recommendation 22:** The Task Force Report recommends establishing a selective certification-type process for use in downsizing to retain employees with specialized skills.

**MLC Response** – The MLC unions oppose this because it eases seniority rules in layoff situations. Increasing the discretion an agency may use in a layoff presents the same potential for patronage and corruption as does hiring which is not made on the basis of merit and fitness. Seniority has proven time and again to be a fair means by which to render personnel decisions.

**Recommendation 23:** The Task Force Report recommends shortening the duration of preferred and recall lists to no longer than two years.

**MLC Response** – This will require the scheduling of an 'expensive exam' to fill positions when they open leading to additional costs. In addition, these workers are trained and have valuable experience.