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1 SENATOR KRUEGER: Good morning. I am Senator
2 Liz Krueger, Vice Chair of Finance. I am joined by my
3 colleague Diane Savino, and I will let the Assembly
4 introduce themselves.

5 ASSEMBLYMAN FARRELL: I am Assemblyman
6 Herman Denny Farrell. I am joined by Chairman Peter
7 Abbate and Chairwoman Susan John and ranking Mr. Hayes.

8 Mr. Hayes.

9 ASSEMBLYMAN HAYES: Thank you, Mr. Chairman.
10 Good morning. And we are joined on our side by
11 Assemblyman Dave Townsend.

12 SENATOR KRUEGER: Thank you.

13 Pursuant to the State Constitution on
14 Legislative Law the fiscal committees of the State
15 Legislature are authorized to hold hearings on the
16 executive budget.

17 This morning's hearing will be limited to
18 the discussion of the Governor's proposed budget for the
19 workforce functional area, including Department of
20 Labor, Office of Employee Relations, Department of Civil
21 Service and Workers' Compensation Board.

22 Following the presentations, we will allow
23 for questions from the Chair and committee members. Of
24 course because throughout much of the state it appears

1 to be what they euphemistically call a snow day, and we
2 have two hearings back to back on this snow day, we are
3 urging everyone who testifies this morning before us,
4 the government representatives and the community
5 representatives, to please be thoughtful about being
6 able to summarize and high light the key issues within
7 your testimony.

8 All of your testimony will be submitted for
9 the record. All of the panelists will be reading the
10 full testimony and of course we now put all your
11 information up on the net, and this is also being
12 televised I guess for all the people sitting at home not
13 able to get to work because of the snow.

14 So, with that, I would like to welcome Nancy
15 Groenwegen from the New York State Office of Civil
16 Service, and I believe Gary Johnson, Director, New York
17 State Governor's Office of Employee Relations.

18 Welcome.

19 MS. GROENWEGEN: It's my pleasure to be here
20 before you this morning to have an opportunity to talk
21 about the Governor's budget as far as it affects the
22 Department of Civil Service.

23 Heeding your message, I will limit my
24 comments to just the high lights. There is one thing,

1 though, I do not want to delete from my testimony and
2 that is my sentiment that as head of the Department of
3 Civil Service, the agency responsible for ensuring that
4 the executive branch agencies have the work force they
5 need to fulfill core missions, I know well the challenge
6 that each and every agency is facing.

7 And I want to stress that from my
8 perspective New York State's work force continues to
9 perform superbly, and something that cannot be
10 overlooked as we talk about the work force today. I
11 believe you share this perception as well, and I hope
12 that your constituents do too.

13 Obviously, these are trying times for every
14 agency. For my agency, we are similarly situated to all
15 others in the state. As a result of the proposed
16 reductions to my department's budget, we have had to, as
17 we have since I began my tenure as President of the
18 Commission and head of the department, had to think
19 creatively about ways to do our fundamental business,
20 that of providing the state with a skilled work force
21 differently.

22 And there's a couple of initiatives that
23 have come to fruition this past year that I want to
24 share with you to exemplify the kind of creativity that

1 the staff I have the privilege of working with bring to
2 our core mission.

3 The first is something that those of you who
4 have followed my agency for years have heard about
5 literally for years are electronic eligible list
6 management system, which has the affect of taking what
7 was a traditional arduous paper and pencil system for
8 helping agencies know when a candidate was reachable on
9 an eligible list, which for 80 percent of work force is
10 how the appointments are made, and has basically
11 transformed that into an electronic process where the
12 information is available to the agencies making the
13 appointments almost instantaneously.

14 The ability to print out the canvas letters
15 that are a central process of ensuring a fair process
16 for all who are interested in applying and competing are
17 aware of it almost instantaneously. And significantly,
18 I think, as we deal with these crisis caused by our
19 older work force and the rapid loss of institutional
20 knowledge, the system has built into it the rules
21 contained in the Civil Service Law as an additional
22 check to make sure only those who are truly reachable on
23 that eligible list are, in fact, appointed.

24 So, that is an initiative that was in the

1 works for years. It has had the effect of speeding up
2 the work of both my agencies and the personnel offices
3 in the agencies we serve.

4 Another reform, which is the way our agency
5 is trying to think about its core mission of testing,
6 relates to the examination we give for our accountants
7 and auditors, a title that is both in great demand for
8 the State of New York, since it is a title that despite
9 the hiring freeze we continue to make appointments to
10 because hiring these workers helps both control the
11 cost, help prevent fraud, and basically do that which we
12 need to do more than anything right now, ensuring that
13 the government expenditures are only those that should
14 be expended.

15 To help facilitate the hiring of this much
16 needed group of workers, we this year converted our
17 examination process for this title into an on line
18 training and experience exam that has the effect of
19 cutting down the time from which a candidate applies for
20 the examination, to determining whether or not he or she
21 is eligible for appointment to a matter of weeks, as
22 compared to a matter of months in the past.

23 It's this kind of programmatic efficiency
24 that my department continues to strive for as we deal

1 with the diminished resources. With respect to another
2 one of my agency's critical functions, overseeing the
3 state's efforts to diversify the work force, we have
4 good news to report there with respect to an example I
5 would really like to bring to all of your attention.

6 One of the exams we give on a periodic basis
7 is our professional careers test. If you, with the
8 state work force sitting in the back of this room I
9 would submit probably a good third of the professionals
10 out there came into the state work force as a result of
11 this professional careers exam.

12 It is the entry level to more than 50
13 professional titles throughout the state. We recognize,
14 as we look to diversify our work force, we wanted to
15 find a way to maximize the number of candidates who
16 would be reachable on the eligible list that this
17 examination produces.

18 So, we had a concerted collaborative effort
19 to do so. We began by looking at colleges granting a
20 four-year degree, which is the sole minimum requirement
21 to take that examination, and focused on the CUNY
22 schools, knowing that their student population contained
23 the diversity that many other schools might not as we
24 are looking for the breadth of representation in our

1 work force.

2 We piloted with them. They prepared a
3 training review seminar for students to be best prepared
4 for the exam. We also, for the first time, prepared a
5 study guide for this examination. We extended the time
6 period for applying to the exam and we brought critical
7 review to all the test questions before administering,
8 as we always do, but with a renewed sense of vigor to
9 ensure that there were questions that wouldn't have a
10 disproportionate impact on one group or another.

11 The results were very encouraging. On the
12 current eligible list that that exam produced we have
13 over 300 protected class members immediately reachable
14 for appointment. Those of you that are familiar with
15 the merit system administration appreciate the
16 significance of what I said.

17 These candidates, these 300 candidates are
18 immediately reachable for appointment. We look at our
19 success in administering that examination as a model to
20 be emulated for others.

21 The last thing I want to speak to before
22 taking your questions is the third component of my
23 agency's responsibility, that for overseeing the
24 administration of the state's employee health insurance

1 system.

2 Again, the news there is I think extremely
3 encouraging. A couple of things I would like to touch
4 upon is: There has been in a variety of media outlets a
5 number of articles talking about there having been this
6 inflated reserve or dividend that the plan, the NYSHIP
7 plan, maintained and that somehow the plan was being
8 overly conservative with respect to the amount of money
9 being held in reserve at a time when the state and local
10 governments were in desperate need of any form of fiscal
11 relief they could find. Particularly relief with
12 respect to the ever increasing cost of health insurance.

13 So, for the past two years, the department
14 has aggressively analyzed the amount of the reserve to
15 see how much of it can be prudently drawn upon to have
16 the effect of reducing the premium rate.

17 Last year, the rate of increase was a
18 historic 1.2 percent increase. This year we were able
19 to keep the rate of increase to slightly over three
20 percent, affording significant relief to both the state,
21 and most importantly, the local governments, the over
22 800 participating local entities that participate in
23 NYSHIP. So, that I think is very significant.

24 The other thing I would like to just speak

1 to now, because -- two things I would like to speak to
2 now because I suspect some of you or many of you have
3 questions that have been raised by your constituents and
4 various advocacy groups.

5 The first relates to the legislation that
6 has been proposed to deal with the Medicare Part B
7 premium. I am sure that's something you have heard
8 about from your constituents.

9 I saw recently, I think just yesterday, a
10 news letter that went out from one advocacy organization
11 that I believe reflects a misunderstanding of what the
12 legislation will do. Having heard Senator Savino the
13 other day talk about on a different pension related
14 issue the need for there to be a good clear education
15 effort out there as to what the proposed legislation
16 would do, I want to be part of that clear advocacy
17 effort.

18 So, as you may know, Medicaid Part B is
19 mandatory for all plan participants age 65 and over.
20 That in New York is mandated. So, the effect of that
21 mandated coverage under Part B for all those 65 and over
22 has the effect of saving the plan literally millions of
23 dollars on an annual basis.

24 The savings that come to the state and local

1 governments by virtue of the mandatory participation for
2 those 65 and over cannot be overstated. As a result,
3 New York State is one of six states that reimburses the
4 retirees for the cost of the Medicare Part B premium,
5 which currently is I think \$96.40, something like that.
6 That is a unique structure in New York.

7 Currently, the premium for Medicare Part B
8 is borne exclusively by the state. This is different
9 than all other components of the premium. With respect
10 to all other components of the premium, which is in the
11 neighborhood of \$5.2 billion annually, that premium is
12 shared between the state or the participating government
13 and the active and retired workers on a rate ten percent
14 for individuals and 25 percent for those who have
15 coverage.

16 What the initiative that is in this year's
17 budget is designed to do is to treat the Medicare Part B
18 premium, which I said is borne solely by the state, like
19 all other parts of the premium.

20 The simple equity attached to this
21 initiative is that everyone who participates in NYSHIP
22 benefits from the savings generated by the
23 participation, the mandatory participation, in Medicare
24 Part B.

1 What this in turn just has the cost of the
2 arrangement that leads to those savings borne with an
3 equitable blending. That is what is going on. It is
4 not that one group of workers, specifically retirees,
5 are being singled out to pay double. To the extent they
6 pay a Medicare Part B premium, that is completely
7 reimbursed.

8 To the extent that all will now share in the
9 cost of this premium there will be a slight increase,
10 there's no denying that, there will be a slight increase
11 to the amount individuals pay for both individual and
12 family coverage but it's not a double counting. I think
13 if, as we approach this issue, we remember the equity is
14 simple. All share in the benefit that comes from the
15 Medicare Part B premium coverage. The thinking is all
16 should bear the cost of that as well in an equal
17 percentage to all others.

18 The other piece with respect to the health
19 insurance plan that I am sure you are curious about, and
20 may have had calls from your constituents, relates to
21 the department's dependent eligibility audit.

22 I think you may have had calls from
23 constituents. You may have made calls yourself about a
24 packet that was received by all NYSHIP enrollees that

1 was designed to do for the first time in the 51-year
2 history of the State Health Insurance Plan, do an across
3 the board audit of did we, in fact, have ineligible
4 dependents in the plan inappropriately receiving
5 benefits.

6 We contracted with a company expert in doing
7 this kind of work, and we have found so far that the
8 contract, the way it was written, guaranteed to the
9 state savings of \$13 million. The contract amount was
10 \$3.4 million, or something in that neighborhood, and we
11 aggressively negotiated a rate that required a return on
12 investment of three to one. That's what we get, the
13 guaranteed \$13 million savings.

14 After the amnesty period alone, an amnesty
15 period that was put into place pursuant to legislation
16 enacted by all of you, we already had the savings that
17 were projected. As we continue to see the analysis of
18 those who were unable to produce sufficient
19 documentation to establish eligibility, we are
20 continuing to see additional savings.

21 Now, a question may be asked, rightly, how
22 do these savings actually get realized by the plan?
23 They get realized in two ways. The first is by those
24 who were found to be ineligible after the amnesty

1 period. To the extent costs were incurred for
2 ineligible dependents, the carriers will be seeking to
3 recover costs inappropriately paid. When those monies
4 are recovered they will be paid back to the plan as a
5 credit, thereby reducing the cost that the plan is
6 billed for.

7 A second way, looking prospectively, that
8 savings will be realized by the plan, relates to those
9 who are removed from the plan, either through the
10 amnesty period or through the whole appeal process
11 period. They will no longer be submitting claims. And
12 when they are no longer submitting claims the claims
13 experience of the state will decrease.

14 When the claims experience decreases, so
15 too, does the premium for which we are billed. So, we
16 have a two pronged approach to seeing savings.

17 If I could add just one other comment about
18 the dependent eligibility audit. It relates to another
19 issue that I know is on everyone's mind in the room this
20 morning, the question of contracting out. When should
21 the state contract out for important governmental
22 services and when should that work be done by state
23 employees.

24 You heard me just say that the decision to

1 contract out the work associated with the dependent
2 eligibility audit was made. Now, there are some who
3 would argue that, why? Why wasn't that work done by
4 existing staff?

5 We engage in a rigorous cost/benefit
6 analysis before going forward with the decision to
7 contract out. We look at what the work this audit would
8 entail. It would include a significant enhancement to a
9 call center.

10 We already have a call center to deal with
11 the calls we get on behalf of the 1.2 million enrollees
12 in the health insurance plan, but we would have been
13 getting an inordinate number of calls from people asking
14 questions about the plan. So, we would have had to have
15 an investment in infrastructure, call centers. We would
16 have had to hire staff on a temporary basis.

17 The paper processing alone, if those of you
18 who received the materials know the explanations, the
19 booklets, the instructions, the mailing costs, it would
20 have cost us approximately \$4 million if we did it in
21 house. At the end of the process, which was intended
22 all along to be a temporary function, there would have
23 been a work force that would have been displaced.

24 Instead, we made a cost effective

1 determination to contract the work out, as I said, for
2 under \$4 million with a returned guarantee on
3 investment.

4 I give you that example only to demonstrate
5 that the question about whether the work should be
6 performed in house or through a consultant are
7 determinations that need to be made on a case by case
8 basis with a critical analysis of the work to be done
9 and the savings to be had.

10 With that, I will conclude my remarks and I
11 am happy to entertain any questions you may have. Thank
12 you for your time.

13 SENATOR KRUEGER: Thank you very much.

14 First we will hear from Director Johnson.

15 MR. JOHNSON: Thank you. Good morning, Vice
16 Chairwoman Krueger, Chairman Farrell, distinguished
17 members of the Senate Finance and Assembly Ways and
18 Means Committees.

19 I'm pleased to appear this morning on behalf
20 of the Governor's Office of Employee Relations to
21 testify on employee relations and the status of the
22 state work force.

23 What I will do is I will quickly review for
24 you the numbers in regards to the status of the work

1 force and even more quickly indicate to you the status
2 of collective bargaining, and then take your questions.

3 SENATOR KRUEGER: I mistakenly didn't
4 introduce Senator John DeFrancisco, ranker on Finance;
5 Senator George Onorato, Chair of Labor; and Senator Bill
6 Perkins, who have all joined us.

7 ASSEMBLYMAN FARRELL: Joined by Assemblyman
8 Jeff Aubry.

9 SENATOR KRUEGER: Thank you. Sorry to
10 interrupt.

11 MR. JOHNSON: In regards to the state work
12 force, filled positions decreased this year. We expect
13 to be at 196,375 positions by March 31st of 2010, this
14 will be a net decrease of 3,500 positions in one year
15 from last March. More particularly, in the portion of
16 the state work force that's subject to executive
17 control, the net decrease on the year will be 3,975
18 positions, while the work force not subject to the
19 Governor's control will actually increase slightly by
20 some 425 positions.

21 The trend overall, since Governor Paterson
22 took office March 20th, '08, is certainly worth noting.
23 In just those two years the numbers of positions subject
24 to executive control will have decreased some 5,150

1 positions or more overall.

2 The governor's proposed 2010-2011 budget
3 sets the total number of employees at 195,700, achieving
4 an additional net work force decrease of 675 positions.
5 This reduction is based on a combination of just 134
6 anticipated layoffs; 16,605 separations through
7 attritions, and 16,065 mostly refills.

8 The executive budget as proposed contains
9 more than \$1 billion in reductions to state agency
10 operation spending, incorporating \$500 million in
11 additional across the board agency cuts and \$250 million
12 in negotiated work force savings.

13 Those savings include \$28 million from
14 administratively rescinding for the second year the
15 scheduled four percent general salary increase for
16 non-union management confidential employees, as well as
17 closing some prisons, right sizing some new facilities
18 and merging some facilities.

19 It also realizes savings through shared
20 service initiatives that are spearheaded by Governor
21 Paterson's Office of Taxpayer Accountability.

22 In my testimony I have some more detail in
23 regards to especially the closings of facilities at DOCs
24 and the right sizing facilities at the Office of

1 Children and Family Services, but I wanted to just take
2 a little time to talk to you about the savings proposals
3 and the status of collective bargaining.

4 The budget anticipates a number of work
5 force actions to reduce state employee salary costs.
6 The negotiated work force actions are targeted to save
7 \$250 million in general fund savings in '10-'11.
8 Options to achieve those savings include: The salary
9 payments in '10-'11 that are scheduled could be deferred
10 until an employee leaves state service, at which time
11 employees would receive a lump sum payment based upon
12 their annual salary at the time of the payout.

13 This would generate some \$30 million in
14 savings each day deferred. It's a device we are
15 familiar with from back in the '90s where a day of pay
16 in each pay period might be deferred and returned to
17 employees when they leave state employment, and they
18 would be reimbursed at the rate they are making at that
19 time.

20 The four percent salary increase that's
21 scheduled for the coming fiscal year for many
22 represented employees could be delayed, eliminated or
23 reduced, providing some \$63 million in general fund
24 savings for each percentage point of increase avoided.

1 As I noted, there is \$28 million in savings in regards
2 to withholding the MC increases.

3 And in addition, requiring employees and
4 retirees, as Commission Groenwegen indicated, to
5 contribute toward Medicaid Part B would also add
6 additional savings.

7 As the Governor's labor relations
8 representative, GOER negotiates with nine unions
9 representing 14 bargaining units. We are essentially on
10 schedule with most of those bargaining units with
11 respect to the last cycle of bargaining, which began in
12 2007, so there we have agreements in place for '07 to
13 '11 with CSEA and PEF, DC37, UUP and the State Police
14 units.

15 With the other units, especially those
16 uniform units in correctional services, who have
17 interest arbitration, at this point we either have
18 awards in place or agreements for '07-'09. We are about
19 to go into further negotiations with NYSCOPA in regards
20 to '09-'11.

21 We recently in December, last December of
22 '09, reached an agreement with the graduate students
23 employees union for '09-'11 and they are expected to
24 take a ratification vote on February 25th.

1 The agency law enforcement services unit has
2 traditionally lagged behind and are currently in
3 interest arbitration with them for '05-'07.

4 With that, I will just say to you that there
5 are several accomplishments that my office and the
6 administration achieved in the past year that are noted
7 in my testimony. And I will conclude by saying that we
8 at OER have a 40-year tradition of working with the
9 unions to provide employees with fair collective
10 bargaining agreements, training programs, and a safe,
11 efficient work place. Faced with this unprecedented
12 fiscal challenge, we will continue to work with the
13 unions.

14 Let me especially end by concurring with
15 Commission Groenwegen in regards to the performance of
16 the state work force and our appreciation of the work
17 they do and our recognition there is no state government
18 without the outstanding work that they do.

19 Today being a good example that in regards
20 to New York City, where state offices remain open, those
21 employees will report to work as best they can and be on
22 the job and we are extremely appreciative of that.

23 I'll be pleased to take your questions.

24 ASSEMBLYMAN FARRELL: You should talk to my

1 wife. Schools are closed and you are not.

2 MR. JOHNSON: That's where you want us to be
3 though, I think, in terms of your wife.

4 ASSEMBLYMAN FARRELL: I have a 5-year-old
5 child.

6 SENATOR KRUEGER: Senator Diane Savino.

7 SENATOR SAVINO: Thank you, Vice Chair
8 Senator Krueger and Assemblyman Farrell. I'll be brief
9 because I know we all want to get back home before we
10 get snowed in permanently here.

11 Just a couple of questions. One for
12 Commissioner Groenwegen. You talked about the NYSHIP
13 eligibility dependent contract, so what I am curious is
14 how many people have we identified to date that are
15 ineligible have been removed from coverage?

16 MS. GROENWEGEN: Give me a minute and I will
17 have that number for you.

18 SENATOR SAVINO: I believe when we first
19 started this discussion a year or so ago the expectation
20 is we might identify 60,000 at a projected savings to
21 the state of 30 million.

22 Has the audit reflected that or is it
23 anywhere near that?

24 MS. GROENWEGEN: The final number for

1 savings won't be known for quite sometime. We know we
2 are already at \$13 or \$14 million right now. Again,
3 that's just from the actions we have taken so far.

4 One of the things that has surprised us
5 about the response to this was that the response rate
6 from state employees, as compared to local level
7 employees, which was much less robust, shall I say, than
8 what was expected.

9 And so a number of dependents were removed,
10 in the neighborhood of 27,000 were removed last -- late
11 last year because they had submitted insufficient
12 documentation or no documentation at all.

13 What happens, which I think is consistent
14 with human nature, is the first time a covered person
15 goes to submit a claim and finds out that there has been
16 this determination of ineligibility, that brings them
17 around to submitting the required paperwork.

18 So, over the Christmas to New Year's break
19 we had hundreds of calls from people trying to fill
20 prescriptions, saying, what do you mean I am not
21 eligible? And suddenly the information started coming
22 in.

23 So, it won't be known until the whole of the
24 appeal process, and even then, until someone has a need

1 to file a claim that we will know completely, but the
2 savings are on target for what we expected.

3 Again, as to how many have actually been
4 removed, I will have that in one second. They are on
5 track, though, with what we expected.

6 SENATOR SAVINO: While you are looking for
7 that, the obvious question is: I understand the reason
8 why you felt the need to contract out this work because
9 of the demands it would place on your department and
10 they wouldn't be able to meet it, but how do we prevent
11 this from happening again?

12 If we had 60,000 people who were ineligible
13 covered by NYSHIP, how do we prevent that from happening
14 after this audit is over, this project is done, how do
15 we prevent this from happening in the future?

16 MS. GROENWEGEN: I think what the
17 expectation is that there will be a more rigorous
18 ongoing ballot verification process every time a new
19 member comes on, but clearly, the problem that gives
20 rise most often to an ineligible dependent is when there
21 has been a divorce and the spouse is not actively
22 removed. That is hard to guard against other than to
23 periodically require the health benefit administrator at
24 the employee's work site to verify these kinds of

1 things.

2 And the other is children who lose their
3 student status. Again, a lot of that, that kind of
4 ongoing effort, will have to occur at the level at which
5 the eligibility is first determined by the HBA, health
6 benefit administrator, at the level of employment.

7 Understandably the number of ineligibles can
8 be seen as distressing. I think that's exactly why this
9 administration recognized the need to do this kind of
10 audit, to recognize that if you hadn't done this close
11 examination of eligibility in 50 years of the plan, it
12 was imperative that we do so.

13 One of the things the consultant has agreed
14 to do, too, is work with us to put together measures to
15 ensure eligibility on an ongoing basis and we will
16 continue to do that. You know, it is unquestionably a
17 work in progress.

18 SENATOR SAVINO: Thank you.

19 Mr. Johnson, I will be very brief because
20 last year we saw some of the same recommendations coming
21 from the Governor in the budget that we see this year,
22 and the problem that we faced last year, or you faced
23 last year, is the same one you face this year.

24 The savings that the Governor is projecting

1 are mandatory subjects of bargaining, so, as the head of
2 the Employee Relations Division, what bargaining
3 sessions have been scheduled? What discussions have
4 been held with the representatives of the work force in
5 an effort to achieve some of these savings that the
6 Governor claims he's going to get by the elimination of
7 a contractual raise or any of the other benefits that
8 he's previously agreed to?

9 MR. JOHNSON: Senator, unfortunately, I
10 might give you the same answer I gave last year. Part
11 of that is that we have continuing relationships with
12 the unions so that we are in conversation with them on a
13 day to day basis. We have not at this point
14 specifically begun to negotiate the specific proposals
15 that are targeted for savings in the budget.

16 At the same time, we are very aware of the
17 impending deadline of April 1st, have every intention of
18 engaging the unions in that discussion and have every
19 intention of achieving results within that time period.

20 Last year, while those results may not have
21 come exactly within the time period, we were successful
22 in a lot of fronts in gaining union support and being
23 able to achieve things collaboratively with them.

24 Examples of that would have been the Chapter

1 500 IT in sourcing bill, with an IT certification pilot
2 that we were able to begin with them, and the
3 achievement of the tier 5 pension reform.

4 So, it's clear that we are able to achieve
5 results. In regards to timing, that's always subject to
6 the vagaries of collective bargaining, but we intend to
7 get it done.

8 SENATOR SAVINO: Time is running out for
9 you.

10 Secondly, one of the things that you did
11 negotiate with them late last summer was the voluntary
12 severance plan with target of reaching 4500 employees.

13 The first round didn't reach anywhere near
14 that and I understand we don't yet have a report on the
15 number of people who have opted to take the voluntary
16 severance plan.

17 Do you have an update on that?

18 MR. JOHNSON: We do have a report. I can
19 certainly give you the complete particulars after
20 today's session. Essentially where we are as of
21 January 11th is that the plans were approved and given
22 to the agencies in regards to 1389 employees. Of those
23 1389, 851 have accepted. That's as of January 11th.

24 The plan was going to close out on

1 January 20th. We expect to have some additional people
2 who did participate as of that date. And probably the
3 most important thing to note is that the savings at this
4 point are estimated at least, even without regards to
5 fringe benefits, as being about \$48, 49 million, which
6 is an important amount.

7 SENATOR SAVINO: But 1300 still brings us
8 far short of the 4500 that were determined to be the
9 target in order to reach the maximum savings.

10 So, one of the concerns that we have heard
11 from many of the unions is that most of the
12 Commissioners are not allowing people who are interested
13 in taking the severance plan to actually avail
14 themselves of it.

15 MR. JOHNSON: You are aware I believe this
16 is the first time we have done a severance like this and
17 so we did not know what the response would be, number
18 one. And also it's a question of exactly what the
19 effect of the tool is.

20 Obviously, the Commissioners' concerns about
21 maintaining services, maintaining staff, because they
22 knew that the savings were going to be achieved by
23 holding people out of positions once people took the
24 severance, they had to have -- be concerned about

1 exactly who they were going to be able to deliver
2 services.

3 So, as to the possible scope of what that
4 particular tool can achieve, maybe on the basis of this
5 experience we have a better sense now of what it can
6 achieve, what it's capable of. It still remains a tool
7 that's in our tool kit and we can see what happens going
8 forward.

9 SENATOR SAVINO: Do you think if we don't
10 reach the number of people after the January 20th report
11 comes out that you maybe consider extending the
12 severance plan again in an effort to reach that targeted
13 number?

14 MR. JOHNSON: As long as it remains a tool
15 it's there available for us, but our position at this
16 point is that, especially with regards to savings
17 achieved, we are where we wanted to be and we will
18 continue to look at the situation in order to make the
19 appropriate response.

20 SENATOR SAVINO: Finally, more of a comment
21 than a question.

22 Earlier this week Senator Klein and I put
23 out a report on examining what we determined as waste in
24 the Department of Corrections. I would urge you to look

1 at that report.

2 As we try and find ways to reduce expenses
3 at agencies we should find ways to better coordinate our
4 procurement policies, better coordinate our
5 administrative function and allow people who are
6 interested in taking the severance plan to actually
7 avail themselves of it.

8 I think we should look at every agency, what
9 is the core mission of that agency, what are we doing to
10 make sure that we provide the resources to meet the core
11 mission, not just do an across the board reduction.
12 Actually negatively impacts not just the people who
13 depend upon services of that agency but the local
14 surrounding communities.

15 Thank you.

16 MR. JOHNSON: I have your report. I haven't
17 gotten to spend the time that I would like to spend with
18 it, but it's clearly exhaustive. I look forward to
19 reviewing it.

20 SENATOR KRUEGER: Thank you.

21 Assembly.

22 ASSEMBLYMAN FARRELL: Peter Abbate, Chair.

23 ASSEMBLYMAN ABBATE: Either Commissioner or
24 Director, I'm going to direct a few questions to them.

1 What I'm reading or hearing in your
2 statement that the executive proposals are 16,605 people
3 being through attrition or layoffs then and new hires
4 would be 16,065. Now, I know we are in a hiring freeze.

5 Can you explain -- far be it from me to
6 decrease the work force -- but how does almost the
7 equivalent come back of 16,065, and are they full-time
8 state workers, management confidential, members of CSEA,
9 members of PEF and things, or are they temporary
10 workers? Because it's almost -- there's a couple
11 hundred only difference and there is supposed to be a
12 freeze, etc., essential personnel, and I know some
13 agencies are outside.

14 MS. GROENWEGEN: I think with respect to --
15 you have to remember that the work force is a dynamic
16 living thing, and even though there is a hiring freeze,
17 as the budget director's bulletin dealing with the
18 freeze makes clear, there are still critical functions
19 that must continue to be performed.

20 So, when you look to see where new hiring is
21 you will see that it continues to be direct care workers
22 in both mental health and mental hygiene, but some new
23 workers you will see right now being added to the
24 payroll are the additional 300 workers at the tax

1 department to help collect.

2 ASSEMBLYMAN ABBATE: They are full-time
3 state workers. They are not contract workers?

4 MS. GROENWEGEN: No. That's the number
5 being referred to. But it is reflecting the fact that a
6 work force is a living dynamic entity and therefore
7 critical functions need to be replaced.

8 What I think can't be overlooked is that the
9 effect of the hiring freeze brings this extra level of
10 scrutiny to the appropriate of every new hire in a way
11 that operating without a freeze would not, but to assume
12 that a hiring freeze means that the number does nothing
13 but go down precipitously misunderstands, I think, or
14 doesn't reflect the reality of what a work force is.

15 ASSEMBLYMAN ABBATE: I wanted to make sure
16 they were full-time and not temporary or contract
17 workers included in that. Those are full-time state
18 employees.

19 MS. GROENWEGEN: Correct.

20 ASSEMBLYMAN ABBATE: Second question is on
21 contract workers. In the 2009-2010 executive budget the
22 state was expected to spend \$742 million on 12,000
23 contract workers. In this budget it says expected to
24 spend \$779 million on 19,303 contract workers.

1 In between that, from the 742 that was in
2 the proposed budget it went up to \$786.5 million for
3 20,312 contract workers. So, it looks like a decrease
4 in contract workers from the last proposed budget, but
5 through the year, when we actually did look at the
6 numbers, it was 20,313 contract workers, not 12,000.

7 So, it's really an increase of 7,000
8 contract workers; is that correct?

9 MS. GROENWEGEN: Without having the data you
10 are looking at in front of me, the one thing I would
11 caution all who are involved in this debate about
12 contract workers, the number, the savings, is to make
13 clear we are all working off the same data with the same
14 understandings.

15 I think it's like many issues related to the
16 state work force and expenditures. If people aren't
17 counting the same way you are going to get skewed
18 results, and it's not going to be meaningful as a place
19 to start a discussion.

20 By that, I would say my experience recently
21 is I was looking at, after this week's -- past weekend's
22 report of the number of state workers making over
23 \$100,000, I think many of you probably saw that, seeing
24 that there was an alleged increase of 16 percent on the

1 number of workers making over that amount.

2 When you start to analyze the data you
3 realize there are a host of caveats that need to be
4 attached to it. One that's very basic is the data that
5 was used for that report reflected not base salaries,
6 but actual W-2 type earnings, so there is overtime
7 numbers in there. There is legislative numbers in
8 there. There's judiciary numbers in there. There's
9 SUNY numbers in there.

10 I mean it's a number that is taken out of --
11 I don't mean to say it's taken out of context, but it's
12 not the number that is typically reported for other
13 purposes, and I think the same can be said for the
14 numbers for contract workers.

15 I mean, in talking to staff at the
16 Comptroller's Office as to how they even identify which
17 contracts, it's not a precise science. Their coding is
18 somewhat different than how agencies code, but I think
19 what's important to really focus on in this debate is
20 where there is agreement, because I would submit that
21 the specific --

22 ASSEMBLYMAN ABBATE: What you are saying is
23 the numbers are different. These are the numbers the
24 executive office have given us. We have to determine a

1 budget. From 742.5 raised up 786.5 million down to
2 777.9.

3 Those are the numbers we have to judge to do
4 a budget. So, it's not our data, it's his data, and
5 which one?

6 MS. GROENWEGEN: I think the reality is that
7 there will be, as the numbers reflect, a decrease in the
8 dollars spent on these workers for a variety of reasons
9 based upon --

10 ASSEMBLYMAN ABBATE: Not a decrease. It
11 went up during the -- now it's decreasing down --

12 MS. GROENWEGEN: We have got to measure from
13 the right period, too. I mean, when you go back in
14 time, when you look back to when Governor Paterson first
15 made this a commitment, going back to last year, when
16 you measure from then you will start to see a decrease.

17 The Governor has taken a number of
18 aggressive steps to both study this problem and propose
19 appropriate solutions to address it.

20 First, as we all are aware, the Governor put
21 out the executive order to limit outside consulting
22 contracts. That was a meaningful report just put out on
23 that that made a significant number of meaningful
24 recommendations.

1 We had the new Chapter 500, which is
2 legislation designed to achieve significant savings by
3 in sourcing IT consultants, a process that reflects I
4 think the best in collaboration of how to approach it.

5 You have real numbers there. You have real
6 targets. You have the affected employee representative
7 groups at the table understanding where the savings can
8 be achieved. You have reporting requirements for
9 measurable results.

10 ASSEMBLYMAN ABBATE: But this was the same,
11 you know, basically the same conversation last year that
12 we're going to try to do less contracting out and it
13 went up, it went substantially up. It didn't go down.

14 And it was exact same conversation. We are
15 trying to do more in house, less contract workers, and
16 from the proposed budget to what was actually spent was
17 a large increase, roughly 8,000.

18 MR. JOHNSON: If I can just add:
19 Commissioner Groenwegen previously indicated part of the
20 situation that we are dealing with is that the work
21 force is a living breathing thing, a moving target in a
22 sense.

23 In other words, the circumstances in which
24 you have to do hiring change. So, from year to year

1 what you see happen may not be what you are hoping to
2 happen. One of the areas where obviously consultants
3 are the greatest concern is in the area of information
4 technology, and that area has been specifically targeted
5 over the last 12 to 18 months.

6 And we have seen significant progress there,
7 specifically because Dr. Melodie Mayberry-Stewart has
8 been concentrating on the ten state agencies that are
9 responsible for 72 percent of IT hiring. In that
10 specific IT area what we are seeing is that, from the
11 first half of two fiscal years ago, to the first half of
12 one fiscal year ago, IT spending has gone down -- on
13 consultants has gone down.

14 ASSEMBLYMAN ABBATE: It's going up in other
15 areas.

16 MR. JOHNSON: As I say, it may be dependent
17 upon circumstances, because the people that you are
18 hiring are -- it's because of circumstances in regards
19 to whether you have short term projects, whether or not
20 the employees have the necessary skills.

21 And so it's not that kind of a fine science,
22 but it is the kind of thing where in the instance where
23 Dr. Mayberry-Stewart has made a targeted effort we can
24 show specific results. That's probably the most

1 important thing.

2 In addition to that, in that IT area, in
3 cooperation with the CIO OFT and Department of Civil
4 Service and OER, we established, as I indicated earlier,
5 the IT certification pilot under which we are training
6 state employees who previously would not have had these
7 IT skills to have certification.

8 We have a first cohort of 28 employees who
9 are studying database management administration and will
10 soon take their first test and hopefully move on to
11 certification so that we can use state employees and not
12 use consultants in that instance.

13 And then specifically in regards to what we
14 did with you in regards to Chapter 500, to make it
15 possible to do targeted hiring from the list, again, to
16 in source IT work, in addition to which a component of
17 that was an agreement with PEF that will allow us to
18 increase spending on training. Again, to make sure that
19 state employees get training and that they can be doing
20 work that consultants are doing at this point.

21 ASSEMBLYMAN ABBATE: I think it's larger
22 than just IT but we will go on to just the last
23 question.

24 I'm curious, Director, Commissioner, who

1 would be in charge of temporary workers in the state,
2 and how does that go about? Probably read in the last
3 couple weeks and all some reports coming out that there
4 are literally thousands of temporary workers.

5 Who has jurisdiction and how is that
6 controlled? I mean I was given a list of page after
7 page of temporary workers, Kelly Services, Fusco
8 Services. Who makes the decision to hire the temp
9 worker and for what position?

10 MS. GROENWEGEN: These are decisions made at
11 individual agency level that are then submitted as
12 procurements through the budget division and then
13 through the controller. They are made on an agency by
14 agency basis.

15 ASSEMBLYMAN ABBATE: So there is no check of
16 people coming in working?

17 MR. JOHNSON: In regards to the hiring of
18 temporary workers, CSEA did issue a report, the Governor
19 responded to that report. Part of the response was to
20 put a freeze on that type of hiring.

21 What we have seen over the past, again, it's
22 about 18 months I guess, from July of '08 to July of
23 '09, there is a reduction in monthly spending on
24 temporary workers from about \$4 million to \$2 million;

1 and then from July of '09 to December of '09 another
2 reduction of about \$500 million.

3 So that at least as a result of that freeze
4 and a result of the Governor's intention to engage with
5 CSEA and all stakeholders in order to understand what's
6 happening in regards to the temporary workers, we are
7 seeing a reduction in spending. We want to continue to
8 focus on it and drive it down even further.

9 ASSEMBLYMAN ABBATE: Do we know how many
10 temporary workers there are now in each agency and where
11 they are being hired from? Let me just say: If you
12 don't have it, sometime in March we will be having a
13 hearing on this. So, you might not have it now but I am
14 just curious.

15 And the procedure, who is checking. In the
16 Office of General Services, who would make that
17 determination to hire the person? Who would they call,
18 what agency? Is there a fee paid to the agency? Are
19 they sending over three people or are we being billed
20 for three people and they are sending over two people?

21 Do we know? Checks are being issued, I
22 assume to someone, or are they being -- which can be and
23 I think -- are the checks being sent to the agencies and
24 not the individual and then would the agency pay that

1 individual, do we know? That's important information,
2 if we could have -- try to put that together in the next
3 couple weeks, appreciate it.

4 Thank you.

5 ASSEMBLYMAN FARRELL: Thank you.

6 SENATOR KRUEGER: Any other Senate
7 questions? I don't think so. We are good.

8 ASSEMBLYMAN FARRELL: Assemblyman Jeff
9 Aubry.

10 MR. JOHNSON: If I could just make one
11 correction. I said 500 million. It was 500,000. Half
12 a million was what I wanted to say.

13 ASSEMBLYMAN AUBRY: Good morning, Director
14 Johnson.

15 I am Chair of the Assembly Committee on
16 Corrections so I'm obviously interested in the analysis
17 that you may make by the report by Senator Savino.

18 I do have a question. In that regard, we
19 have had a lot of discussion about the
20 overrepresentation of management in the Department of
21 Corrections, and some explanation to that that
22 individuals were counted in the wrong way, that
23 individuals who were in management shouldn't be in
24 management, and so therefore as we reduce the size of

1 the prison population, and there are reductions in
2 security, management goes down in some way by
3 individuals being reassigned.

4 When the agencies come up with these
5 analysis, is that something that you review before they
6 are announced?

7 MR. JOHNSON: The analyses of who is in
8 management and who is not in management?

9 ASSEMBLYMAN AUBRY: Yes.

10 MR. JOHNSON: In regards to certainly the
11 creation of positions, we have an ongoing process with
12 the unions in regards to making determinations that
13 might otherwise be made by the Public Employment
14 Relations Board, and making a determination as to what
15 the representation status of a position is going to be.

16 I don't know if that's the circumstances
17 that you are really addressing.

18 ASSEMBLYMAN AUBRY: Obviously, when the
19 department reports to us they indicate a certain number
20 of employees who are said to be in management, and a
21 certain number of employees who are in security as they
22 define that. And that number seems to -- they are
23 representing to us that that number of people who are in
24 management should not be counted in management.

1 So, I am just trying to determine whether
2 that is something reviewed by your office, is something
3 that an agency will come to us and say, based on their
4 own analysis, and how you might get involved in that.

5 MR. JOHNSON: My understanding is that in
6 that circumstance we would not get involved.

7 ASSEMBLYMAN AUBRY: Thank you.

8 ASSEMBLYMAN FARRELL: Mr. Townsend.

9 ASSEMBLYMAN TOWNSEND: Thank you,
10 Mr. Chairman. Just a couple of quick questions.

11 According to the executive, 90 school
12 resource officers will be reassigned to highest priority
13 areas, including 15 officers out of troop D, which is in
14 the Oneida area, central area that I represent; 15 in
15 the western part of the state.

16 I guess I am going to ask you a rhetorical
17 question but I would expect some sort of response from
18 you as to what's a higher priority than the safety of
19 our children in the schools and in the State of New
20 York?

21 MR. JOHNSON: Assemblyman, I'm not at all
22 prepared in terms of the details of the reassignment of
23 those positions in regards to the State Police to
24 respond.

1 I can only say you know and I know, at
2 least, that Governor Paterson obviously is concerned
3 about school children and Superintendent Corbett is as
4 well. And those decisions I know are not taken lightly,
5 but that's the only response I can give at that level.
6 In regards to the details, I would not be able to give
7 you a response.

8 ASSEMBLYMAN TOWNSEND: As a former member of
9 the New York State Police, and having attended their
10 police academy and see the turnover in the State Police
11 on an annual basis through normal attrition and
12 whatever, to forego a plan class, funding for a plan
13 class in the 2010-2011 budget year, approximately 200
14 plus New York State Troopers, New York State Troopers,
15 when we are in a situation that we have to be ever
16 prevalent of issues that could affect the safety and
17 integrity of the people of the State of New York, why
18 would you eliminate members of the New York State Police
19 but then still allow for refill of 211 positions in the
20 Department of Motor Vehicles, 409 positions in the
21 Department of Labor, or 33 positions within the
22 executive chamber instead of allowing for the
23 maintaining of the SRO school resource officers in our
24 schools, which I dealt with a lot of times in this

1 career, and my previous career, and take away a training
2 class to backfill a normal attrition and loss of 200
3 plus members of the New York State Police that they
4 anticipate in the 2010-2011? It just boggles my mind
5 that they've become so low on the totem pole that the
6 public safety is being impacted here for the saving of a
7 million dollars.

8 MR. JOHNSON: Again, I probably shouldn't
9 respond because it's not in my area of responsibility
10 except to say that it would be a dispute among
11 reasonable people about the most appropriate way to
12 provide state services given the present circumstances
13 in regards to what state resources are.

14 MS. GROENWEGEN: Sir, if I could just add
15 one comment, too. I think one thing that can't be
16 ignored is that, as you just pointed out, there are
17 other ways besides assigning active State Troopers to
18 the school to meet the vital safety needs that you
19 addressed.

20 I know regularly the Civil Service
21 Commission sees applications from school districts to
22 hire school safety officers. Many times they are
23 retired police officers seeking to perform that
24 function, which is paid at a relatively -- a fair but

1 modest wage, that with the ability to continue to
2 collect their pension, it's a meaningful way to provide
3 that function.

4 So, I think part of the decision making can
5 focus on it's not that it's not a high enough priority
6 statewide. It's more that there are other ways
7 available to address the need you identified.

8 ASSEMBLYMAN TOWNSEND: I find that an
9 interesting comment because we are having a terrible
10 time getting, what is it, the 211 waiver for retired
11 police officers to be hired by the school districts.

12 And the second point being that now you want
13 to shift the cost down to the taxpayers of the school
14 districts to provide public safety in the schools
15 because those school resource officers that are hired as
16 retired police officers are former police officers
17 aren't paid by the state. They are paid by the local
18 taxpayers.

19 I don't know if you realize or can
20 comprehend, because probably you've never been there.
21 And it's not a disparaging remark, I'm just saying this
22 from a professional standpoint on my side. The
23 tremendous impact that those SROs have in our schools
24 not only from the safety standpoint, but also from the

1 educational standpoint and building the trust between
2 youngsters and police officers that will carry on
3 through their life time as they build that bond and know
4 that they can trust the police officer, whether it be a
5 New York trooper or city policeman, or village or town
6 police officer.

7 It's a valuable learning lesson, and to
8 throw all that aside for the saving of a few dollars or
9 shifting of dollars down to our local taxpayers, in my
10 estimation, doesn't make much sense.

11 One other question. Maybe you can answer
12 this one for me. The early retirement incentives that
13 we've offered the last couple of years have always been
14 targeted positions. I guess by targeted we say that
15 they are positions that are not going to be back filled.

16 I have a tremendous amount of state
17 employees in my Assembly district with four prisons and
18 OMRDDs and DOTs and whatever, and a lot of employees
19 that are working for the state that have been there for
20 a good number of years, would like to take advantage of
21 an early retirement incentive but because they are in
22 positions that cannot be eliminated because they are
23 needed for the betterment of the agency they are not
24 allowed to do this.

1 But it never made much sense to me why, if
2 it's a targeted position, it's not going to be
3 eliminated once the person leaves. We have an employee
4 that's at the top of the pay scale and in tier --
5 there's still some of tier 1's around, tier 1, or tier
6 2, or tier 3 that have the higher retirement benefits,
7 to allow them to retire. Let them take advantage of it
8 and then bring in the new employees at a lesser pay
9 scale.

10 And especially now with the new tier 5
11 contributory retirement system that we have, and shift
12 the monetary burden on the taxpayers to a reduced
13 amount. Maybe it won't reduce the work force, but at
14 least the cost of the work force would be there as new
15 employees come in at maybe half the pay that some of
16 these 25- and 30-year employees have that can't retire.

17 Does this make any sense? Is there a reason
18 that you don't allow this to happen? That's the
19 question I guess. Why can't we retire, bring somebody
20 new in that's going to earn a whole lot less than I do
21 if you're looking to save money?

22 MR. JOHNSON: At a higher level our concern
23 is with early retirement just as a concept, that
24 especially given the fiscal constraints that we find

1 ourselves in, but even if it's in the typical situation
2 it requires so much discipline to get any savings at all
3 out of an early retirement incentive that it's just not
4 an idea that we are prepared to take on certainly at
5 this time.

6 And that's one of the reasons why we looked
7 at the voluntary severance in this past year, because
8 that voluntary severance that involved immediate savings
9 and early retirement incentives do not.

10 So, I know that does not go specifically to
11 your question, but just as an indication of where the
12 administration is in regards to early retirement in
13 general, we would not necessarily get involved in that
14 discussion because of our concern about the ability to
15 achieve savings using an early retirement incentive at
16 all.

17 ASSEMBLYMAN TOWNSEND: Did you look at it
18 from that standpoint?

19 MR. JOHNSON: Yes, we have.

20 MS. GROENWEGEN: If I could just add one
21 thing, to echo Director Johnson's comments too, I think
22 one thing that I think is not popularly thought of when
23 people think about retirement incentives, you hear your
24 constituents talk about the math of they can bring

1 someone in at a lower salary. There is also a cost,
2 obviously, to the state for every early retirement
3 incentive.

4 The value of the additional service credit
5 is a contribution that the state has to make to the
6 retirement system. That cost I think often gets lost in
7 lay people's understandings of how the incentives work.

8 But another thing that I think has to be
9 borne in mind right now is that when you see my
10 testimony, year after year I presented to you the crisis
11 the state work force has experienced because of the age
12 of our work force.

13 Right now we have 20 percent of the state
14 work force that's eligible to go in the next five years.
15 When you look at the managerial confidential work force
16 as a group, 36 percent of them are eligible to retire in
17 the next five years.

18 When we study the data, the demographics
19 about the state work force, what we see, which is very
20 worrisome, is that you've got those who are able to go
21 and then right behind them, they are number two in the
22 agency, is also able to go.

23 So, an incentive right now in terms of
24 knowledge transfer and avoiding the critical state many

1 agencies find themselves in, that is something that has
2 to be factored into the calculus for determining what's
3 the best policy decision.

4 There's cost considerations. There's work
5 force management implications. But as you pointed out
6 yourself, though, there are savings that these workers
7 will come back at tier 5, which is clearly the more
8 workers we get into tier 5 the greater the long term
9 savings, but it's not as single dimensional I think
10 sometimes as your constituents may ask you that question
11 on.

12 ASSEMBLYMAN TOWNSEND: One of the requests I
13 got, just to share how important this is to the state as
14 far as maintaining integrity, was from a cook at a state
15 school system up in Central New York.

16 Thank you.

17 SENATOR KRUEGER: Thank you very much for
18 your testimony today.

19 Our next testifier will be Colleen Gardner,
20 the Acting Commissioner of the New York State Department
21 of Labor.

22 Good morning. Again, I made the statement
23 earlier, but I will make it again as my colleagues have
24 joined us on both sides. We are also joined by Senator

1 Velmanette Montgomery.

2 Because it's technically a snow day
3 throughout the state, and we have scheduled two hearings
4 today, we are asking everyone to try to summarize their
5 testimony so that we have time both to ask questions,
6 and also so that all the people waiting here to testify,
7 and the next group coming in for the next hearing also
8 might be able to accomplish our goals before we all get
9 snowed in in our respective either Capitol or home town.

10 So, good morning.

11 ASSEMBLYMAN FARRELL: Good morning.

12 MS. GARDNER: Good morning, Vice Chairman
13 Krueger, Chairman Farrell, Senate Labor Committee Chair
14 Onorato, Assembly Labor Committee Chair John, and
15 Senators and members of the Assembly.

16 Thank you for the opportunity to outline the
17 Department of Labor's budget and agency operations over
18 the past year and our plans for this year. I should
19 start by mentioning that last week Labor Commissioner
20 Patricia Smith was confirmed as Solicitor of the US
21 Department of Labor. This is a tremendous gain for our
22 nation's workers and employers, and I know that you join
23 me in congratulating her and wishing her well.

24 So, today is my first day as Acting

1 Commissioner of Labor, and I can't think of a better
2 place to start off my day than to appear before you on
3 our executive budget.

4 You have my written testimony but I promise
5 that my oral testimony will be much shorter. Our
6 agency's mission is to protect all workers, assist the
7 unemployed, and connect job seekers with employers. I
8 would like to tell you how we have achieved that mission
9 in the face of these very difficult economic times.

10 Approximately 86 percent of the Department
11 of Labor's budget is funded by federal special revenue
12 appropriation. Our overall budget has grown
13 significantly over the past two years, increasing from
14 2.8 billion in state fiscal year 2007-8 to more than 10
15 billion in state fiscal year 2009-10, largely due to the
16 dramatic rise in unemployment across the state.

17 Most of our growth related to the payment of
18 unemployment insurance benefits to over a million New
19 Yorkers. Last year, Commissioner Smith spoke about how
20 the downturn in the economy was creating anxiety for
21 workers across our state.

22 She said that Governor Paterson and the
23 department would advocate for federal extended
24 unemployment benefits to help ease that stress on

1 unemployed New Yorkers.

2 Today, I can tell you that the Governor's
3 efforts to secure federal extended benefits succeeded.
4 Thanks to federal stimulus funds, New York now provides
5 73 weeks of unemployment benefits in addition to the
6 regular 26 weeks of benefits.

7 This includes 20 weeks of extended benefits
8 that are currently funded 100 percent by the federal
9 government. Thanks to legislation supported by Governor
10 Paterson and the state legislature last year, New York
11 was able to offer these extended benefits.

12 Stimulus funds also provide claimants with
13 an additional \$25 in their weekly payments. This is
14 vital since we have not increased our maximum benefit
15 level in over a decade.

16 We currently pay unemployment insurance
17 benefits to about 655,000 people each week. That
18 compares to 175,000 two years ago. We paid 9.2 billion
19 in unemployment insurance benefits in 2009. That figure
20 includes 5.1 billion in regular unemployment benefits
21 and 4.1 billion in stimulus funded emergency and
22 extended benefits.

23 But the extension of benefits and supporting
24 provisions will end soon unless Congress acts to extend

1 these provisions beyond February 28th. That is why
2 Governor Paterson and the department are working with
3 New York's Congressional delegation to advocate for
4 additional federal benefit extensions.

5 As you can imagine, the extraordinary jump
6 in claims in just two years has placed a burden on the
7 unemployment insurance trust fund. At the end of 2009,
8 the UI trust fund had a deficit of more than 2 billion.
9 It is expected that this deficit will increase to nearly
10 3.5 billion by the end of 2010.

11 The stimulus funded benefits are fully
12 federally funded and have no effect on the UI trust fund
13 balance. In addition, federal stimulus funds will save
14 businesses 150 million in payroll taxes because right
15 now the interest payments on our mounting UI trust fund
16 deficit have been waived until the end of this year.

17 To put the urgent need for additional
18 benefits in perspective, in December, New York's
19 unemployment rate reached 9 percent, matching a 26-year
20 high. While below the national rate, our unemployment
21 rate is expected to continue to rise this year even as
22 the economy improves.

23 Moreover, there are several areas of the
24 state where the unemployment rate is over or close to 10

1 percent, particularly in New York City and in the North
2 Country. And the unemployment rate for youth and
3 minorities continues to be unacceptably high.

4 New York's unemployment rate, long term
5 unemployment rate, which tracks the number of people who
6 are unemployed for more than 27 weeks, was 40.3 percent
7 in the last quarter of 2009, and on average 275,900 New
8 Yorkers were considered long term unemployed in any week
9 in 2009.

10 The average duration of unemployment in New
11 York is 30.1 weeks. We know that unemployment insurance
12 benefits are a lifeline for New Yorkers. They help them
13 remain in their homes, pay their bills, and put food on
14 their tables as they look for new jobs or seek training.
15 These benefits help pump much needed dollars into our
16 local economies and businesses.

17 Studies show that every dollar paid in UI
18 benefits generates a \$1.64 increase in economic
19 activity. The increase in unemployment claims prompted
20 us to examine our resources and make changes in order to
21 serve our UI customers better.

22 I am pleased to report that New York was one
23 of the first states to get extended benefits into the
24 hands of claimants last year. Each new benefit tier was

1 enacted with a short lead time, yet we were able to keep
2 pace and haven't missed a payment. To assist claimants,
3 we placed a UI benefits calculator on our website to
4 allow them to find out within seconds how many weeks of
5 unemployment they would be eligible for, and that's one
6 of our most popular hits on our website.

7 We also extended the hours of our telephone
8 claim centers and used federal funds to increase our
9 staff to handle the growth in claims. We have changed
10 many procedures to make sure that we answered more calls
11 more quickly.

12 The use of our website for filing claims has
13 increased to about 65 percent of claims, and the
14 Department of Labor was one of the first state agencies
15 to use social media like Facebook, Twitter and Youtube
16 to get the information out to the public as quickly as
17 possible.

18 We met the need to process the additional
19 claims through innovation, hard work, and the
20 enhancements we made to our system technologies. I am
21 pleased to say that our multi-year unemployment
22 insurance system improvement project is on schedule to
23 be completed within the next three years as planned, and
24 within budget.

1 All of these improvements help us to get
2 benefits into the hands of claimants in a more efficient
3 and timely manner, but they are only part of the story.
4 We are also using advanced technology in our one stop
5 career centers to help put more people back to work.

6 We are using software to help match job
7 seeker skills with potential job openings in a variety
8 of industries. We are using federal stimulus funds to
9 increase the number of staff in our one stop career
10 centers to handle the more than 746,000 customers who
11 came through our doors last year looking for
12 reemployment.

13 Last summer we used 61 million in Workforce
14 Investment Act, or WIA, stimulus dollars to put more
15 than 23,000 lower income youth to work in summer jobs
16 statewide. This past fall, we awarded 5 million in WIA
17 stimulus funds for disconnected youth grants to
18 organizations statewide.

19 These programs expand the career awareness
20 of low income youth, provide drop out prevention
21 services to develop a base of skills to give them a
22 foundation for the future.

23 We strategically targeted our other WIA
24 training funds to where they were needed most. We

1 awarded 4.7 million to business, to 150 businesses to
2 upgrade the skills of approximately 7400 workers.

3 And under the emerging and transitional
4 worker program we awarded 15 million to 44 organizations
5 and provided training to 6200 lower income unemployed.

6 Our agency is also supporting initiatives to
7 focus on training for green jobs that provide career
8 ladders and pathways out of poverty in the clean energy
9 industry. While we received additional stimulus funds
10 for training, I would have to point out that from the
11 year 2000 up until 2009, we saw a 43 percent cut in our
12 funding for federal WIA formula funds.

13 So, right now we are almost at parity with
14 what we had in the year 2000 and at the same time we are
15 serving more customers. We have also expanded the
16 criteria for approval under the 599 program so that more
17 UI recipients can participate in training while they are
18 collecting benefits.

19 And we know that the last thing that
20 employers want to do is to layoff workers. That's why
21 we are focused on expanding our layoff aversion
22 activities. For instance, we increased employer
23 participation in the shared work program by 366 percent.
24 Shared work enables businesses to reduce the hours of

1 full-time employees rather than lay them off.

2 Employees then can collect partial
3 unemployment insurance benefits to supplement their lost
4 wages and they get to keep their benefits. When layoffs
5 occur, the state worker adjustment and retraining
6 notification act, or WARN act, has helped us to reach
7 out to dislocated workers sooner to help them find jobs.

8 As we work to build the capacity of our
9 state's work force, we want to make sure all workers are
10 treated fairly and paid appropriately under our state's
11 labor laws.

12 I am pleased to report that we set new
13 records in collections in 2009. Our Bureau of Public
14 Work disbursed more than 9 million to nearly 2600
15 workers who were underpaid on public works jobs. Our
16 Division of Labor Standards paid out over 20 million to
17 over 15,000 workers who were cheated out of their wages
18 due. These numbers represent the division's largest
19 annual recovery to date, an increase of over 15 percent
20 since 2008, which was another record year.

21 And last year our misclassified worker task
22 force conducted 19 proactive investigations in several
23 industries and improved coordination among state
24 agencies. We identified 19,200 instances of employee

1 misclassification; more than 235 million in unrecorded
2 wages; and unemployment insurance taxes due of over 6
3 million. And we also assessed fraud penalties.

4 Our UI division completed some additional
5 audits and found more than 113,900 misclassified
6 employees and unrecorded wages of over 2 billion.

7 All of these efforts work to ensure the
8 integrity of the UI trust fund and they level the
9 playing field for employers who play by the rules. We
10 will also continue to protect the safety and health of
11 public workers and the general public in those areas
12 under our purview.

13 Last year, our public employee safety and
14 health, or PESH, bureau increased inspections; began
15 enforcing the new work place violence prevention rules;
16 and provided safety and health assistance to more than
17 2000 small private sector employers.

18 My written testimony outlines some of the
19 many other programs that the department is working on.

20 So, in conclusion, we believe that we will
21 continue to see a high rate of unemployment, so we will
22 continue to do the work we do because we know it's so
23 vital to the wellbeing of New York's workers and
24 employees.

1 Economists predict that the economy may
2 begin to turn around later this year but job growth will
3 likely lag behind economic growth. So, while we hope
4 for a brighter tomorrow, we must continue to provide the
5 best protections and services to New Yorkers today.

6 I ask for your continued support. Thank
7 you.

8 ASSEMBLYMAN FARRELL: Thank you very much,
9 Commissioner.

10 Senator George Onorato.

11 SENATOR ONORATO: Good morning,
12 Commissioner. Good to see you again.

13 I just have two questions for you. It's my
14 understanding that the unemployment trust fund was
15 already insolvent before the Recovery Act was enacted.
16 The state will have to start to prepay interest at the
17 end of this year after a temporary interest free period.
18 How much will the state owe in interest?

19 MS. GARDNER: Well, actually we went
20 insolvent two hours into the year 2009, so, we have been
21 insolvent since then. Beginning next year we will have
22 to begin to pay back the interest assessment surcharge,
23 the \$150 billion in interest that we had foregone so
24 far, and we estimate that's about \$300 per employer at

1 least, but that's one of the projections.

2 Each year employers have to pay a federal
3 unemployment tax of 6.2 percent. Now, under normal
4 conditions the employers would get a rebate of
5 5.4 percent, but this year they are going to have to pay
6 -- I am sorry, not this year, next year -- a 0.3 percent
7 surcharge onto the -- what they have to pay back to the
8 federal government.

9 Each year that surcharge will increase. So,
10 the following year going to have to pay 0.6 percent and
11 then the following year 1.2 percent until all this money
12 is paid back. At the same time, there is also efforts
13 underway by the US Department of Labor to state that
14 states really should have 18 months' worth of benefits
15 on reserve to the UI trust fund.

16 SENATOR ONORATO: That probably answered a
17 good part of my second question, but what impact will it
18 have on the employee's federal unemployment taxes if the
19 fund continues to be insolvent?

20 MS. GARDNER: We have to keep on paying --
21 We've going to have to keep on paying it back until it
22 is completely paid back.

23 SENATOR ONORATO: Thank you.

24 ASSEMBLYMAN FARRELL: Thank you.

1 great investment for employers and we're trying to
2 encourage employers to hire veterans as much as possible
3 and take advantage of these tax credits.

4 ASSEMBLYMAN HAYES: The concern I think is
5 sometimes, though, that while the policy at the top
6 level may be something that looks good, by the time it
7 hits the grass roots there are often some problems with
8 it.

9 One I am particularly familiar with involves
10 preapproval of the course of study that the veteran may
11 be enrolled in and it's limited to maybe a one year or a
12 two year degree program.

13 Are you able at this point to talk a little
14 bit about -- is that a federal regulation? Is that a
15 state regulation? That program in particular, is that
16 something that the state just passes through on rules
17 and regs made by the federal government or is it
18 something that we've tailor made and designed for New
19 York State residents?

20 MS. GARDNER: It's a federal requirement,
21 but we do the approval. What we are trying to do is
22 approve them as much as possible but sometimes we are
23 constrained by the parameters of the federal
24 requirements.

1 ASSEMBLYMAN HAYES: Thank you very much.

2 ASSEMBLYMAN FARRELL: Thank you.

3 Senator Savino.

4 SENATOR SAVINO: Thank you, Assemblyman.

5 Thank you, Ms. Gardner. I'm sorry I missed
6 your testimony but I do have it in front of me. And I
7 look forward to you becoming the Commissioner at some
8 point, following the steps of Trish Smith, which are
9 very big shoes to fill.

10 I'm going to ask you a question. You may
11 not know the answer to it, but if you don't that's okay.
12 Hopefully you have some insight.

13 In the executive budget there is a proposal
14 to merge SERB with PERB, and of course we some concerns
15 about the ability of PERB to handle all of the
16 complaints of the private sector unions including the
17 Indian nations.

18 Do you have any insight on how that's going
19 to happen?

20 MS. GARDNER: Right now SERB is the only
21 part of the New York State Department of Labor budget
22 that is out of the general fund. Right now there are
23 five staff there. We are the only state that has a
24 separate private sector employment relations board. We

1 had -- SERB predated the National Labor Relations Act.
2 It was established in the 1930s.

3 Since then, the National Labor Relations Act
4 really has more jurisdiction over most work places. In
5 every other state they merge the private sector
6 responsibilities with the public sector
7 responsibilities.

8 When we looked at moving over the
9 responsibilities of PERB, Division of Budget had
10 numerous conversations with PERB and they have said that
11 they feel that they can fully take over the
12 responsibilities of SERB.

13 They also have offices in Buffalo, Albany
14 and New York City, just as SERB does, so it's a very
15 good fit.

16 SENATOR SAVINO: So, the volume of
17 complaints that SERB deals with are relatively low?

18 MS. GARDNER: Yes.

19 SENATOR SAVINO: Thank you.

20 ASSEMBLYMAN FARRELL: Thank you.

21 Any further questions?

22 Susan John, Chair.

23 ASSEMBLYWOMAN JOHN: Commissioner,
24 congratulations on your appointment. I hope my

1 colleagues in the Senate make quick work of your final
2 approval.

3 Unemployment insurance, does the department
4 know when the last time was that the unemployment
5 insurance fund actually had 18 months of reserves
6 available?

7 MS. GARDNER: I would say over a decade.

8 ASSEMBLYWOMAN JOHN: So, over ten years it
9 would have been at that point.

10 So, it's fair to say that the unemployment
11 insurance fund has been unstable for several years.

12 MS. GARDNER: Yes. I think the amount of
13 money coming in -- a good year is probably matched the
14 amount of money that went out, but especially this year,
15 we took in 2.5 billion but we paid out 5.1 billion in
16 regular benefits. So in a particularly bad year it's
17 very insolvent.

18 ASSEMBLYWOMAN JOHN: I note that last year
19 we offered appropriation authority up to \$10 million for
20 unemployment insurance, which to some of us seemed like
21 a big number. It's my understanding that we will have
22 to increase, as part of our actions, that \$10 million
23 number is insufficient when we will get to March 31st.
24 So, we will actually have to increase the appropriation

1 authority.

2 I know it's not state general fund money,
3 but it's a comment on the severity of the situation.
4 And as you point out, this is a long standing problem,
5 the instability of the fund. When we last adjusted the
6 wage base and the payment level was I believe 13 years
7 ago, maybe 14 years ago now that the clock has rolled
8 over to 2010.

9 So, even the last time that it was adjusted,
10 the wage base and benefit level, we didn't make great
11 headway in stabilizing the unemployment insurance fund.

12 MS. GARDNER: Right. Especially since
13 following that in 2001 there was a recession and then
14 again now, but back a decade ago when they increased the
15 employer contribution, the wage base, the wage base was
16 20 percent of the average weekly wage in the state.

17 The \$8500 wage base is far less than that.
18 At the time when we raised benefits, benefits were
19 50 percent for the average weekly wage. Right now the
20 maximum weekly benefit is about 30 percent of the
21 statewide average minimum wage.

22 ASSEMBLYWOMAN JOHN: We seem to lack the
23 will to address this situation. And if the federal
24 government doesn't continue to extend the additional \$25

1 payment, workers are going to be -- unemployed workers
2 are going to be falling further behind.

3 You make reference to the fact that in the
4 unemployment insurance area, because of the enormous
5 volume that you cite in your written testimony, that
6 additional staff had to be employed to answer the calls
7 to deal with the hotline and so forth.

8 Are those contract staff that the department
9 has hired?

10 MS. GARDNER: No. They are considered
11 temporary staff but they are members of the collective
12 bargaining agreement. They will -- we hope eventually
13 through attrition they will come on as full-time
14 permanent staff at the department.

15 ASSEMBLYWOMAN JOHN: Again, in your written
16 testimony -- and I thank you for this -- you have
17 offered some pretty startling figures about what the
18 long term unemployment rate is in New York State.

19 I suspect that your unemployment insurance
20 staff could also provide the labor committee with
21 additional breakdown of some of the subsets of what that
22 long term unemployed staff is, and I would welcome the
23 opportunity to review that.

24 MS. GARDNER: Yes. We were also looking the

1 other day at the number of people who will eventually
2 run out of their 99 weeks of benefits. There are about
3 60,000 people who may run out of 99 weeks at the end of
4 March. They tend to be, we believe, looking at the
5 stats, and they tend to be lower income folks, but also
6 folks from the financial services industry, because
7 probably some of those jobs may not be coming back.

8 But we are taking a look because we think
9 it's better that we should be targeting our resources to
10 the needs of those type of workers.

11 ASSEMBLYWOMAN JOHN: In light of the
12 unemployment figures, and in light of another portion of
13 your written testimony describing the efforts of the
14 department to try to help our disconnected youth into
15 the work force, the Governor eliminated the funding for
16 the summer jobs program in the budget that was submitted
17 to the legislature.

18 Does the department foresee any ability to
19 have work force investment funds available to try to
20 connect any of the disconnected youth to work,
21 particularly in light of the eliminated \$35 million
22 appropriation?

23 MS. GARDNER: Most of the funds were federal
24 funds. I know that the House --

1 ASSEMBLYWOMAN JOHN: The work force
2 investment funds are federal funds.

3 MS. GARDNER: Right, for the summer youth
4 program. And the House is now currently talking -- in
5 their proposal that they passed in December they
6 provided some funding for summer youth jobs programs and
7 now the Senate is looking at -- they are working on a
8 bill.

9 I got to say I love the summer youth
10 employment job because that's where I got my first
11 summer job.

12 ASSEMBLYWOMAN JOHN: So, in the absence of
13 additional federal action there won't be any program
14 available from the Department of Labor to help connect
15 this funding.

16 MS. GARDNER: Unfortunately, correct.

17 ASSEMBLYWOMAN JOHN: Thank you,
18 Commissioner.

19 Thank you, Mr. Chairman.

20 ASSEMBLYMAN FARRELL: Thank you very much.

21 Further questions?

22 Assemblyman Jeff Aubry.

23 ASSEMBLYMAN AUBRY: Just an issue. We have
24 this well acknowledged difficulty in employment rates of

1 minority males that has been catalogued and talked about
2 for a very long time by lots of administrations.

3 So, my question is: Even in these difficult
4 times that we have, is there any concerted effort to
5 look at that population and do specifically directed to
6 try and understand and alleviate some of this long
7 standing economic disenfranchisement?

8 MS. GARDNER: Yes. We're very concerned
9 about the high rate of unemployment among people of
10 color. I think one of my priorities is to look
11 internally and look at the services that we provide at
12 the Department of Labor and make sure that we are
13 actually reaching out to people of color and making sure
14 that our one stop career centers are welcoming to all
15 types of folks, and that we are able to sit down and
16 identify things that we can do to help connect them with
17 employers, as well as figure out if additional training
18 is required and try to link them with funding for job
19 training.

20 ASSEMBLYMAN AUBRY: In that effort, are your
21 efforts targeted geographically to the communities that
22 display the highest unemployment?

23 MS. GARDNER: That's going to be one of my
24 priorities. I think we have done it to a certain extent

1 in some parts of the state but we need to do a better
2 job of doing that.

3 ASSEMBLYMAN AUBRY: For instance, in the
4 North Country where they also have a very high rate of
5 unemployment, how do you deliver those services in those
6 communities? How do you deliver those services? You
7 obviously have very unique problems in terms of access
8 and one stop centers.

9 MS. GARDNER: One thing we did last year is
10 we used some of our funds for gas cards to help pay for
11 transportation because transportation can be a very big
12 problem for folks.

13 We are also, through our research efforts,
14 we try to figure out what are the jobs in the area,
15 because there are some differences around the state. We
16 want to train people for jobs that will be there in the
17 communities. We would rather not see them leave New
18 York.

19 So, we do bring -- within weeks after people
20 receive unemployment, they are asked to come into our
21 one stop career centers. We sit down with them, go over
22 their job skills, go over -- help them develop a resume.
23 We have ongoing workshops on interviewing skills and
24 things like that.

1 And we are trying -- with having these
2 extended benefits, we've been able to also get people in
3 training so they are able to collect unemployment
4 insurance and get training for new jobs in the area.

5 ASSEMBLYMAN AUBRY: And the analysis that
6 you make of these two troubling populations, is that
7 something that's done simply in house? Is that
8 something that is produced so that we could read it,
9 understand your thinking, try and understand what
10 experts you brought together to analyze this problem?

11 Again, because of its long standing nature,
12 its implications on the state budget and the state as a
13 whole. I'm just concerned that it's always sort of we
14 admit it, we acknowledge it, it's a terrible thing, and
15 we're going to try to do something. We would really
16 like to try, we have lunch and then we go away.

17 MS. GARDNER: We look forward to working
18 with you. We have the research staff. If you're
19 interested in knowing the demographics and the jobs in
20 your district or any part of the state we can share that
21 information with you.

22 We are trying to be proactive not only in
23 investigations, but in trying to connect workers with --

24 ASSEMBLYMAN AUBRY: I look forward to that.

1 Thank you.

2 ASSEMBLYMAN FARRELL: Thank you.

3 We have been joined by Assemblyman Jack
4 McEneny.

5 Any further questions?

6 Senator Montgomery.

7 SENATOR MONTGOMERY: Thank you. Good
8 morning, Commissioner. Good morning. I just wanted to
9 ask you about a couple of programs that you mentioned in
10 your report.

11 On page five, you talk about the 5 million
12 in WIA and stimulus funding for disconnected youth
13 grants, and I am just wondering if we could get some
14 further detail on just how that program works and where
15 they are.

16 MS. GARDNER: Actually, we do publish that
17 on our website, but I would be happy to get you a copy
18 of all the people, organizations that receive the
19 funding and the amounts of funding.

20 SENATOR MONTGOMERY: Okay. And we can see
21 approximately how many young people are served by that?

22 MS. GARDNER: These programs are just
23 beginning to be launched, but there are strict rules by
24 the federal government and goals that are set, and we do

1 look at outcomes.

2 SENATOR MONTGOMERY: That's good. That's
3 one of the areas of very high need, as you well know,
4 and hopefully we would like to see more of that, and if
5 it works we would like to be able to build on that.

6 The other one that I am going to ask you
7 about is building skills in New York State. That
8 program, it seems to me that one of the ways that people
9 actually build skill and learn how to work and how to
10 look at the requirements in relationship to having a job
11 is that they actually have a job.

12 And I am always concerned when we put a
13 disproportionate amount of funding into job readiness,
14 work readiness, as opposed to in work. And so, this
15 program appears to actually do what I like more, and
16 that is it provides funding to allow for businesses to
17 employ more people perhaps, and help them to build
18 skills as they work.

19 So, I am just wondering why we have such a
20 disproportionate amount directed toward the emerging and
21 transitional worker program as opposed to the work
22 program, the actual work program.

23 MS. GARDNER: Well, the building skills
24 program is directed toward incumbent workers. It's to

1 ensure that current workers have the skills and change
2 with technology and still remain employed with that
3 employer. We have a saying that a job saved is a job
4 gain, so that's focusing funding to ensure that current
5 workers have the adequate skills.

6 There is very little federal funding for
7 incumbent worker training. So, we only had a small pot
8 of money that was available to and we chose to direct it
9 toward that, versus we have more leeway to provide some
10 of the funding for the emerging and transitional
11 workers.

12 But I've got to say that it's important to
13 do job readiness for youth. The unemployment rate for
14 youth is at the highest it's ever been. There's been
15 all kinds of studies that show if youth had a long
16 period of unemployment, actually years down the pike, it
17 impacts their earnings. And they actually earn less
18 over time. So, it's very important that we address the
19 low employment rate of young people.

20 SENATOR MONTGOMERY: I certainly appreciate
21 that. I just hope that we begin to move more in the
22 direction of supporting employers who actually provide
23 jobs and so that young people, or anyone who is
24 unemployed or who needs to work, has a job that helps

1 them to really be part of the work force.

2 I receive so many complaints that people go
3 training forever and it really never leads to a job job,
4 and so that's a big concern of mine. I just wanted to
5 share that with you.

6 I agree with you we want to do as much as we
7 can to support young people, but I also would like to
8 see us do much more partnering with employers that
9 allows them to employ young people actually, and in the
10 process of having a job they learn skills.

11 So, just offer that and thank you. I look
12 forward to working with you on those.

13 ASSEMBLYMAN FARRELL: Thank you very much,
14 Senator. Any further?

15 Thank you very much, Commissioner.

16 Next, CSEA, Fran Turner, Director.

17 We have been joined by Assemblyman Keith
18 Wright.

19 MS. TURNER: Good morning. I want to talk
20 about this pile of paper because it's one of the best
21 kept secrets that we just recently discovered. And I
22 know that you have been working on it and you've been
23 talking about it.

24 And this pile of papers is \$62 million of

1 temporary workers that the state has been employing for
2 quite sometime. Don't get the impression that this just
3 started. This has been going on for awhile.

4 I want to go over a little bit of history
5 how do we get here and how we found out. In 1990, CSEA
6 represented state workers that numbered almost 120,000
7 workers. At the present time, our state work force is
8 less than 75,000 state workers.

9 We complained. Many years I came before
10 you, we complained about staffing. That we were
11 understaffed, that we couldn't get the job done, and we
12 were right. So, the agencies -- and not that we blame
13 the agencies -- needed to get the job done. We have
14 hiring freezes. We can't go to DOB and get our
15 positions filled. The end result is a whole shadow work
16 force of temporary workers.

17 These temporary workers are coming from
18 private companies that the State of New York is paying a
19 premium for, the Kelly Services, which I might add is
20 incorporated in Michigan. Accustaff, Fusco Personnel.

21 We were astonished when we started to look
22 into it, and I have to tell you how we found out. Back
23 in October we received a phone call from one of our
24 members who was laid off as a result of the closure of

1 an OCFS residential facility in Chautauqua County. She
2 was offered a job by the state three hours away from her
3 place of residence, which was impossible for her to
4 take.

5 She subsequently got a call from Kelly
6 Services asking her if she would take a temporary job
7 through the Department of Health at a veterans home out
8 in Batavia. And she called CSEA and asked how could
9 this happen?

10 I would have liked to ask Commissioner
11 Groenwegen are they sharing our list of who's on a
12 layoff list with these temporary agencies? This woman
13 had over ten years of service with the State of New York
14 and now they wanted her to come back as a temporary
15 worker.

16 The work force, besides this shadow work
17 force, we need to talk about other workers that are less
18 than permanent full-time workers. Many agencies are
19 employing temporary state workers.

20 In fact, OMRDD, in fact, I heard Diane
21 Ritter say that she's lost 20,000 employees in the past
22 ten years. OMRDD, many of 24/7 facilities are employing
23 temporary state workers. They actually earn partial
24 benefits, but for many years. They are not working

1 20 hours a week. They are working 40 hours a week.

2 Many of our agencies are employing what we
3 call per diems that are paid on an hourly basis. We
4 have all kinds of workers, less than permanent full-time
5 workers, that now make up this shadow work force.

6 So, I guess the question we really need to
7 address is: What do we want our state work force to
8 look like? Do we want a temporary worker -- these
9 temporary workers get no benefits. They are hired
10 through Kelly Services. They don't have a retirement
11 benefit. They don't have health care. They don't have
12 paid time and leave.

13 They get no benefits and they are working
14 side by side with our members. And in fact, they are
15 working in a lot of positions that would be a
16 promotional opportunity for the unionized work force for
17 the CSEA members.

18 It's something that we need to address. We
19 brought it to the Governor's attention in October. I
20 realize that the Governor's response was that it is
21 cheaper. It provides them more flexibility.

22 The biggest abuser is the Department of
23 Health. So, the day that we went public with this we
24 decided to send some staff down to the Department of

1 Health to see if we could talk to some of these
2 temporary workers.

3 We talked to about 33 of them. And we took
4 down some information, and the average length of service
5 was six years. So, I am not sure by whose definition
6 temporary is six years, but it certainly isn't by ours.

7 I realize that the agencies need to get the
8 work done. We understand that. We understand that they
9 were forced to go this route because they couldn't get
10 jobs filled, but we need to look at what is a temporary
11 worker.

12 I don't want anybody to get the idea that
13 CSEA thinks that we can just convert all these workers
14 to full-time workers. We get it. We understand the
15 fiscal constraints. But I don't want any of you to
16 think that we can just get rid of these workers either,
17 because our members cannot do the work with staffing
18 they have.

19 They actually have to rely on this temporary
20 work force because they can't deliver the services that
21 the agencies have to deliver.

22 But I don't want you to think that we don't
23 have an alternative. We do. Rather than pay outside
24 companies a premium, we could set up our own temporary

1 pool of state workers. For years, we have complained
2 that the state has done nothing as far as work force
3 planning.

4 I heard the Commissioner of Civil Service
5 talk about our aging work force, but we are doing
6 nothing to look for workers to come in to take the place
7 of those older workers that are going to be retiring,
8 but perhaps this is a great opportunity for us to save
9 some money. We know we need money. To set up our own
10 temporary pool to train these people. Hopefully to get
11 them to take Civil Service tests because that's how you
12 get a permanent job, or that's how you are supposed to
13 get a permanent job.

14 And perhaps we can draw on them to make up
15 our future work force, because certainly to continue
16 this practice is wrong. It's unconscionable that this
17 is what our work force looks like.

18 While I was glad that Gary Johnson said they
19 reduced it by 4 million, okay, so now we're down to 58
20 million, it's still too much money to pay for a
21 temporary work force.

22 The second biggest abuser -- and I bring
23 this up in another context -- is the State University of
24 New York system. In fact, Senator Klein, on top of the

1 temporary work force that they employ, Senator Klein a
2 month ago came out with a report about the \$21 million
3 in overtime that was spent by SUNY last year.

4 And I am amazed that in spite of all that
5 the Governor would propose that we give SUNY more
6 autonomy, which means less transparency, less
7 accountability, go set your own tuition and do what you
8 want.

9 Our positions are going unfilled. Just the
10 other day we heard from our members in Binghamton that
11 SUNY Binghamton is going to use foundation money to
12 offer a severance plan to shrink their work force again.

13 You know, sometimes when you hear people
14 talk about things like shrinking the state work force,
15 the bloated state work force, the high salaries that the
16 public employees make, and hear it over and over and
17 over again you actually start to believe it.

18 Every day I pick up a new newspaper and I
19 see the attacks on the public employees and it's no
20 wonder that the general public thinks that we're
21 overpaid, that our benefits are generous.

22 I just want to get these facts straight
23 today and hope that somebody maybe will report the
24 facts. The average CSEA salary in the State of New York

1 for state workers is \$40,000. That's after 20 years of
2 service.

3 The average CSEA retiree benefit is about
4 \$14,000 a year. Contrary to what you read, our members
5 do contribute to their health care. They pay 25 percent
6 premium every year. They do pay taxes in the State of
7 New York, and they do contribute to the economy.

8 So, for all of the editorials that think
9 that we should be equal with the private sector, we
10 should suffer the way the private sector has suffered, I
11 would say that does nothing for the economy to put more
12 people out of work and to downsize even further.

13 I listened to Assemblyman Aubry talk about
14 the management positions. And over the years, as we
15 have seen this drastic reduction in the hands on direct
16 care workers, we haven't seen a corresponding reduction
17 in management positions.

18 I don't understand if you have that many
19 less workers why you need that many more bosses but
20 that's what we have now in the state, and every agency
21 is now very top heavy with administration. And we
22 should look at that because I think there is some
23 savings to be realized there.

24 In addition, we are looking at the

1 Governor's proposed mergers. I am not saying that we
2 necessarily have a problem with any of the mergers.
3 We're still looking at them. One of them we do have a
4 problem with. I would think that with some of these
5 mergers you might be able to merge some of these
6 administrative high level positions and save some money,
7 but I didn't see any savings there. I don't know if
8 they are planning it and not telling us, but I didn't
9 see anything there.

10 As far as the Department of Economic
11 Development, I am not sure why we are creating a whole
12 new hierarchy and a new authority when we could merge
13 everything into the department, have some accountability
14 and transparency, and maybe we could reduce some
15 management staff.

16 I am not going to go on because you have our
17 testimony and I know you will all read it. I know that
18 Peter is going to have further hearings on this problem
19 here. But I do want to say that, over the years when
20 we've been in tough fiscal times, CSEA has always
21 stepped up to the plate and always worked with the
22 administration to try to find a mutually agreeable
23 solution.

24 The Governor, in this budget, obviously has

1 proposed that we go back to the table, we find \$250
2 million worth of savings from the employees, but I will
3 tell you that until we look at what's going on in these
4 state agencies, what's going on with the work force, I
5 don't think we are inclined to do that.

6 I also think that we work with several
7 agencies very well, but I can't say that for OCFS. Over
8 the past few years, all we have seen is closures at OCFS
9 and what we really want to see is a long term plan as to
10 how we can do this together.

11 CSEA has been involved in a lot of closures
12 over the years and a lot of agencies, especially in
13 OMRDD, we deinstitutionalized OMRDD and we brought up
14 jobs in the community.

15 We don't have an issue with where the
16 Commissioner wants to go. We have an issue that we are
17 not a part of where the Commissioner wants to go and
18 that you can't do it without sufficient staff and the
19 workers.

20 We want to be a part of that and we want to
21 see a plan, a plan that goes beyond a year by year
22 closure. We are happy this year that we have 12 months'
23 notice, but that doesn't excuse the fact that we should
24 have a five year plan at least, as to where we're going,

1 how are we going to bring up services in the community,
2 and how are we going to transition a trained and
3 educated work force into the community.

4 With that, I will leave it. I will take
5 your questions. I know you're in a hurry because it's a
6 snow day.

7 Thank you.

8 SENATOR KRUEGER: Senator Diane Savino.

9 SENATOR SAVINO: Thank you, Senator Krueger.

10 Thank, Ms. Turner, for your testimony. I
11 have the testimony here. I am interested in the
12 information in that report that you had given to us. I
13 just want to talk briefly about it because I know we are
14 going to meet and go through it further at a later time.

15 As you indicated, in 1990 the Civil Service
16 Employees Association represented 120,000 state workers.
17 You're now down to 75,000 in 2010, 20 years. Yet still
18 the number of temporary workers has risen dramatically.

19 You said that some of them are actually --
20 you have temps that are hired through Kelly Services,
21 Fusco, and one of these other agencies, and then there's
22 the use of temporary state workers.

23 And it reminds me of -- this is an old trick
24 that the City of New York used to use, in fact, when

1 they were trying to claim tremendous reduction in the
2 city's head count when, in fact, they had the same
3 number of employees.

4 It's an old budget trick because temps and
5 per diems don't show up in budgeted head counts. They
6 even went so far as to create an oxymoron in the Civil
7 Service called the provisional per diem employee, which
8 of course is impossible, cannot be, a per annum per diem
9 employee.

10 Are you seeing that in the state agencies as
11 well, the use of per diem employees in per annum titles?

12 MS. TURNER: Three's a lot of per diem
13 employees in the 24/7 facilities. Let's not get the
14 wrong impression that we don't think there is ever a
15 need for temporary employees. Obviously there is
16 situations where you have to hire temporary employees,
17 but when you have per diems every day and per diems are
18 working overtime, that's another thing we should talk
19 about.

20 I don't know if they are provisional per
21 diems but we have per diems and it's mostly in your 24/7
22 facilities, especially in OMRDD and OMH.

23 SENATOR SAVINO: Are they in competitive --
24 they are in competitive class titles?

1 MS. TURNER: Yes.

2 SENATOR SAVINO: They are provisional per
3 diem.

4 MS. TURNER: I get what you are coming from.

5 SENATOR SAVINO: The reason why the City of
6 New York did it, and I would be interested to see if the
7 state is doing it, because it's not just the fact that
8 they are hiring on a per diem basis which means they
9 don't get the same benefits as the per annum employees,
10 holidays.

11 They also get half time benefits.

12 MS. TURNER: That's correct.

13 SENATOR SAVINO: They don't get the same
14 benefit contribution as a full-time employee would, so
15 the use of a temporary worker on a per diem line in a
16 per annum title is not just depriving the worker of
17 their benefits. It's a savings to the state and a way
18 to get around the competitive class system.

19 I would really be interested in looking at
20 that with you at some point in the future.

21 MS. TURNER: Let's say, you bring up a good
22 point, but I have to be honest with you. We can't
23 always get this information. There is no -- I mean it's
24 just like we got this by accident because of a situation

1 that came up. We got this from the Office of the State
2 Comptroller pursuant to a FOIL request.

3 We have FOILED all the state agencies for
4 how many temporary employees do you have, how many state
5 temporary employees you have, how many per diems you
6 have, and we have never been able to get that
7 information.

8 Some agencies will say, we don't have it.
9 Go to Civil Service. Civil Service will say, we don't
10 have it, go to the agencies. And it goes like this.
11 For years we've been trying to get the information.

12 So, I would ask that perhaps you help us get
13 that because I don't know where to go for it. Just like
14 the information on here, I can't tell you how much Kelly
15 Services is making. I can tell you that in the industry
16 -- the other day I was stuck at the airport in
17 Washington and I was talking to this gentleman next to
18 me waiting for a plane.

19 And he was just starting up a temporary
20 agency, a company out of Binghamton. I asked him out of
21 curiosity, what's your take? When you hire a worker,
22 you hire out a worker, and he was doing a lot for
23 Verizon. What do you usually take? He said minimum
24 50 percent but usually it's 60 percent.

1 Now, I would imagine that the state might
2 have a better deal with these central contracts with
3 these agencies, but I can't even tell you what the
4 worker is getting paid versus what the company gets
5 because we just can't get this information.

6 It's very tight. We know more about what's
7 going on in the work place about temporary workers from
8 our members who tell us and then when we go to try to
9 get the information we can't find it.

10 SENATOR SAVINO: Let me try and help you.

11 MS. TURNER: I appreciate that.

12 SENATOR SAVINO: One other -- I'm going to
13 ask you the same question I asked Gary Johnson, who was
14 here earlier, because in the Governor's -- in the
15 executive budget proposal is the same cost savings that
16 he associates with the elimination of the next upcoming
17 contractual increase that is part of the contract that
18 exists between CSEA and the state that goes through
19 2011, I believe, along with some other benefits that
20 have been previously negotiated.

21 As I reminded him the same situation that
22 existed last year exists this year. They are mandatory
23 subjects of collective bargaining, and if you hope to
24 claim those savings what steps have you taken to

1 negotiate with the public employee unions who you are
2 asking to give this up?

3 He kind of gave me a vague answer about
4 continuing discussions, but no actual negotiations
5 sessions. So, has there been any formal discussions
6 with GOER about the potential savings that they claim
7 will be in this budget by those elimination of salary
8 increases?

9 MS. TURNER: No.

10 The usual practice would be that we would
11 get a letter from GOER asking us to go back to the
12 table. We had no conversations. We have had no
13 letters. Just like last year, we waited to the last
14 minute and there has been no conversation, at least not
15 that I am aware of.

16 SENATOR SAVINO: And also with respect to
17 the severance package that was part of an agreement that
18 was entered into with CSEA and PEF earlier this year,
19 how many of CSEA members who have expressed interest in
20 the severance package have been given the opportunity to
21 take it, if you know?

22 MS. TURNER: You know what, Diane, I don't
23 know how many have expressed interest and gotten it. I
24 can tell you those that expressed interest that are not

1 allowed to get it, and there's a good reason. I mean,
2 we can't afford to lose any more direct care workers in
3 the direct care agencies, like OMH and OMRDD. It's just
4 impossible because there's nobody to take their place.
5 We have to provide that service.

6 So, there is a lot of disappointment within
7 the direct care workers, but you know, just as was
8 mentioned earlier, they don't get the ERIs that were
9 offered in the past either. They have been the group
10 that has been consistently excluded.

11 We don't do a good job training for the
12 future work force at those agencies. So, you can't let
13 them go. So, that's where most of the dissension is
14 coming from. That's where most of the workers have not
15 been able to take it, but there is a good reason why
16 they can't take it because there's nobody to take their
17 place.

18 So, it's that catch 22. I mean you can't
19 let it happen.

20 ASSEMBLYMAN FARRELL: Thank you.

21 Assemblyman Peter Abbate.

22 ASSEMBLYMAN ABBATE: Thank you.

23 Thanks for letting Senator Savino ask the
24 questions. The first question I was going to ask: Are

1 there any negotiations or talks going on? The one thing
2 I do want to mention is on the temporary workers I see
3 you have a nice stack of papers there and all. We are
4 going to be having hearings in the beginning of March
5 and I would appreciate if some of your people could sit
6 down with staff and go over what you might have, as I
7 asked Director Johnson to do the same.

8 So, that's it.

9 MS. TURNER: I will bring all this
10 documentation.

11 ASSEMBLYMAN FARRELL: Thank you.

12 Thank you very much.

13 SENATOR KRUEGER: Thank you very much.

14 We are going back to order. Our next
15 testifier will be Robert Beloten, Chair of the New York
16 State Workers' Comp Board.

17 MR. BELOTEN: Thank you, Assemblyman
18 Farrell, for this opportunity to appear before this
19 committee. I am Robert Beloten. I am Chair of the
20 Workers' Compensation Board.

21 As you know, the New York State Workers'
22 Compensation Board is classified as a self funding
23 agency within state government. Therefore, the board
24 itself must recover all of the costs incurred in the

1 delivery of services through its own revenue sources.
2 As a result, the board does not require any funding
3 through general tax revenue. By law, recovery of these
4 administrative costs, which includes the cost of
5 personnel, plant, supplies, travel, etc., and the
6 uninsured employees fund, is done through a series of
7 general administrative assessments levied against the
8 insurance carrier, the State Insurance Fund, and self
9 insured employees or groups.

10 The administrative assessment is also the
11 interdepartmental program, or IDP. These include the
12 Department of Health's network of occupational health
13 clinics and Department of Labor's occupational and
14 safety health programs.

15 The board also assesses and collects special
16 funds which support programs administered by the board,
17 and make payments directly to claimants and reimbursed
18 carriers or self insured employers for payments they
19 have made for claimants in special categories.

20 I would like to pause here and offer Senator
21 Onorato a brief explanation. Yesterday I received a
22 hand delivered letter where the Senator expressed his
23 disappointment that I had declined an invitation to
24 appear before this hearing. I would like to assure

1 Senator Onorato and this committee that I received no
2 such invitation.

3 I am always willing to discuss the workings
4 of the board, and once I received this letter I acted
5 quickly to appear before you today.

6 Senator Onorato, if you could produce this
7 invitation I could track down how this oversight
8 occurred and make sure this never happens again. With
9 short notice, I haven't prepared any other testimony
10 other than what you have heard today, but I would be
11 happy to address any questions you may have.

12 I have brought my senior staff here. To my
13 left is Kenneth Munley, General Counsel, and to my right
14 is Marybeth Wood, who is our Finance Officer, and in the
15 back is our Director of Operations, Elizabeth Lott.

16 SENATOR KRUEGER: Thank you.

17 Senator Onorato. Senator George Onorato,
18 our Labor Chair.

19 SENATOR ONORATO: What is the purpose of
20 this program that they want to have -- they have more
21 judges now, they conduct fewer hearings than before.

22 MR. BELOTEN: I'm sorry. I didn't quite --

23 SENATOR ONORATO: The law judges, Workers'
24 Comp.

1 MR. BELOTEN: We just received the approval
2 for eight more senior law judges, that is correct,
3 Senator Onorato, and these are to conduct hearings and
4 they will be trained in the alternative dispute
5 resolution, our MAP program, as has been illustrated in
6 the paper or reported in the paper.

7 SENATOR ONORATO: If administrative judges
8 will be making proposed rulings without any testimony or
9 appearance by parties, what happens to the due process
10 rights of claimants and employers to be heard before
11 judges even before minds are made up?

12 MR. MUNLEY: Senator, I think the program
13 that are you referring to is our attempt to implement
14 Section 25(2)(b) of the Workers' Compensation Law. As
15 you probably recall, in 1991 this legislature passed the
16 conciliation process and it directed the board to refer
17 cases where there was not the high level of controversy
18 to be resolved informally through conciliation.

19 That's Section 25(2)(b) of the Workers'
20 Compensation Law. We implemented that process over the
21 years and a new initiative that we have undertaken very
22 recently is to increase that section of the law to make
23 sure that those cases that we can adjudicate off
24 calendar will be adjudicated off calendar.

1 So, therefore, we can reserve precious judge
2 time for those cases that are truly in controversy. The
3 intent here is to make sure the flow of benefits to
4 injured workers happens expeditiously.

5 We handle over 300,000 hearings a year
6 throughout New York State. Many of these hearings are
7 not necessary because what's at issue is very, very
8 simple and can be decided off calendar on the papers.

9 So, what we are doing is we are using that
10 section of law that you gave us to divert those cases
11 that can be resolved by paper on the papers, just like
12 in the motion calendar in front of Supreme Court.

13 You don't always bring in the parties. You
14 can resolve it, simple matter, resolve it off calendar.
15 It will done by the conciliator. A proposed decision
16 will be sent to the parties.

17 If they do agree with the proposed decision
18 they have three days to object. If they object, they
19 then have the right to a hearing in front of the judge.
20 Our experience has been that over 80 percent of those
21 decisions are accepted by the parties.

22 So, what we are attempting to do is
23 streamline this process and not reduce the number of
24 hearings, but to maximize our judge time to have the

1 hearings where we really truly have a disputed claim, we
2 need testimony, we need a judge to decide it.

3 That's the MAP program. It's just a program
4 whereby we are managing our adjudication process and
5 making sure those cases that truly need a judge to
6 decide get the judge, but those cases that can get
7 decided off calendar get decided off calendar so we
8 don't clog up the calendar.

9 MR. BELOTEN: Also, I add the MAP program
10 only refers to accepted cases where an accident or an
11 occupational disease has been established and a medical
12 bill is in dispute, and a claimant is going back to
13 work, let's say.

14 Why put that claim back into the Workers'
15 Comp system where that bill can be adjudicated either by
16 their attorney or by a judge by referring to the record
17 that's already been developed in that case?

18 This is the purpose of MAP is to expedite
19 it. The hearing process, as Mr. Munley explained, it's
20 already in effect, has been in effect for a number of
21 years.

22 SENATOR ONORATO: Where in the 2009-2010
23 budget, proposed budget, did the board inform the
24 legislature it planned to use its appropriations for

1 this program? And what other program is the board
2 planning for the fiscal year 2010-11 that are not
3 mentioned in the proposed budget? And what is the 2015
4 program?

5 MS. WOOD: The 2009-10 budget does not
6 specifically contemplate this pilot project. There is a
7 number of initiatives that the board considers
8 throughout the year based on resources and program
9 needs, and this is one that came up during the current
10 fiscal year.

11 There were no specific line items. What the
12 board would need to do for these initiatives would cut
13 in other areas or trim other expenses to accommodate
14 whatever costs this may include.

15 SENATOR ONORATO: Will there be additional
16 costs associated with moving conciliatory positions to
17 administrative judges, such as salary increases, and if
18 so, where is this money going to come from?

19 MS. WOOD: There's currently a proposal with
20 the Department of Civil Service to consider
21 reclassifying these positions to a judge level. It
22 would be a slight salary increase from their existing
23 positions. I believe it affects about 20 individuals at
24 the board.

1 If it's approved by the Division of Budget,
2 by Civil Service, it would be approximately a \$10,000
3 difference in salary with the job rate. And those
4 savings would have to be achieved through either
5 attrition or not filling other positions or to
6 accommodate the increased levels if those were
7 generated.

8 MR. MUNLEY: Senator, we have 19
9 conciliators statewide that we have asked Civil Service
10 to reclassify as judges and we have not received
11 approval to do that yet.

12 SENATOR ONORATO: Injured workers and
13 employees and carriers uniformly object to this program
14 as a violation of due process. Prior changes to the
15 Workers' Compensation procedure occurred only after
16 careful negotiations with all bodies and the
17 legislature.

18 Why is the board moving so quickly on its
19 own and why did this suddenly change from a pilot
20 program to a statewide program that will begin soon?

21 MR. BELOTEN: Senator Onorato, you
22 rightfully so have indicated in the past that you are
23 unhappy with the Workers' Compensation, with delay, with
24 unnecessary delivery of medical care and wage benefits.

1 We are trying to streamline this in conformity with all
2 due process and constitutional mandates.

3 It is not our intention in any way to
4 violate the constitutional or any individual's rights.
5 The decisions they will get, let's say, in conciliation,
6 they will receive those notices in a number of different
7 languages informing them of what that decision is.

8 They will be receiving a phone call if they
9 do not understand that caller number and call that phone
10 number. We have interpretive services. If they truly
11 do not understand something or object to any part of
12 that decision, they will get a hearing before a judge.

13 What we are trying to do is expedite the
14 system not on workers' backs, I can assure you. We are
15 here to make sure that every injured worker is
16 expeditiously taken care of in the way of medical care
17 as well as wage replacement benefits.

18 Studies have shown if the board isn't
19 proactive, if a worker remains out of work for more than
20 four months, the chances are almost nil that he or she
21 will ever return to the labor market.

22 And that's a study done by the Workers' Comp
23 Research Institute in Cambridge, Massachusetts.

24 SENATOR ONORATO: Now, the board is moving

1 forward with digital audio recording pilot program. The
2 legislature has already rejected prior executive budget
3 proposals that would allow the board the use of digital
4 audio recording instead of stenographers.

5 Given the current law that requires
6 stenographers to record hearings, and certify to the
7 accuracy of the transcripts, how can this program be
8 implemented legally?

9 MR. MUNLEY: Senator, as you know, this was
10 the topic of a public hearing that you held
11 approximately six months ago. And I think we
12 respectfully disagree with respect to the fact that the
13 board does not have the authority to use digital audio
14 recording devices, but nevertheless, the pilot program
15 is not eliminating verbatim reporters.

16 What we are doing is an experiment whereby
17 verbatim reporters will be in the courtroom as well as
18 digital audio recording devices. We are simply testing
19 the technology to see if it's viable, but verbatim
20 reporters will be in the courtroom.

21 We have no plan to eliminate verbatim
22 reporters during this pilot program, but we feel that we
23 need to do our due diligence with respect to this new
24 technology. As you are aware, it's being used in many

1 other states in Workers' Compensation systems.

2 It's being used by OCA in family courts and
3 numerous other courts throughout the state. The
4 technology has increased in its efficacy over the years.
5 We want to see is it viable for the Workers'
6 Compensation system because we hold numerous hearings,
7 and is there a cost savings that could result from the
8 use of this technology.

9 We have drawn no conclusions whatsoever. As
10 we said at the hearing, the previous hearing, we will
11 report to the legislature with respect to the results of
12 this pilot program. We have promised our unions that
13 they will be part of the evaluation process. We want to
14 see whether or not this technology is a good thing or a
15 bad thing; whether it will save us money or not or cost
16 us money.

17 We are doing it on a very, very limited
18 program and we believe under Section 142(5) of the
19 Workers' Compensation Law that we have an obligation to
20 keep accurate records of our hearings.

21 It doesn't say they have to be by a verbatim
22 reporter. We believe that is the basis for our ability
23 to conduct this pilot program, to explore this
24 possibility.

1 SENATOR ONORATO: I don't think you were at
2 the hearing we had in Manhattan on this issue. It was
3 overwhelming opposition to it from the New York Bar
4 Association because we could not get a cost analysis
5 from anyone. We had two gentlemen there who were going
6 to bid for providing the digital.

7 And I asked them what the cost would be so
8 we could make an honest and justifiable comparison.
9 They said it was privileged information and they would
10 not give it to us, but how the hell are we going to make
11 a comparison when we don't have that information on
12 hand?

13 MR. MUNLEY: Senator, we now have the
14 contract with the costs specified and delineated which
15 we can hand up to the committee so we know exactly how
16 much this is going to cost. That will be part of our
17 evaluation process with respect to the cost/benefit
18 analysis of this program.

19 I think what happened at your previous
20 public hearing was the bid had not been accepted yet, so
21 the competing companies were afraid to violate in state
22 laws with respect to releasing information concerning
23 their bid.

24 I think they were overly cautious and I was

1 there and I did hear their very obtuse answers to your
2 questions, but I think that was based on their legal
3 concerns of not being disqualified for the bid by
4 sharing the information with outside sources.

5 But we are past that now, Senator. We have
6 the contract. We have the exact amount of monies and we
7 can hand that up to you.

8 SENATOR KRUEGER: Thank you.

9 Assembly.

10 ASSEMBLYMAN FARRELL: Susan John.

11 ASSEMBLYWOMAN JOHN: Good afternoon,
12 gentlemen.

13 The budget that has been submitted by the
14 Governor includes the funding for the digital audio
15 program that you are piloting; is that correct?

16 MS. WOOD: The budget has an NDS contractual
17 services line. It's not specifically lined out. There
18 aren't increased funding from '09-'10 to '10-'11.

19 ASSEMBLYWOMAN JOHN: It is included within
20 the budget as one of your expenditures.

21 MS. WOOD: The board will need to make
22 adjustments to other expenditures to accommodate those
23 costs.

24 ASSEMBLYWOMAN JOHN: Does the budget as

1 submitted propose the elimination of any positions?

2 MS. WOOD: No.

3 MR. BELOTEN: We have not eliminated anyone,
4 Assemblywoman, at the Workers' Compensation Board.

5 ASSEMBLYWOMAN JOHN: The budget does not
6 anticipate a reduction of the employee work force during
7 the 2010-'11 fiscal year.

8 MS. WOOD: That is correct.

9 ASSEMBLYWOMAN JOHN: Thank you.

10 SENATOR KRUEGER: Senator Diane Savino.

11 SENATOR SAVINO: Thank you.

12 Just following up on this because, as you
13 remember, Mr. Beloten, I also participated in that
14 hearing. One of the things that we were trying to find
15 out at that hearing was how much this could potentially
16 cost.

17 As Senator Onorato said, the two people who
18 were attempting to sell the equipment to the Workers'
19 Compensation Board told us, as strangely as this could
20 be, that they didn't think it would be prudent to tell
21 us the cost.

22 MR. BELOTEN: They were in a closed period,
23 Senator.

24 SENATOR SAVINO: Yes, so they said.

1 So, what I am interested to know is how much
2 is this pilot project going to cost?

3 MR. BELOTEN: \$35,000 a unit. We intend to
4 use four units, two downstate, two upstate, to test the
5 efficacy of the system and I'm sure there's some
6 associated technical services, but we do have the
7 contract for you for your perusal.

8 SENATOR SAVINO: Oh, thank you.

9 What became clear at that hearing, and if
10 you had stayed around for the rest of day, I know you
11 had to go other places.

12 MR. BELOTEN: I apologize.

13 SENATOR SAVINO: It's not a criticism. I
14 understand you had to go other places.

15 Had you been there, though, you would have
16 found what Senator Onorato and I found. Not one person
17 involved in the Workers' Compensation system thinks this
18 is a good idea. Nobody. Not the judges in the Workers'
19 Compensation system, certainly not the stenographers
20 themselves, not attorneys for the insurance company, not
21 insurance companies for injured workers. Nobody.

22 They presented to us reams of evidence in
23 states where this had been overturned, this practices
24 has been reversed because of the protection of the

1 records has been so compromised, including a capital
2 murder case in Texas that was thrown out on appeal and
3 returned to the local court.

4 All of those things, increased costs on
5 whatever the administrative body is. So our concern is,
6 one, there doesn't appear to be a justification. Two,
7 nobody can tell us how much it costs. And three, how
8 much money can the Workers' Compensation Board expect to
9 spend later in appeals of cases where you have a record
10 that is not -- an imperfect record.

11 So, before we go down this road I would ask
12 you to reexamine this potential pilot project.

13 MR. BELOTEN: Nobody is more in awe of the
14 hearing reporters, the verbatim reporters, than I am,
15 but we do have to consider costs in the future.

16 At the present time, at no -- if we
17 implement this program there will be a digital audio
18 system in the room as well as a court reporter, and that
19 will take place over a year, and we get the results. I
20 will be more than happy to share it with the committee
21 before anything is implemented, and before any decision
22 is made on the system.

23 I have never seen the system. I am
24 concerned, as well as you, as to the efficacy and

1 whether or not it keeps an accurate record, but we won't
2 know that if we don't try it.

3 In every courtroom where one is placed there
4 will be a court reporter. That program will -- this
5 experimental program, this trial program will go on for
6 over a year and when we get the results and we get the
7 recordings I will make them available to this committee,
8 to the unions, to all interested stakeholders.

9 I have worked with these reporters. This is
10 very hard for me to do. They are excellent. But, as
11 you know, this week we lost four reporters. This week.
12 My biggest fear? I have no alternative right now but to
13 use reporters. If I lose reporters, one day there may
14 be a sign at the Workers' Compensation Board saying, no
15 hearings today until we get reporters.

16 SENATOR SAVINO: Mr. Beloten, I appreciate
17 your concern for making sure that we have a reporter at
18 every hearing, but also at that hearing -- and you
19 testified to this -- never once in the State of New York
20 has there had to be a hearing cancelled because of a
21 lack of reporters. You testified to that at the
22 hearing. So, let me finish. There's never been a
23 situation where we didn't have sufficient reporters.

24 You also testified that one of the problems

1 with retaining reporters in a Workers' Compensation
2 System, verbatim reporters, is that we lose them to the
3 Office of Court Administration because the salary is
4 higher. So, for many of them, the training ground is
5 Workers' Comp, that's where they perfect their skill and
6 then they take an exam to go on to OCA.

7 You actually stated to us there if the
8 salaries were higher at Workers' Comp you could retain
9 workers and I suggested to you that you perhaps look at
10 maybe increasing the salary for verbatim reporters at
11 Workers' Comp in an effort to stabilize your work force.

12 All I would suggest to you is, before we go
13 down this road that much further, according to the
14 information that you did provide us this is a \$916,000
15 contract. We have seen this in other states. It has
16 not worked. It has, in fact, been repealed in areas
17 where they have utilized digital recording devices.

18 We do not need to replicate mistakes that
19 have been made in other states, particularly when it
20 doesn't appear to be a cost savings to the Workers'
21 Compensation Board. So, I think we should be very
22 careful before we invest too much money when we have a
23 very short supply of it in a plan that has failed in
24 every other state.

1 MR. BELOTEN: We are using the digital
2 recording in the courts in our state at the present
3 time.

4 SENATOR SAVINO: Not often. With very rare
5 instances in Dutchess County Family Court. In fact, the
6 individual who was applying for this contract came out
7 of the Dutchess County Family Court, so suffice to say I
8 found his testimony somewhat skewed because he was
9 looking to then sell the machines that he brought into
10 Dutchess Family Court.

11 MR. BELOTEN: Senator, this is only a test
12 pilot.

13 SENATOR SAVINO: I understand that, and I'm
14 suggesting to you, Mr. Beloten, that before we waste too
15 much money on a test pilot, look to where it's been
16 utilized in those states it has failed.

17 MR. BELOTEN: I have looked to some states
18 where it's failed. I can tell you many courts use tape
19 recording. Many of our administrative courts actually
20 still use tape recorders.

21 All I am suggesting is to protect rights
22 that we just explore, just explore, in four courtrooms
23 in the State of New York whether or not this particular
24 program is a viable option. Nothing more, nothing less.

1 I pledge to this committee to come back with
2 the results of that report. When I say -- getting
3 reporters in New York City is a little bit easier right
4 now, I wouldn't say right now because I would have to
5 submit a request for a new reporter, that would have to
6 go over through the whole state bureaucracy and six
7 months I may get another reporter.

8 Meanwhile, the court system has opened up
9 their lists, has opened up their list of people who have
10 passed the test. And a number of our reporters -- in
11 fact, the highest scoring reporter was a Workers' Comp
12 reporter. She has left the system as of today.

13 SENATOR ONORATO: How do you reconcile the
14 numbers that you gave me before, the \$35,000 for the
15 pilot program, and the comptroller just issued out a
16 report contract runs from January 21, 2010 to January
17 20, 2013 at a cost of \$960,160. That's an awful lot of
18 difference between the numbers you have just given and
19 the numbers I'm getting from the comptroller's office.

20 MR. MUNLEY: Senator, the contract that the
21 comptroller approved last month is a total complete
22 contract to implement digital audio recording in all 106
23 hearing parts and eight board hearing parts that we
24 have. That would be a total acceptance and

1 implementation of the program statewide.

2 That is not what we are doing. We are doing
3 a pilot program. We are in the concept phase and we
4 will be spending no money this fiscal year and a small
5 amount of money next fiscal year to implement it in a
6 couple of hearing parts, as the Chair just indicated.

7 Under Section 8(a) of that contract, we can
8 terminate it at any time upon our notice to the vendor,
9 so we have the ability to get out of this contract at
10 any time. The \$917,000 represents a total complete
11 three- or four-year contract implementing this
12 statewide.

13 We don't plan on doing that, but it is a
14 much more prudent contract to have everything available
15 to us if we decide to go that route because now we are
16 under contract in 2000 -- now it's 2010, but we can get
17 out of the contract under Section 8(a) of the contract,
18 and we are implementing it in phases.

19 We are going to start at the Menands hearing
20 part, see how it goes and then expand it and then
21 evaluate it before. So this contract face value is
22 \$917,000. The board will not spend \$917,000 on this
23 unless we make the decision in consultation with the
24 legislature to do digital recording statewide in all our

1 hearing parts. That is years and years away even to
2 consider that decision.

3 SENATOR ONORATO: The business community is
4 not in the discussion. There is money available and at
5 any particular agency it never returns. It's always
6 spent. So I'm holding you to that, that you are not
7 going to spend the \$916,000.

8 MS. WOOD: I just want to clarify. The
9 \$916,000 or \$917,000 is not included in our budget per
10 se. We have a flat contractual services budget from
11 '09-'10 to '10-'11. The expectation to the extent we
12 wanted to do a pilot of four locations, that's \$140,000,
13 we will need to cut other areas within our budget to
14 accommodate it. There's not \$917,000 set aside for this
15 project.

16 SENATOR KRUEGER: Thank you.

17 Assembly Member Hayes.

18 ASSEMBLYMAN HAYES: Can I just get you just
19 for the record to walk me through what happened with the
20 excess assessment on the situation. This was the
21 situation in which insurance companies collected an
22 excess of Workers' Compensation payments. It was over
23 \$100 million that eventually got shifted to the general
24 fund.

1 And the Governor has Article 7 language, I
2 believe, proposed in the budget this year that would go
3 back and try to get even more money. Can you just
4 explain for the record what happened there.

5 MS. WOOD: Sure. There is a rate issued by
6 the compensation insurance rating board every year that
7 basically tells the carriers how much to charge a
8 policyholder for assessments in addition to their
9 premium for Workers' Compensation coverage.

10 So, if we assume the rate is, let's say,
11 15 percent, every policy that's issued will have a
12 15 percent surcharge added on to that. The employer
13 will pay that to the carrier. The carrier then gets a
14 notice from the Workers' Compensation Board that says,
15 this is your apportionment of the administrative
16 expenses in the special fund assessment that we send out
17 every year.

18 Then the carrier has to look at what they
19 collect from their policyholders and what is the board
20 asking them to pay, and oftentimes there is a
21 difference.

22 ASSEMBLYMAN HAYES: If I can interrupt you.
23 Just, why is there a difference? Is that because of
24 diminished expenses on a going forward basis from the

1 Workers' Compensation Board, or is it just because of a
2 transmission error? Why does that happen that an
3 assessment is charged to the insurance company or they
4 are asked to go collect it and there ultimately is a
5 differential?

6 MS. WOOD: Part of it is the calculation the
7 compensation insurance board goes through to determine
8 the rate. Another part of it is the basis they collect
9 on this versus the basis the board bills on are two
10 different basis, or were up until this point.

11 So, in 2009, part of the budget process,
12 that was changed to be the same basis, standard premium.
13 And the other discrepancy that's causing a disconnect
14 between what's collected and what's being asked to pay
15 out are situations where you have these large deductible
16 policies.

17 So, if you have a policy that's a million
18 dollars and you have to surcharge your employer based on
19 that million dollars, they are going to pay \$150,000 of
20 assessment money. When the board turns around and bills
21 you back, you are reporting to the board the net number.

22 So, if you have a large deductible and the
23 premium would be a million but you are only going to pay
24 500,000 because you are assuming some deductible portion

1 of that, the board is going to charge the carrier based
2 on the \$500,000 number.

3 So, the carrier has the difference between
4 the \$500,000 that the board is charging them and the
5 million dollars that the employer paid in. That
6 15 percent on that differential is, in effect, being
7 left with the carriers, not necessarily returned to the
8 employer, not submitted to the board.

9 So, there is definitely a disconnect in the
10 past.

11 ASSEMBLYMAN HAYES: That was in the amount
12 of \$100 million last year?

13 MS. WOOD: Correct. Well, that's the
14 cumulative impact 2001 to 2007. So, it was
15 approximately \$119 million was collected under that
16 bill. There is a proposal in the 2010-11 budget to do
17 the '08-'09 year as well. It's the last year before the
18 correction took place.

19 ASSEMBLYMAN HAYES: But where did that
20 hundred million dollars end up, that differential? Is
21 it in the hands of the carriers or did it come to the
22 state?

23 MS. WOOD: It largely has come to the state.
24 We have a few that were still --

1 ASSEMBLYMAN HAYES: But not to the Workers'
2 Compensation Board. It went to the general fund?

3 MS. WOOD: \$20 million of that amount was
4 allowed to stay with the Workers' Compensation Board.
5 The balance has been remitted to the general fund.

6 ASSEMBLYMAN HAYES: What is the Governor's
7 proposal in the Article 7 language for this year going
8 forward? What is that -- is there still an excess that
9 the carriers are holding right now? Is this language
10 going to authorize the return of that to the businesses
11 or is that going to come to the state as well?

12 MS. WOOD: Currently the language in the
13 Article 7 bill is for strictly the 2008-'09 fiscal year,
14 the disconnect that occurred before that clean up in the
15 language last year.

16 That money is scheduled to come in and go to
17 the general fund. I believe the estimate in the
18 financial plan is about \$23- or \$24 million.

19 ASSEMBLYMAN HAYES: Do you think that's
20 right that the general fund should be enriched by money
21 that's been collected, or that it should be returned to
22 the businesses?

23 MS. WOOD: The difficulty with returning it
24 to the businesses is it's difficult to identify a

1 uniform way of returning it because some carriers have
2 an excess, some carriers don't, some employers paid on
3 the basis of a higher number, other carriers paid based
4 on a large deductible premium.

5 So, it's very difficult to determine how you
6 go about returning that back to the individual
7 employers. And I don't think there's an equitable way
8 to actually give it back to the employers. I think it's
9 difficult to try to return it back.

10 ASSEMBLYMAN HAYES: It seems kind of strange
11 that there would be an equitable way of collecting from
12 the employers but not an equitable way to return it.

13 What guarantees do businesses have on a
14 going forward basis, what do the carriers have, that
15 this isn't going to continue to happen?

16 MS. WOOD: This disconnect was corrected in
17 the 2009 budget cycle, now everything is collected on
18 standard premium. Things are paid based on standard
19 premium. So, that's why it's a one time true up of that
20 one year before this correction took place to make sure
21 that any excess funds that were out there were not put
22 to the bottom line of the carrier or whatever happened
23 to them.

24 ASSEMBLYMAN HAYES: Obviously mistakes have

1 been made but I can tell that the business community
2 continues to see all these mistakes, errors, accounting
3 glitches, as mechanisms that are inherent in state
4 government that just add one more insult to injury in
5 terms of what the state is doing in trying to improve
6 the business climate.

7 I mean these are costs, real costs, that
8 fall on real businesses in the state, and to be able to
9 say, look, there was a mistake, it was taken, but we
10 can't come up with an equitable formula to return it so
11 we're just going to slip it into the general fund,
12 that's a very disappointing response for most of our
13 businesses.

14 So, I'm glad it's corrected and I'm glad
15 you're on the record as saying it's not going to happen
16 again in the future, but I do have to express a
17 disappointment that it happened in the first place.

18 Thank you very much.

19 SENATOR KRUEGER: Any other Assembly
20 members?

21 Thank you very much for your testimony this
22 morning.

23 And our next testifier is Stephen Zinone,
24 President of the Court Reporters Association.

1 And then, just for people who want to keep
2 track, the next will be Stan Winter and Tony Cantore of
3 the Retired Public Employees Association, and then the
4 Workers' Comp section of the New York State Bar, if
5 people want to move forward.

6 Again, just being the bad guy, we have two
7 hearings, it's a snow day, so we are asking people to
8 summarize their testimony and I am encouraging my
9 colleagues to ask precise questions and people to give
10 precise answers.

11 Good morning.

12 MR. ZINONE: Good morning. Actually, good
13 afternoon, Chairman Krueger.

14 SENATOR KRUEGER: You're right. Good
15 afternoon. Excuse me.

16 MR. ZINONE: Chairman Farrell, and
17 distinguished members of the Senate Committee on
18 Finance, and the Assembly Ways and Means, thank you for
19 permitting me the opportunity to address the panel
20 regarding the granting of \$916,160 to --

21 SENATOR KRUEGER: I just want to interrupt
22 you one second. If the people leaving the hearing room
23 could take their conversations outside, your noise comes
24 down here very intensely.

1 MR. ZINONE: Again, thank you for this
2 opportunity to address this panel. My name is Stephen
3 Zinone and I am the President of the New York State
4 Court Reporters Association. I am employed by the
5 Unified Court System in the 7th Judicial District in
6 Rochester, New York.

7 I am also the President, as I mentioned, of
8 our state association. I am actually pinch hitting
9 today for Jeanne Beskin, our Past President, who was
10 unable to be here due to the weather. So, please bear
11 with me as I summarize her comments.

12 In 1995 to 1996, as I am sure you were
13 aware, there was a pilot project regarding this exact
14 same issue. The findings of that project are still
15 relevant today, and I'm just going to summarize a few
16 because after listening to the last group of people you
17 obviously have a great grip on this issue.

18 Number one, first and foremost, the
19 transcripts and the quality and accuracy of transcripts
20 suffer with digital recording. Also, a hearing reporter
21 can provide instant readback of the testimony which a
22 digital recording system cannot do. It cannot provide
23 instantaneous voice to text translation.

24 With all due respect to the Commissioner of

1 the Workmen's Compensation Board, monies would be better
2 spent to have all the verbatim reporters become realtime
3 certified because then you would have an instantaneous
4 transcript.

5 Also, the rights, due process rights, of a
6 deaf or hard of hearing person are severely compromised
7 with digital recording. That's where realtime
8 instantaneous voice to text translation really works
9 best and provides a wonderful service.

10 Furthermore, a lot of the doctors and the
11 claimants in Workmen's Compensation in the hearings are
12 foreign born and have a particular vernacular which they
13 use at rapid speeds. A hearing reporter has the ability
14 to stop, clarify and make an accurate record, which is
15 really what we all want.

16 Also, as I am sure you witnessed, people do
17 talk over each other, whether in this room or in a
18 Supreme Court room, or a Workers' Compensation Board
19 hearing. A verbatim reporter can stop people from
20 speaking over, clarify what was said, take an accurate
21 record, so when you go have an appeal you are on firm
22 footing with the record. In other words, you have a 95
23 to 100 percent accurate transcript of what was said.

24 Also, a verbatim hearing reporter prepares

1 the transcripts with strict confidentiality. This
2 strict confidentiality would go out the window utilizing
3 digital recording. You will be sending all these
4 recordings to either possibly off shore or maybe here in
5 this area for another person who wasn't present at that
6 hearing to create the record.

7 I personally don't understand how you can
8 certify a record if you weren't in the room when that
9 record was being made, and also certify to its accuracy.

10 And I think if you really look at
11 transcripts that were prepared using digital recording
12 you will find a lot of inaudibles peppered throughout a
13 transcript.

14 As has previously been mentioned, numerous
15 states have tried digital recording -- New Mexico, New
16 Jersey, Texas -- and have returned to use of the
17 verbatim stenographic reporter for many obvious reasons,
18 one of which, the stenographic reporter -- as witnessed
19 by this hard working reporter sitting to my right -- is
20 the gold standard in the guardian of the record.

21 This person hears it, writes it, transcribes
22 it, under very strict guidelines and also very rigorous
23 training, which you do not receive when you just turn a
24 switch for a digital recorder and then ship out that

1 digital recording media to a third party to prepare a
2 transcript.

3 I don't want to take up a lot of your time.
4 I would be more than willing to answer any questions you
5 have. In closing, I would like to stress that several
6 years ago the executive budget had been tried to be
7 amended, Section 122, which was rejected by the
8 legislature. Obviously, there was a recognition that in
9 order to use this equipment Section 122 had to be
10 amended.

11 Now here we are 2010 and the Workmen's
12 Compensation Board is moving forward without any
13 amendment to Section 122, which I clearly don't
14 understand, and I would like to -- actually, I would
15 love to hear an answer to that.

16 With that, if you have any questions I would
17 be more than willing to answer them for you at this
18 time.

19 SENATOR KRUEGER: No questions I think
20 because we had asked so many questions of the Workers'
21 Compensation Board before you. Many members voiced
22 their concerns. So, I want to thank you for coming up
23 today.

24 I also want to apologize that I, with no

1 intention, overlooked Pat from the Public Employees
2 Federation who was next in line to testify, along with
3 the organization of the New York State Management and
4 Confidential Employees. So, I am not changing the
5 order. I'm clarifying that the next testifiers are from
6 Public Employees Federation.

7 Thank you very much.

8 Good afternoon.

9 MR. BRYNIEN: Good afternoon.

10 Thank you for having us here. Included in
11 the testimony that you have in front of you are some
12 charts, and we thought we would try to put some of those
13 charts up on the screen just to see if they work, and
14 but you can look at what you have in front of you.

15 I am with Brian Curran and Tom Citrino, two
16 members of my staff. I am Ken Brynien, President of
17 Public Employees Federation.

18 As you know, the executive budget calls for
19 a number of reductions, and I am not going to go through
20 everything in this testimony that you have but I want to
21 high light certain pieces and then respond to some of
22 the comments I heard from speakers this morning, and
23 maybe try to answer some of the questions I heard from
24 the panel up there.

1 The Governor's budget is looking at reducing
2 674 positions and that continues a reduction in the
3 state work force that's been going on for two decades.
4 There are a number of groups in the state who every year
5 call for further reductions the work force should make,
6 it's too big, bloated, it's too expensive, but they
7 don't really understand what's been happening to the
8 work force over the last two decades.

9 The first slide we have shows that there's
10 been actually zero growth in the state operations budget
11 for state agencies since 2008. No growth at all. And
12 when compared to every other part of the state budget,
13 over the last ten years state agency budgets have grown
14 at the lowest rate.

15 The next slide I'm showing that if you look
16 at 2009 dollars, the amount actually spent on state
17 employees has dropped by \$300 million over the last
18 20 years. The work force has actually shrunk. It
19 actually costs less if you compare dollars to dollars.

20 The work force, if the budget is enacted
21 this year, will be the same size as it was ten years ago
22 and 15,000 positions fewer than it was in 1994 despite
23 an increased need for services.

24 The state also has one of the smallest work

1 forces per capita. Only six states in this country have
2 fewer public employees, state employees per capita, than
3 we do, but the response has been over the last two
4 decades we got to keep cutting. We got to keep cutting.

5 Despite the fact that the biggest problem
6 the state has in its budget as far as the work force is
7 concerned is that we continue to use high priced
8 consultants to do the work that our current work force
9 can do.

10 We've given testimony over the years. We've
11 made presentations to the Governor and the Legislature
12 over the years that the work that we do is cheaper work
13 for work, person for person, than the consultants that
14 come in. Consultants tend to cost an average of \$82 per
15 hour, or \$160,000 a year to do the same work that a
16 public employee can do at \$50 an hour. It's a 62
17 percent profit somebody is making off of that work that
18 the state cannot afford to pay.

19 And that includes all the fringe benefits.
20 So, you include what the state worker makes plus their
21 health care plus their pension plus whatever else you
22 might throw in there, and you replace it with a
23 consultant, the consultant still costs 62 percent more
24 on average.

1 Now, to your credit and the Governor's
2 credit, due to the efforts of Assembly Member Destito
3 and Senator Savino, and support of the leadership of
4 both Houses, we've begun to institute some policies to
5 start reducing the state's use of these consultants,
6 particularly in the area of information technology.

7 However, more needs to be done and it needs
8 to be done aggressively. We have a pilot project that
9 started. We are going to try to remove a few hundred
10 consultants and replace them with a few hundred state
11 employees, but the area where the biggest offense is in
12 this area is in the Department of Transportation.

13 And we have a plan that, phased in over the
14 next three years, will save over \$600 million, and it
15 will save hundreds of millions of dollars going forward
16 into the future. And I will talk about that in a few
17 minutes, but that's how we think we can help you save
18 money.

19 But I want to talk about some specifics that
20 are in the budget first before I do that. You heard by
21 a prior speaker that the Governor is proposing \$250
22 million cuts out of the unions or the state work force,
23 either through cutting raises or lag pay, or somebody
24 mentioned furloughs, whatever it is, as well as shifting

1 the payment of Medicare Part B premiums to the state
2 health insurance fund -- health insurance plan, I mean.

3 We oppose these cost shifts and these cuts.
4 Our members and the members of the other public employee
5 unions are taxpayers and citizens too, so if there's
6 going to be extra costs for cigarettes and there's going
7 to be extra costs for soda, there's going to be other
8 fees and taxes put on people, public employees pay those
9 same things.

10 What's being asked of us is a double burden.
11 We take on the same extra costs everybody else has to
12 take on, plus you have to give up some other money
13 someplace. That's not fair.

14 We have a contract in place to cover these
15 things that last through the end of this year. That
16 should be honored. Next year is a new round of
17 negotiations with a new contract and we will discuss
18 those things at that time, but a contract is a contract.

19 And the Governor is not asking for anyone
20 else that the state has a contract with to break that
21 contract. None of these consultant companies are being
22 asked to give up a percentage of what they were getting
23 from the state.

24 They aren't being asked to reduce

1 expenditures on their own work forces. They are getting
2 paid what their contract says. So should the public
3 employees.

4 Last year, I am sure you all remember, we
5 were in negotiations with the Governor over the fiscal
6 climate and we said to avoid layoffs and to avoid other
7 things we would go along with a Tier 5 pension plan, and
8 we did, and that is estimated to save the state \$35
9 billion over the next 30 years.

10 And when we said, okay, we can live with
11 that, is that all that's going to be needed? Yes.
12 That's all we need. Everything will be fine. The ink
13 is not even dry yet and people are talking about now we
14 need more. That is not something we will be able to go
15 along with.

16 If the work force needs to be cut further,
17 you heard about the severance plan by one of the
18 previous speakers. Only about 12- or 1300 people
19 actually got that severance package.

20 Some estimates are lower than that but those
21 are the numbers we have, but there were many more that
22 wanted it that were not offered. I have already given
23 the Governor a list of another thousand people that said
24 they would go tomorrow if they were offered that

1 severance package.

2 The problem is: Most agencies refuse to
3 offer it to anybody. And while they may say they can't
4 afford to give up somebody, we're already as tight as we
5 can get. Here's what I think is really going on.

6 They are operating under the use it or lose
7 it type of mentality. When I worked at a facility, and
8 it was coming towards the end of a budget year and we
9 had money in our budget for recreational items, but we
10 didn't need any more recreational items, we were told,
11 go out and buy them anyway or we will lose the money
12 next year.

13 So, we bought exercise mats and basketballs
14 and threw them in the closets because we didn't need
15 them, we had enough of that stuff already, but our
16 budget got preserved for the following year.

17 I think that in part is what's going on
18 here. You got agencies saying, well, maybe I do not
19 have that extra worker. Maybe I don't need a secretary.
20 Maybe I can let somebody take the severance and save a
21 little bit of money, but I might not ever get that
22 position back. So, maybe I'll just make sure I keep
23 everybody that I've got now, so that I don't have to
24 worry about that problem. I actually heard that from

1 some Commissioners directly, that they are afraid they
2 will never be able to hire again so they're not going to
3 let anybody go.

4 So, Senator Savino, you were right to ask
5 those questions earlier this morning about what's going
6 on with that. I think we need to start mandating that
7 if you are going to downsize the work force and you have
8 this tool available, this is what GOER Director says,
9 "tool", mandate people use that tool. Don't just offer
10 it up as an option, but if you don't want to do it
11 that's okay.

12 I think the legislature should reject all
13 the salary and benefit cuts, restore the funds to allow
14 the state to honor its contractual obligations. As I
15 understand it, this Governor has already pulled out the
16 \$250 million that he wants out of the public employees.
17 And if he doesn't get it through negotiations, which
18 have not started yet, then where is he going to get
19 those? By laying off people that he already said he
20 can't afford to let go voluntarily? I don't know what's
21 going to happen, so we're asking for that money to be
22 restored.

23 And we'll talk about in a minute where you
24 are going to get that money. We do support some things

1 the Governor was talking about as far as cost savings,
2 such as allowing the state and local governments to
3 amortize their pension payments, allow NYSHIP to self
4 assure for employee health benefits.

5 And some of the mergers that he wants to do
6 will save a little bit of money. We don't have problems
7 with most of those.

8 But another big problem is overtime. Right
9 now state agencies spend more than \$500 million a year
10 on overtime. We recognize that some overtime is
11 necessary, but most overtime is the result of being
12 short staffed in the first place. You don't have enough
13 nurses. You don't have enough aides. You don't have
14 enough social workers.

15 Somebody's got to do this work. You've been
16 cutting the work force but the work is all still there
17 and has to get done. So, the people you have left do
18 the overtime and it costs far more than just hiring
19 people at the bottom of the pay scale, first year
20 people, rather than paying the senior people time and a
21 half. It will save money and you will have a constant
22 work force.

23 We estimate that by doing this you could
24 save about \$33 and a half million a year or 100 million

1 over the next three years.

2 The state is talking about closing some
3 facilities. I just want to address those very briefly.
4 The proposed closure of Office of Children and Family
5 Services facilities in Dansville, and downsizing of
6 Tryon in Lansing, there's a myth that's being
7 perpetrated that somehow state facilities are bad,
8 non-for-profit facilities are better, and that if we
9 take downstate facilities and move youth to these other
10 facilities somehow they will improve more so.

11 There's no evidence to support this. I was
12 a member of the Governor's task force on reforming
13 juvenile justice, and the task force clearly said in its
14 report that we have no clue what's going on in those
15 non-for-profit facilities. They don't have anywhere
16 near the reporting requirements that we have. We don't
17 have any idea what services they are providing.

18 We do know that a third of the people that
19 go to those non-for-profit facilities end up failing out
20 of those and having to go to a state operating facility
21 anyway. Many members we have in state facilities have
22 been through several not-for-profit facilities before we
23 got them. So, we end up with the most challenging
24 individuals.

1 So, to start criticizing that we don't do
2 good work when we've got the toughest job is unfair, and
3 the good things that we do are never highlighted. The
4 fact that 85 percent of the youth that go through our
5 facilities end up getting their GED, whereas only about
6 50 percent of high school kids that drop out ending up
7 getting the GED. So, we are doing something for these
8 people.

9 The report does say that we should have
10 better mental health services, better drug and alcohol
11 services, and I agree with that. We've been talking for
12 years about bringing in more staff to provide these
13 individuals what they need.

14 We are also close to the closure of the
15 correctional facilities at Lyon Mountain, Butler,
16 Moriah, Shock and Ogdensburg. There's been another myth
17 perpetrated about corrections that we have empty jails.
18 We don't have empty jails. The jails are full.

19 The problem is some jails have some empty
20 beds, whereas other jails have double bunks in cells
21 that were only made for one person. There has been a
22 decrease in the number of incarcerated individuals in
23 the state but we are now down to about what the capacity
24 was in the first place.

1 If we eliminate the double bunking and had
2 people in their own cells, like it was designed to be in
3 the first place, you would fill the cells in the state.
4 You wouldn't have this issue where people are saying we
5 have empty beds.

6 Plus, we have to look at the other side of
7 this. If we start closing the facilities, many of which
8 are located in places that have no industry, have no
9 jobs for anybody, some of these towns the state facility
10 is the only job in the town primarily, except if you
11 worked in the grocery store or the gas station where the
12 people that work there go on their way in and out of
13 work. These places will be devastated if we start
14 closing these facilities.

15 Economic development does not mean eliminate
16 jobs. It means create jobs. There is one other agency
17 where there's some eliminations I just want to mention.
18 That's in agriculture and markets.

19 There is two types of individuals
20 specifically that are being targeted in this budget.
21 One are kosher food inspectors and these are individuals
22 that certify whether a food that is designated as kosher
23 actually are. And a case can be made -- there was a
24 lawsuit that said we can't do this anymore so we're

1 getting out of the business.

2 That lawsuit was settled seven years ago and
3 it hasn't changed the business we are doing up until
4 now. So, it really doesn't have any relevance. It's
5 not a real justification for eliminating those
6 positions. I'm not sure what the real justification is
7 but nobody is saying.

8 The second type of work that's being done
9 that's being eliminated is food grading, agriculture
10 food grading. The inspectors that work for the state
11 grade apples, they grade maple syrup so it can be sold
12 out of state. They certify what grade these items are.

13 We can't export them if they are not graded.
14 USDA will not do that. It's our people that do it. And
15 if we don't do it nobody will do it and that's going to
16 hurt the growers of these products.

17 So, we oppose all those cuts and we want you
18 to restore money in the budget for those. But the main
19 thing I want to talk about is the contracting out issue
20 that I have talked about before. And if you look at DOT
21 in particular you will see why hiring freezes and
22 reductions don't work.

23 We've cut in DOT over a thousand positions
24 since 2008, and overall, we have actually seen increases

1 in other parts because we've cut over 1400 positions in
2 the design area. And these are the people that plow our
3 bridges and our roads and help construct new ones.

4 When we eliminate these positions that work
5 still needs to be done. Roads still need to be built.
6 Bridges still need to be inspected. So, what does the
7 state do? They hire consultants because they don't have
8 the staff anymore to do it.

9 Last year, DOT spent a quarter of a million
10 dollars on consultant engineers. \$250 million just on
11 consultant engineers to do the work that our employees
12 could do for about half the price. Despite claims by
13 some people that it's actually been reduced over the
14 years, that's \$24 million more than last year and \$52
15 million more than 2004. It continues to go up. It's
16 not going down.

17 And despite all the studies that say state
18 employees can do it cheaper, 50 to 70 percent cheaper,
19 DOT admits that 60 percent of the engineering work it
20 currently does is done by consultants. Those are their
21 numbers. We believe that DOT should be directed, not
22 asked, directed to start eliminating these consultants.
23 Start saving the state big money by doing so.

24 We estimate the state can save about \$82

1 million a year. There was some questions earlier about
2 consultants in general I think Assemblyman Abate may
3 have asked. And what are these numbers that you are
4 being shown? And why do numbers look different
5 depending on what piece of paper you are looking at?

6 The state, as near as we can tell, is
7 spending \$2.9 billion a year on all types of personnel
8 for consulting. We spent \$100 million more than the
9 previous year.

10 The numbers you have been looking at differ
11 based on where the numbers come from. The numbers that
12 were presented earlier were bodies. 19,000, 21,000,
13 that's how many bodies they were talking about that they
14 were able to report.

15 The problem is only 20 percent of the
16 numbers that are available to anybody, only 20 percent
17 of the agencies report their numbers of how many
18 consultants they have. So, those being somebody that
19 worked for two weeks, not a whole year, through the
20 estimates that we have done we think there is an
21 equivalent of 23,000 full-time consultants, which is
22 2500 more full-time consultants, FTEs, than the previous
23 year.

24 It's not 19,000 part-time people. It's

1 23,000 full-time equivalents are working for the state
2 at 60 percent higher salaries because that's what the
3 state pays. Although they are not necessarily making
4 that money, their companies are making that money. We
5 don't know what they are getting paid. For that matter,
6 we don't really know what anybody is getting paid
7 because these are our estimates.

8 The Comptroller has his own estimates, and
9 that differs from the agency estimates and our estimates
10 because nobody really knows how many consultants there
11 are, nobody really knows how much we are spending, and
12 nobody really knows what we are getting for the money.
13 That's why it's impossible to give you any accuracy on
14 any document you are getting.

15 The forms that get sent in are incomplete,
16 they are misleading by these agencies, by these vendors,
17 but according to the Office of State Comptroller
18 spending on consultants, the first three quarters of
19 this year, were \$8 million more than the first three
20 quarters of last year. That's just their analysis of
21 that. So, even they say it is going up.

22 And the only question I can have is: Why is
23 that permitted? Why, when we don't have money, we try
24 to squeeze every dollar out of every place you can find,

1 are we letting somebody pay 63 percent premiums on work
2 if they don't need to?

3 Here are the things we think the state
4 should do. We should require the Division of Budget to
5 set savings targets for each agency for consultant
6 spending, focusing on information technology and
7 engineering as these are the categories that will create
8 the biggest savings.

9 Institute a freeze on state agency
10 consultant contracts over \$100,000 until a cost/benefit
11 analysis is completed and approved and a waiver is given
12 by DOB.

13 Require DOT, as part of their consultant
14 reduction plan that every agency should have, to conduct
15 at least 90 percent of their bridge inspections with
16 state employees within three years.

17 One of the claims made is this is temporary
18 work. This is special work. They have been inspecting
19 our bridges for a hundred years. It's not temporary.
20 It's not special. You don't need to contract out to do
21 that.

22 We also want this legislature to enact a law
23 that requires agencies to perform a cost/benefit
24 analysis before entering into any consultant contract

1 worth more than \$100,000.

2 We had a couple of speakers here this
3 morning that said they have done that. Civil Service
4 Commissioner said for the dependent eligibility audit
5 they did cost/benefit analysis before they contracted
6 out that work.

7 Workers' Comp Board said before they
8 contracted out the work for those reporters they did a
9 cost/benefit analysis. That's very nice.

10 So, we got two agencies that agree to do it
11 out of the dozens that we have got in the state. The
12 rest don't do it. That even those two, as we learned
13 from the questioning this morning, didn't tell anybody
14 what the results of those cost/benefit analysis were.

15 DOB doesn't know. The Comptroller doesn't
16 know. The legislature doesn't know. The unions don't
17 know. For all we know it wasn't a real analysis. They
18 made up the numbers. Nobody knows because nobody has
19 seen it.

20 The legislation we think should be passed
21 should not only require this analysis be done, but the
22 results should be open so that you and I and DOB know
23 that this is worth the money we are spending.

24 And finally, we should have a law that

1 requires penalties for failure to file your reports. We
2 should have 20 percent of the information that's out
3 there available to us. Every vendor should submit the
4 information they need to the agency. Every agency
5 should submit the information they get to the
6 Comptroller and DOB. Everything is supposed to be open
7 and transparent.

8 We support a number of the measures that the
9 Governor has proposed and even put forward executive
10 order regarding the contract and the cost/benefit
11 analysis, but it seems more like a suggestion than
12 anything anybody is willing to follow.

13 So, we have been working with Assemblywoman
14 John and Senator Klein to try and get legislation
15 introduced to mandate that these analyses be done.

16 Something else I just want to throw in is
17 that big business, some of the people in business who
18 have resulted in the chaos that's being caused in the
19 state right now should be held to account for the crisis
20 they created and should pay their fair share to fix it.

21 In looking at how much regular New Yorkers
22 pay versus how much wealthy New Yorkers pay, and how
23 much businesses pay, and how much the average middle
24 income workers pay, the biggest share of their income

1 than anybody else. That should be looked at, too.

2 I have attached to my testimony ideas
3 advocated by New Yorkers for Fiscal Fairness as other
4 ways to generate revenue. You can read that at your
5 leisure during the snow storm.

6 So, just to summarize, there are four
7 different things that I think we need to do. We need to
8 institute a consultant reduction plan that can save \$650
9 million over the next three years.

10 We should expand the voluntary severance
11 program, and if we actually push it and ask agencies to
12 not try to store basketballs in the closet, but actually
13 do what needs to be done, we could save another \$50
14 million or more.

15 We should institute a work place injury
16 reduction program. We are going to start looking at
17 health and safety and Workers' Comp costs. What can we
18 do to bring that stuff down, and we estimate save
19 another \$45 million that way. Reduce the levels of
20 overtime by hiring more entry level workers to do some
21 of that work.

22 All of this money could be saved and there
23 would be no need to do the drastic things in this budget
24 to the state's work force.

1 And here's the last sentence I want to
2 state. The Governor has made suggestions about all
3 these things that I just mentioned, these four things,
4 but they were suggestions to his Commissioners. This
5 would be nice for you to do. This is what I would like
6 you to do, but a lot of Commissioners are saying, thank
7 you for the suggestion but I don't have to and I won't.

8 The Governor or this body needs to say to
9 these Commissioners, if we think there is money to be
10 saved you don't have the option of saying, well, I don't
11 want to. You should be mandated. The Governor should
12 order the people that work directly under him, these
13 Commissioners, you can save money in each of these
14 places. I want you to do it now and not give them the
15 option to say I don't want to.

16 Thank you for the opportunity to speak to
17 you today and look forward to working with you to craft
18 whatever we need to do to get through this.

19 SENATOR KRUEGER: Thank you. I'm going to
20 just take one quick question. I know we are all running
21 late.

22 You talk about the consultants, specifically
23 the engineers and transportation, you high lighted
24 Department of Transportation. So much of the federal

1 stimulus money actually moved through the state into
2 transportation projects. How did that impact
3 specifically your proposal that we should be using this
4 in house instead of contracting more?

5 MR. BRYNIEN: It hasn't had that big an
6 effect. What the DOT was doing was, well, they figured
7 short term federal stimulus money, we don't need to hire
8 people. We can keep contracting out that work on a
9 short term, and use it that way, burn through it.

10 And they said they still haven't gotten all
11 the money they were supposed to get anyway. A lot of it
12 wasn't done on real work because of some of the
13 requirements that things be shovel ready. So, they had
14 a lot of painting projects which actually helped the
15 infrastructure, just make things look a little better in
16 some places, but the attitude is basically the same. We
17 don't want to get rid of these consultants.

18 Now, while I have heard where many upper
19 level people in some of these agencies ultimately when
20 they retire would like to go work for some consulting
21 firms and so they have attachment to some of them, I am
22 not going to tell you that enters into the decision
23 making but I have heard things along those lines.

24 I think it's a real addiction to the use of

1 these people. It's easy, I can bring them in, I can get
2 rid of them whenever I want, but nobody notices that
3 some of these companies have been working with for over
4 ten years. This isn't temporary. Hire somebody. Save
5 money.

6 SENATOR KRUEGER: Thank you.
7 Assembly.

8 ASSEMBLYMAN FARRELL: Earlene Hooper, Deputy
9 Speaker, question.

10 ASSEMBLYMAN HOOPER: Thank you.

11 First of all, Ken, thank you so very much
12 for that wonderful and very clear presentation.

13 PEF has really been a leader and under your
14 leadership has done quite a bit of good things for the
15 state work force. I would just like to make one or two
16 statements and ask you one or two questions.

17 I did have the experience of before I was
18 elected to the State Assembly working for New York State
19 Department of Social Services and Family and Children
20 Services. And in my position there I experienced
21 consultant workers doing the same work that I did at a
22 higher cost, and I was really puzzled as to why they
23 were there when we had a shortage of Civil Service
24 workers, state workers, and I never was able to get an

1 answer.

2 Your presentation here today has -- in fact,
3 you've been hammering away at this issue of outside
4 contracting, contracting out, for several years, and
5 today you really brought it to our attention and brought
6 it home that we must do something in the legislature to
7 address this very egregious problem of the outside or
8 contracting out that is costing us so much money.

9 With the economy the way it is now we
10 certainly cannot afford it. But before I ask about the
11 contracting out I would like to ask you this question as
12 it relates to spend it or lose it.

13 How do you think we could address the save
14 harmless -- the State Education, in the Department of
15 Education, and when we did the budget for our school
16 districts we have what we call save harmless wherein a
17 school district is saved or preserved from losing funds
18 from the year before even if there is a decrease in
19 population in light of the fact that some Commissioners
20 or agency heads are reluctant to relieve excess staff,
21 because they will probably not be able to ever regain
22 that position. Is there anything you would suggest that
23 would prevent that type of concern in terms of save
24 harmless, that if a position is eliminated and the

1 necessity is then documented maybe two, three, five
2 years in the future, that that position or those
3 positions could be held save harmless so that you would
4 not have to purchase basketballs and other equipment to
5 put in the closet because if you don't use it you will
6 lose it.

7 Could you give me your opinion on save
8 harmless.

9 MR. BRYNIEN: I think it's actually
10 relatively easy, but you can't do it if you are working
11 on a year to year plan. You need to have a long term
12 plan. You need to decide for each agency, for each
13 location maybe, what your needs are going to be in the
14 future.

15 Three years, five years, just do some
16 projections. And if you need -- you are predicting you
17 are going to need a hundred people and you have 100
18 people so you can let ten go, but I might need ten in
19 the future but I don't need them now, I think the
20 planning that you do could build in that overage.

21 Saying right now all you need is a hundred
22 but we can allocate up to 110 for you, say, so that if
23 sometime in the future you need those people you can
24 justify them, you can get them back, but if you don't

1 need them now you can give them up without fear that you
2 are going to lose those extra 10 empty seats.

3 That's something the state's been doing in
4 the past to try to sometimes make believe they are
5 spending less money. You would have an agency that had
6 vacant items. If they were told to downsize what they
7 do is if I got 110 items but only have a hundred people,
8 I can say I'm turning in ten items so I've reduced my
9 work force by ten. You haven't reduced by anything.
10 You reduced these empty desks.

11 If we stop playing that game and maybe we
12 rewarded agencies, if you can make these cuts now then
13 in the future when everybody says what their needs are
14 you are first in line to get your needs met because you
15 held out when we needed the help, but you need long term
16 planning to do stuff like that.

17 ASSEMBLYMAN HOOPER: Is there any way that
18 Public Employees Federation could present a paper to
19 describe how that be achieved so that we would not in
20 any way harm when an agency is trying to address the
21 economic negative impact and yet protect an agency?

22 Because even though the agency might not
23 need the ten employees now is because ten other
24 employees or the 100 employees are picking up ten

1 percent more. Is there any way Public Employees
2 Federation could look at that issue and bring it to us
3 at another time?

4 MR. BRYNIEN: We could try to do that. Just
5 like when I was working with the basketballs, everybody
6 knew that eventually basketballs wear out and eventually
7 you need to replace them, but if we don't keep buying
8 them every year they will never let us replace them.

9 Come up with some ideas of how we could set
10 it up so in five years we can get the balls back. We
11 can try to work out something like that.

12 ASSEMBLYMAN HOOPER: That would be a great
13 idea.

14 In the interest of time, jumping to the
15 consultants and you had ideas as to mandating agencies
16 to follow through with the request from the executive
17 and the legislative branch to present their plan as to
18 cost analysis of consultants.

19 Could you very briefly explain how that is
20 not working now. You did touch on it in your
21 presentation, but so many agencies had refused and/or
22 failed for whatever reason to follow through on cost
23 analysis versus, in other words, what would it cost and
24 what does it cost the state to bring in the consultant

1 and, as you indicated, the employee not necessarily is
2 the one earning the money, versus those wonderful well
3 trained dedicated state workers who could do the same
4 position, the same job, at a much lower cost to the
5 state.

6 What type of legislation would you be
7 presenting to help your colleague --

8 MR. BRYNIEN: The legislation I would like
9 to bring forward is relatively simple. Right now, the
10 Governor has an executive order which says I would like
11 agencies to try to do this, but there are a lot of
12 loopholes in it.

13 If you think it's necessary, if you think
14 it's temporary, if you think it's something else,
15 There's a list of things, then that's okay. It's very
16 easy for somebody to say, well, it's necessary or it's
17 temporary even if it's not, and there's no real
18 justification.

19 What the bill would say is that in every
20 instance where you are contracting or thinking of
21 contracting over \$100,000 for personal services, I don't
22 mean you are buying a piece of equipment, but personal
23 services, you have to justify what those costs are,
24 figure out what the cost would be for your current staff

1 to do it or new staff would cost to do that.

2 And just it's like when you're shopping for
3 anything else in the store. Am I getting what I --
4 buying a pair of pants, is it worth the \$50 or \$2,000
5 they are charging me? If it's \$2,000, no, I can see
6 right off the top of my head that that's not a fair
7 deal.

8 It's the same thing here. Shouldn't take
9 any money to have your own internal budgetary staff run
10 the numbers, say here's what it cost to hire five
11 people, here's what it cost to contract out those five
12 people. We're going to need this job for long term.
13 Just compare the numbers.

14 ASSEMBLYWOMAN HOOPER: Comparison shopping.

15 MR. BRYNIEN: Comparison shopping, and if
16 it's cheaper because it's only going to be a three month
17 job, or you don't have the expertise or whatever it is,
18 I don't have a problem with that. I understand some
19 contracting out is necessary.

20 But if it's run of the mill stuff that we
21 can do, why spend any extra money and that should not be
22 allowed and it should not be left up to the agency
23 either. The bill would say that analysis has to be sent
24 up -- that it has to get approval from DOB before they

1 are allowed to let that contract.

2 ASSEMBLYMAN HOOPER: I think it's a
3 wonderful idea. Thank you so much, both of you, for
4 being here representing Public Employees Federation.

5 Thank you.

6 ASSEMBLYMAN FARRELL: Thank you very much.
7 We have been joined by Assemblyman Felix
8 Ortiz.

9 Next to question, Senator Diane Savino.

10 SENATOR SAVINO: Thank you, Assemblyman
11 Farrell. I will be very brief. One or two questions
12 for you.

13 First of all, thank you for your testimony
14 and I also want to thank you for the work that you guys
15 did earlier this year which lead to the legislation that
16 Assemblywoman Destito and I passed on the IT in sourcing
17 which is the kind of work we need to do to find ways to
18 save money.

19 You mentioned the cost of overtime. We have
20 all seen the cost of overtime explode in the state, and
21 while there's certainly always going to be certain level
22 of non-discretionary overtime because of the type of
23 work that some of the agencies do, it's the
24 discretionary overtime that has been exploding, and the

1 focus is always, as we know, on the people who receive
2 the overtime, not the people that distribute the
3 overtime, as if it's somehow been doing it on their own.

4 Has their been any steps taken with any of
5 the state agencies and your union or any other union
6 that you know of to kind of control the cost of
7 discretionary overtime either through alternate work
8 schedules or flex time or something to kind of bring
9 down this exploding cost?

10 MR. BRYNIEN: It's a two fold question,
11 really. We have been trying to get state agencies to
12 grant different kinds of flexible arrangements, either
13 flex time or telecommuting or different things. It's
14 through our contract with the state that those things
15 are allowable.

16 Most agencies choose not to avail themselves
17 of that, typically using the argument that, well, we
18 can't keep track of people because they're not sitting
19 at the desk in front of me. So, most agencies just say
20 no to all of it and they have the option to say no.
21 They are not mandated.

22 But that will only eliminate some of the
23 cost. I think the bigger cost is when an agency says I
24 need a couple of extra social workers, for example, to

1 cover this case load, and they send them up to DOB and a
2 message comes back, no, you can't. So, all right. Then
3 the social workers I have will have to do overtime to
4 cover that.

5 It's similar to the consultant issue. When
6 DOT, if they said, DOB, I need a couple engineers, and
7 DOB says, no, well, DOT instead of using overtime they
8 use consultants, but it's the exact same issue. Instead
9 of having enough staff to actually do the work you need
10 to do, agencies do what they need to do to get the work
11 done, and whatever they choose costs more money than
12 just having the right number of staff in the first
13 place.

14 SENATOR SAVINO: True, but they also are not
15 required to request from DOB the authorization for
16 discretionary overtime, correct? They administer on
17 their own. Commissioners left to their own devices will
18 spend whatever it is that they want.

19 MR. BRYNIEN: That is correct.

20 SENATOR SAVINO: That's a problem.

21 With respect to the legislation that you've
22 suggested about having oversight over consultant
23 contracts, we actually passed a bill last year,
24 Assemblyman Brodsky and I, but it applied to the public

1 authorities, that would require them to do just that.

2 The Governor unfortunately vetoed that
3 legislation but we are going to take it out, take a look
4 at it again, and see if we can't apply it to state
5 agencies. Take another shot at this.

6 Thank you.

7 SENATOR KRUEGER: Assembly.

8 ASSEMBLYMAN FARRELL: Susan John,
9 Chairwoman.

10 ASSEMBLYWOMAN JOHN: Mr. Brynien, thank you
11 for your testimony today and I want to thank you and
12 your colleagues for the work that you have done, as
13 Senator Savino referenced in the IT consulting area, and
14 also the assistance that you provided to Senator Klein
15 and myself as we tried to expand that concept to other
16 areas in state government.

17 And the statistics that you cited today I
18 believe are significant and illustrative with regard to
19 both overtime and the choices that the state could be
20 making, as well as the amount of money that is being
21 spent under the non-personal services portion of a
22 variety of agencies' budgets which is, in fact, being
23 spent for personal services.

24 And I hope that we will receive a warmer

1 response from the Division of Budget as we try to
2 address these issues as we go through the negotiation of
3 the budget.

4 You cite in particular that Department of
5 Transportation with some pretty negative numbers. There
6 is, of course, a value to the state to also employ
7 businesses in the state who are engaged in engineering
8 and other services, and certainly it's not your
9 testimony that we do not require the services of those
10 individuals, just that we don't require them at the rate
11 that we are using them.

12 Would that be a fair characterization?

13 MR. BRYNIEN: Yes. If you are buying
14 services, I am all in favor of supporting communities
15 and businesses in those communities as long as the state
16 is getting a fair deal, but if they are going to what I
17 would consider to overcharge for the same services you
18 get cheaper elsewhere, particularly your own employees,
19 then why would you pay that over price when you don't
20 have to?

21 ASSEMBLYWOMAN JOHN: Another area that I
22 have been particularly concerned about is the extent to
23 which we have individuals who are failing to treat their
24 employees but instead are treating their employees as

1 independent contractors.

2 While I would hope that the State of New
3 York wouldn't engage in that practice, certainly there
4 are employers who do. They don't pay into the
5 Unemployment Insurance Fund as a result. They don't
6 collect Social Security tax. They don't collect
7 withholding tax.

8 There's an area of tax revenue that is
9 escaping us because of how some individuals are choosing
10 to characterize their employees as independent
11 contractors. I have a suspicion that this is also going
12 on with regard to some of the consultants that you have
13 identified the state is spending money on.

14 MR. BRYNIEN: I am sure it is. And we don't
15 have good information about how much those actual
16 workers are making. They will be sitting side by side
17 with the state employee doing the same job, making
18 sometimes a little more, sometimes the same or less, we
19 don't know.

20 What we do know is a large amount, whatever
21 is being paid out for their services, is just going back
22 to that company. Another speaker here said she was
23 hearing 50 or 60 percent is the cut off the top that the
24 owner of the company makes and the workers weren't

1 getting paid anything great.

2 I think if we could take that 50 or 60 or
3 whatever percent it is, and either plow that back into
4 something better for those workers or plow that back
5 into fixing some holes in the state budget, or just more
6 fixing some more bridges faster, that would be a better
7 thing than just giving it away as a profit to somebody.

8 ASSEMBLYWOMAN JOHN: I thank you for taking
9 the time to come and testify today, and look forward to
10 continuing to work with you as we go through the budget
11 and negotiation process.

12 ASSEMBLYMAN FARRELL: Thank you.

13 SENATOR KRUEGER: Thank you very much for
14 your testimony.

15 Again, we are less than an hour late, which
16 for us isn't that bad if you are watching.

17 The Retired Public Employees Association,
18 Stan Winter, President, and Tony Cantore, Legislative
19 Representative; and then they will be followed by the
20 Workers' Compensation section, New York State Bar
21 Association.

22 Apparently, I also had believed the
23 organization of management confidential employees was in
24 the panel with Pat, who wasn't here, so after this

1 panel, thank you.

2 MR. WINTER: In the interest of time and the
3 late hour I've tried to summarize the written material
4 that you have.

5 Chairwoman Krueger, Chairman Farrell and
6 members of the Senate and Assembly, fellow public
7 servants and fellow taxpayers, my name is Stanley
8 Winter. As President of the over 40,000 members of the
9 Retired Public Employees Association, we are a
10 not-for-profit membership corporation and we are
11 testifying today in strong opposition to the executive
12 budget proposal that would transfer Medicare Part B
13 reimbursement cost to retirees and active employees.

14 RPA is also opposed to the establishment of
15 an employee retirement system board of trustees. We
16 strongly support the concept of a single fiduciary. The
17 Medicare reimbursement tax, and that's what it is, is
18 wrong for several reasons.

19 As to its effect on retirees, they are being
20 asked to pay an increased premium for their health
21 insurance payable to the New York State health insurance
22 program. NYSHIP already saves millions of dollars a
23 year by forcing Medicare eligible persons to join
24 Medicare Parts A and B with only secondary coverage

1 provided by NYSHIP.

2 Medicare eligible retirees still continue to
3 pay the same premiums to NYSHIP as active employees,
4 though the federal government is now paying the bulk of
5 the retirees' health insurance costs.

6 Two, the budget bill is open ended. It
7 permits future increases as necessary, whatever that
8 means. Conceivably, retirees will wind up funding their
9 own Medicare Part B reimbursement.

10 Three, it also preempts the Governor's own
11 task force retiree health insurance protection, which I
12 might add he created after vetoing the bill that
13 received bipartisan legislative support in creating a
14 similar task force under the aegis of the legislature.

15 Retirees are helpless pawns to the budget
16 division in this scenario. Under the Taylor Law, nobody
17 can negotiate on behalf of retirees. Our last line of
18 defense, in fact, our only line of defense is you, the
19 Legislature.

20 We thank you for your years of bipartisan
21 support and the cause of protecting retiree health
22 insurance.

23 On the second issue, our opposition to
24 changing the concept of a single fiduciary is rooted in

1 experience. Every Governor since Nelson Rockefeller,
2 Republican and Democrat, has attempted one way or
3 another to underfund or otherwise use the funds of the
4 common retirement fund to address fiscal problems in the
5 state.

6 Our New York State constitution provides
7 that these monies can only be used for the benefit of
8 the fund and its retirees or members. The only
9 protection we have had has been the Controllers of New
10 York State who have even sued a Governor on behalf of
11 the fund and its retirees and members to stop these
12 raids. These Controllers have also been both
13 Republicans and Democrats.

14 A 2008 study by the Wisconsin legislature of
15 87 public retirement systems found that the common
16 retirement fund was not only fully funded but one of the
17 most secure. The study happens to include the years of
18 Comptroller DiNapoli's predecessor. By the way,
19 Comptroller DiNapoli has moved quickly to correct and
20 prevent the abuses that have occurred.

21 As to the comment that the better protection
22 for the retirement system, the retirement fund may be
23 found in the board, you only have to look to California.
24 Three of their retirement systems are underfunded by a

1 total of \$87 billion. And that includes two board
2 members who are under indictment for undue influence.

3 In short, I believe in the old adage: If it
4 ain't broke, don't fix it. Those are the two key issues
5 that we feel retirees face in this Governor's budget.

6 Thank you for having us here.

7 SENATOR KRUEGER: Thank you very much for
8 your testimony.

9 ASSEMBLYMAN FARRELL: Thank you, gentlemen.

10 SENATOR KRUEGER: Again, we were working on
11 a snow day schedule. And now Barbara Zaron, President,
12 Organization of New York State Management and
13 Confidential Employees.

14 MS. ZARON: Good afternoon, everyone. I
15 will try to get through this quickly. With me is Joe
16 Sano, our Executive Director.

17 Thank you for the opportunity to discuss
18 with you our concerns. I am going to focus today on
19 only one issue rather than all of the proposals that the
20 Governor has presented to you in the budget.

21 That issue is the withholding of the salary
22 increases from MC employees both last year and the
23 Governor's proposal to again rescind those salary
24 increases this year.

1 I would like to dispel a misconception that
2 many people have, and that is that the MC employees for
3 the state are the Governor's people. Well, there are
4 more than we think necessary of the Governor's people.
5 The vast majority of MC employees are competitive class
6 employees who got their positions through exams. That's
7 both entry and promotional positions.

8 Approximately 94 percent of the state work
9 force is unionized, which leaves the MCs, who compose
10 approximately six percent of the work force. Many, many
11 years ago under Governor Rockefeller the MCs were
12 promised they would be treated no less well. This has
13 never been the case through all administrations since
14 then.

15 MCs have been told they need to share the
16 sacrifice. They are willing to share the sacrifice.
17 They are not willing to bear the full cost of the
18 required work force savings that the Governor says he
19 needs.

20 Many times a day we're told by MCs, I can
21 understand and I could accept the withholding of my
22 salary increases if that same action were applied across
23 the work force.

24 Unlike some of the implications of comments

1 you heard this morning, we really do need managers to
2 manage government programs and agencies. We don't have
3 enough people to do the job properly. We need managers
4 to make sure we are as effective and cost efficient as
5 we possibly can be in running our programs and agencies.

6 And I just must make this comment. We
7 acknowledge that while we are talking about getting back
8 the salary increase that was withheld, we do understand
9 and acknowledge that legislators and judges have not had
10 a salary increase in 12 years, which we don't believe is
11 the right thing to do and we all ought to be working
12 together to fix the entire compensation system in the
13 state.

14 I am not going to go through the proposals
15 that the Governor made last year and this year. You are
16 all aware of them. I would just point out that last
17 year, despite the fact that the withholdings that the
18 Governor proposed were not included in the budget, the
19 Governor did withhold payment of previously approved
20 vacation exchange payments from MCs two weeks prior to
21 the payment date, and withheld the payment of previously
22 approved three percent salary increase last year one
23 week after the budget division had released instructions
24 on payment of those salary increases. So, only MCs were

1 not paid. All union represented employees who had
2 contracts in place were paid their increases.

3 You heard earlier that no negotiations have
4 begun with the unions on this year's proposed work force
5 savings. You also heard PEF and CSEA indicate they are
6 not inclined to accede to the Governor's wishes in terms
7 of work force savings. We also object to those proposed
8 work force savings, and we especially object to the
9 Governor saying I am taking away the MC salaries once
10 again this year.

11 MCs are at a point now where they are, most
12 of them, \$6- to \$10,000 behind their equivalent PEF or
13 CSEA colleagues, and where they are \$6- to \$10,000 at
14 least behind those people who report to them and they
15 supervise.

16 What is happening is that MCs are retiring,
17 and you heard Nancy Groenwegen talk about the percentage
18 of the work force, the MC work force, that will be
19 retiring in the next five years and that's a real
20 concern.

21 Many, many MCs are requesting demotion or
22 reassignment into PEF or CSEA positions because they
23 want to get that \$6- to \$10,000, especially if they are
24 close to retirement and looking at their final average

1 salary for pension calculations. In other instances,
2 CSEA and PEF represented employees are refusing to take
3 MC positions being promoted because they say, I can't
4 afford it. I'm already making much more money now and
5 I'm not going to do it.

6 We are hearing in some agencies that they
7 can't staff their clerical and administrative support
8 functions because nobody will take those positions.
9 Psych center directors are telling us they have critical
10 MC positions they need to fill. They can't fill them.

11 When agency heads and Commissioners start
12 conversations with me, telling me how difficult their
13 position is in terms of getting the work done, and that
14 their MC employees are saying, I don't want to be an MC
15 anymore, we have a really serious problem.

16 The problem can be solved and should be
17 solved, in part, by treating MCs fairly and equitably,
18 by insuring that their salary increases are paid just as
19 they are to everyone else in the work force. Now, we
20 are not here to say I'm here for a hand out. I want
21 something more or different than anybody else is
22 getting.

23 We have, since November of 2008, been
24 talking to the Governor and his staff, budget executive

1 chamber staff, etc., about how to fairly and equitably
2 resolve this issue. We have presented, which is
3 attached to the testimony, a list of savings proposals
4 that equal over a billion and a half dollars.

5 Many of these are, for example, the
6 reduction in contracting out is on that list. There are
7 a number of others that are consistent with what the
8 unions have been talking about as well. Others are ones
9 that we came up with on our own and we are always
10 looking for additional savings possibilities.

11 So, we are not just saying pay us and we
12 don't care about the state's financial condition. As
13 managers, our folks are probably more aware than anybody
14 else in the work force about the financial situation
15 that we are all facing, and they are the ones that have
16 to come up with these proposals and manage the budget
17 once it is implemented.

18 They are the ones that have to deal with do
19 I have enough staff? Do I have to use overtime? Can I
20 get -- do I use a contract? How do I manage to do the
21 work that has to get done?

22 So, managers feel very strongly that they
23 should be paid what the statute says they are entitled
24 to.

1 Let me just tell you what we are proposing.
2 In addition to that billion and a half dollars we have
3 already talked about, and understand that these are
4 management confidential people, two weeks ago we met
5 with the governor's executive chamber and budget staff
6 and we went through some things we think ought to be
7 done, and we said eliminate 300 exempt class political
8 appointee positions from your agencies, which would give
9 you \$30 million in savings and could fund the four
10 percent salary increase for MCs.

11 We simply don't believe that political
12 appointees should be, if I could say, protected at the
13 expense of career people, and we have long term
14 political appointees on the payroll still.

15 We have a proposal that we have talked about
16 with chamber staff in budget over the last year which
17 would use -- actually, one of the Governor's proposals,
18 which is a deferred lag payroll. So that I'm sure you
19 all know what that means, but people would get paid
20 their salary increase when they leave state service on
21 retirement or voluntary severance, termination, whatever
22 it is, but they will be ensured of getting the salary
23 increase and it will be used to calculate their pension
24 payments, which is certainly very important to them.

1 We also talked about a proposal to ensure
2 that MCs are treated fairly and equitably that would
3 require changing the MC pay bill statutory language
4 which allows the budget director to withhold salary
5 increases.

6 Now, every union pay bill also has
7 withholding authority. It's never been used to our
8 knowledge in any circumstance other than for MCs.

9 So, we have some language that we would
10 propose on that, and we would set a standard which would
11 be something like, when the actual revenues that come in
12 during the first quarter of the budget period are below
13 90 percent of the projected revenues, then it would be
14 reasonable to allow the budget director to withhold
15 those increases across the work force until such time as
16 the revenues increase to the projected revenues and
17 increases could be paid.

18 I mean it's an attempt to have some logical
19 standard applied before a budget director can simply
20 say, I am taking your money away.

21 We have three other proposals. We would
22 amend the Civil Service Law to allow an individual MC
23 employee to seek financial redress through an expedited
24 review and determination for an occupational pay

1 differential, which is already a provision in the Civil
2 Service Law and just another way to get at getting an
3 equitable salary.

4 We also have a proposal to amend the
5 Retirement and Social Security Law if none of these
6 other things work, to provide two years of retirement
7 service credit for those MCs who had their salary so
8 that their pensions are not forever diminished.

9 And the fourth proposal is that when we
10 craft the 2010-11 budget that funds are included in the
11 budget to pay these MC increases that have been taken
12 away for last year and this year.

13 You heard earlier today that \$28 million is
14 the figure for this year. It was \$16 million for last
15 year. And I think through a number of our proposals we
16 can certainly find that amount of money to treat MCs
17 fairly.

18 I just mentioned -- I did say that we are
19 not -- we do oppose the Governor's proposals that would
20 include the Medicare Part B payment. And in terms of
21 self insuring for NYSHIP, we do believe it's prudent and
22 worthwhile to explore the feasibility of going to self
23 insurance. We would say that it's imperative that any
24 plan to do so must contain the protections currently

1 required by state insurance department that all state
2 insurance rules and regulations apply and that full
3 compliance with ERISA should be assured.

4 SENATOR KRUEGER: I ask you to finish up.
5 You are a bit over time.

6 MS. ZARON: Thank you very much.

7 You have the full testimony and it has
8 several attachments including our proposals. And we
9 thank you for the opportunity to address you.

10 SENATOR KRUEGER: Thank you.

11 ASSEMBLYMAN MCENENY: The 300 MC positions
12 that were politically appointed, how many have fallbacks
13 that are CSEA fallback or PEF fallback?

14 MS. ZARON: I don't know, Jack. We have not
15 specifically targeted those 300. And we took that
16 number because there are approximately 2700 exempt class
17 positions, MC positions. So, we chose a number that
18 would provide the amount of money necessary to fund the
19 increases, but we have not -- and we don't have the data
20 that would tell us how many of those might have fallback
21 positions, but I am sure you know there are -- over the
22 years we have had lots of assistant commissioners,
23 assistant deputies, deputy assistants, you know, a
24 proliferation of positions that may not be necessary or

1 affordable at this time.

2 ASSEMBLYMAN MCENENY: Thank you.

3 SENATOR KRUEGER: Thank you very much.

4 ASSEMBLYMAN FARRELL: We have been joined by
5 Assemblyman Gary Pretlow.

6 SENATOR KRUEGER: Next we have Peter Walsh
7 and William Crossett of Workers' Compensation section of
8 the New York State Bar Association.

9 MR. WALSH: Good afternoon, thank you.

10 Just for the record, I want to tell you that
11 the lady to my right, the reporter, is doing a great job
12 and I don't think she should be replaced by a machine
13 ever. That goes back to the other comments of the
14 Chairman of the Workers' Compensation Board.

15 For the record, my name is Peter Walsh, a
16 defense attorney here in Albany. To my left is my
17 colleague Bill Crossett. He is a claimants' attorney in
18 Syracuse. We've come to you from the New York State Bar
19 Association.

20 Earlier you heard the Chairman and his
21 general counsel speak on some issues and initiatives.
22 Senator Onorato appears to be on top of some of these
23 issues, as does Senator Savino, thankfully.

24 Over the past few months we have met

1 privately with the Chairman of the board as part of a
2 subcommittee assigned by the Bar Association, and we
3 have absolutely strong concerns that some of these
4 initiatives, particularly with the way the board wants
5 to adjudicate claims here on out, have serious
6 ramifications regarding due process rights.

7 So, our task here today is to ask you with a
8 discerning eye to begin to look at these issues. I know
9 Assemblywoman John on the Assembly side has been well
10 informed over the past couple years regarding these
11 issues and regarding the board's actions.

12 I want to point out to the members here that
13 there seems to be a general theme from the Workers'
14 Compensation Board that they look at a statute one way
15 and the Bar Association and the State Legislature looks
16 at the statute in a different way. And they seem to
17 believe that they go in this direction and no one really
18 agrees with them. They don't cite any case law. They
19 don't cite the position of labor, business or the bar.
20 They just kind of go ahead and do it.

21 And they have taken this new initiative,
22 which they have given a name called managed adjudication
23 path. It's just a name of a new program which
24 essentially means don't have hearings and just make

1 these decisions which affect literally thousands of
2 people on the paper as opposed to being heard in front
3 of a judge.

4 All the while, they are asking you to fund
5 more judges who, in our estimation, aren't going to be
6 doing hearings. We want them out doing hearings. So,
7 our point is to ask you to begin to look at these
8 initiatives. I know Senator Onorato and Senator Savino
9 have begun to examine those initiatives.

10 From my point of view, as someone who
11 represents insurance carriers and businesses, I don't
12 know why or what these assessments are going for if we
13 are not going to have hearings and we are not going to
14 be allowed to put our proof in in defending our claims
15 that are filed by folks who are injured.

16 Essentially the state legislature has set up
17 a system where parties can come in, put their proof in
18 and a judge makes the decision. It's been this way for
19 years upon years. There's case law dating back to World
20 War I which allows for this.

21 And now the current leadership of the board,
22 we come to find out, wants to change all this, and they
23 haven't solicited input from labor, although they claim
24 there's benefits to injured folks. They haven't

1 solicited input from business, that we know of. And
2 their contacts with us have been limited and much of the
3 information we garnered have been from sources outside
4 the Chair.

5 So the Bar Association has deep concerns
6 over the board's current initiatives and how it's going
7 to affect constituents in your district who are injured,
8 as well as businessmen or women who operate in your
9 district.

10 So, you have to begin to look at this
11 closely. And I will turn it over to my colleague,
12 Mr. Crossett.

13 MR. CROSSETT: Thank you for entertaining us
14 today on behalf of the state bar. We are members of a
15 special committee that was formed in response to the
16 board's latest initiatives.

17 In my testimony I've tried to lay out a
18 little historical perspective so that you can understand
19 this in a sense what we do. Just like I can't
20 understand your process here in just a few minutes, I am
21 sure that you can't understand the process that's been
22 going on in the Workers' Compensation Board for a long
23 time, especially as it relates to injured workers and
24 employers.

1 When someone looks down the table they
2 should not be seeing two lawyers. They should be seeing
3 people who represent the injured workers of the State of
4 New York and the employers of the State of New York,
5 because that's who we represent.

6 The Workers' Compensation Board, you have
7 heard the Chairman sit here and tell you they want to
8 decide cases off calendar. Their counsel was correct
9 that the law was amended back in 1991 to allow for some
10 cases to be resolved by conciliation. At that time, the
11 cases were limited to those in the duration of eight
12 weeks. Over the years, through a variety of different
13 means, that's been increased to where it allowed
14 52 weeks after the 1996 reforms.

15 However, the statute also called for
16 meetings, conciliation meetings, not to make these
17 decisions off the calendars. After experimenting with
18 this for a number of years, the former Chairman of
19 Workers' Compensation Board announced to the state bar
20 that the conciliation was a failed process.

21 Now they are rolling it out again with a
22 different name, with no different direction, but this
23 time without any meetings at all. Without any notice to
24 any parties, they are going to make decisions.

1 Fundamental due process requires notice and a right to
2 be heard. There's nothing more important to an injured
3 worker in the State of New York than an opportunity to
4 have their case heard by the judge.

5 And one of the little nuances that people
6 don't understand about Workers' Compensation is that if
7 the employer or the carrier picks up the benefits
8 voluntarily, as they are encouraged to do by the
9 statute, that does not prevent the insurance carrier or
10 the employer from unilaterally, without notice, reducing
11 the benefits.

12 The only thing that stops that is a hearing
13 and a direction of the court. If there is a direction
14 of the court to continue benefits, the carrier cannot
15 change the benefit level without a hearing.

16 That's the most important right to an
17 injured worker. This process takes that right away,
18 leaves no protection for the injured worker, and gives
19 no predictability to them. Our system is not set up to
20 do that. I urge you to protect the rights of the
21 hearing of the injured worker.

22 Thank you.

23 MR. WALSH: Just may I also remind the
24 committee members when the general counsel spoke this

1 morning from the board he gave you some examples of what
2 goes on in other courts, and he had spoken to us in our
3 meetings privately and the Bar Association has politely
4 and respectfully disagreed with his interpretation not
5 only of the statute, but of the process in different
6 courts.

7 But they just continue to ignore our
8 concerns. And this is why we are now before you and
9 this is why, in our opinion, the Legislature is going to
10 have to begin to revisit some of these things.

11 I know, as I said, Senator Onorato has
12 already shed serious doubt on all of these issues, but
13 you have to know the Bar Association has expressed
14 themselves to us clearly and without equivocation that
15 this is not the direction the State Workers'
16 Compensation Board should be going in and you need to
17 know that.

18 SENATOR KRUEGER: Thank you. I think,
19 again, we have had a great deal of testimony on that
20 issue here today.

21 MR. WALSH: Thanks so much for your time.

22 SENATOR ONORATO: I want to thank you again.
23 I want to work with you. I would like to get some more
24 input from you on how we can better enforce this.

1 MR. WALSH: Senator, I know you have the
2 hearings set up for us, and his office has been and his
3 staff have been number one. They have opened up to
4 anyone who needs answers, questions, and his office is
5 doing a tremendous job.

6 SENATOR KRUEGER: Thank you very much for
7 testifying today.

8 Moving right ahead, we have Center for
9 Economic Growth, Michael Tucker, President. That will
10 be followed by Displaced Homemaker Program and then
11 Direct Support Profession Alliance are our last two
12 after you.

13 Good afternoon.

14 MR. TUCKER: Good afternoon. My name is
15 Michael Tucker, and I'm the President and CEO for Center
16 for Economic Growth.

17 CEG is a regional economic development
18 organization serving 11 counties in the capital region.
19 We focus on growing existing businesses, attracting new
20 business and investment, and preparing the region for
21 growth.

22 I am here today in support of funding in the
23 Governor's budget, as a representative of CEG, because
24 we receive funding to train small and medium

1 manufacturing companies through the state match of the
2 NYST MEP manufacturer's extension program through
3 NYSTAR.

4 This is a very important program for our
5 region, particularly in light of the successes that we
6 have achieved through the support of state government
7 and in particular the Legislature, the Senate and
8 Assembly, for the Global Foundries project, and for the
9 College of Nanoscale Science and Engineering here in the
10 capital region.

11 Throughout Tech Valley, we are focused on
12 work force development opportunities in an effort to
13 work with our community colleges, our four year
14 institutions, our BOCES, our school districts, our work
15 force investment boards, and the many regional
16 stakeholders that will ensure a viable technology work
17 force for the future.

18 With Global Foundries' \$4.2 billion project
19 under construction in Saratoga County, it is the largest
20 construction project in the country, if not in the
21 world. That is happening within 30 miles of where we
22 sit today.

23 The concern of our small manufacturers in
24 the region is that the work force demands of a company

1 of this magnitude, together with the work force
2 requirements for General Electric, which has invested
3 over \$1 billion in the region in terms of their battery
4 facility, their imaging facility, their wind turbine
5 institute, will put small and medium size manufacturers
6 at a disadvantage in retaining the skilled and technical
7 work force.

8 We urge you to continue funding work force
9 development initiatives and to take a new look at
10 opportunities to develop training programs for the
11 technical worker of the future.

12 Many of the workers in the future in the
13 innovative economy will only need a two-year degree or
14 certificate program education to get into the work
15 force. Certainly, once they are working, the
16 opportunity to get a four year degree or advanced
17 education is certainly encouraged and is an opportunity.

18 But as we move the innovation economy, which
19 the state has provided incentives and support for, it is
20 important that we continue that effort by funding
21 creative work force development initiatives not only
22 here in the capital region and in Tech Valley, but
23 through the state.

24 Thank you very much.

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1 SENATOR KRUEGER: I want to thank you for
2 coming because you actually tied the discussion of work
3 force issues into how to create more jobs. And we
4 should never forget with all the discussion about having
5 to make tough decisions at the state level and reducing
6 jobs, reducing pay, that the actual assignment is to
7 support job creation in the State of New York.

8 Thank you.

9 MR. TUCKER: It's important to get the
10 return on the investment that the state has made and
11 these educational institutions and these incentives to
12 attract companies here. And appreciate your support.

13 SENATOR KRUEGER: Thank you.

14 Next, the Displaced Homemaker Program,
15 Eleanor Moran, Executive Director, Women's Employment
16 and Resource Center, and then again, followed by the
17 final testifier of hearing one of the day, Direct
18 Support Professional Alliance of NYS.

19 MS. MORAN: Good afternoon, Chairwoman
20 Krueger, Chairman Farrell, and distinguished members of
21 our Senate and Assembly.

22 I have with me today also Dimey McGrath from
23 Women's Opportunity Center. I am with the Women's
24 Employment and Opportunity Center in Utica, but today I

1 am here representing the 22 centers. And you have all
2 been very good friends of the Displaced Homemaker
3 Program, and for that I say thank you very much. And I
4 will be brief. I promise you.

5 There were many questions that came up with
6 earlier presenters that I would like to share how we
7 work into your concerns as well. As you know, we help
8 women who are seeking employment who have lost their
9 source of revenue, their wages, either by divorce,
10 separation, they may be on public assistance, but there
11 are other people that we are serving as well.

12 We are also -- Assemblyman Hayes, you
13 mentioned something about veterans. The veterans who
14 are returning who were providing income for their
15 spouses that are now unemployed, they are eligible to
16 access services through the centers. So, the veterans
17 and their spouses are able to move their lives forward
18 after they have served our country. So, they another
19 group of displaced homemakers.

20 Senator Montgomery mentioned that she wanted
21 to be sure that the job readiness programs lead to jobs.
22 Our programs do lead to jobs. We work very closely with
23 the employers. We have developed at all of our centers
24 innovative and creative ways to meet the needs of

1 getting women into gainful employment.

2 We have retail training centers, customer
3 service training centers, administrative assistant
4 training centers. All built around the needs of each
5 local employer, so we don't just come up with regular
6 job readiness. It's employer specific to ensure that
7 the jobs are there.

8 As you know, in this year's budget Governor
9 Paterson has zeroed us out. We would like to ask you to
10 restore us for 2011 and '12 to \$7.8 million that we are
11 operating with this year. This is our current level of
12 funding. However, in addition to the \$7.8 million we
13 too have been a victim of the proposed 25 percent
14 reduction and we need to know that the programs we have
15 started this year we are able to finish through a
16 restoration of those funds. So please understand that
17 it's a double request here.

18 Together, our 22 centers have effectively
19 moved 4,217 displaced homemakers forward? We have
20 placed over 1300 women in employment. While that may
21 sound like a small number, it is really not a small
22 number and it's not just women who are becoming
23 employed. It's women who leave their families who are
24 becoming better role models, who are teaching their

1 children that poverty is not the way they want to live
2 and how to escape from it.

3 The cost per individual served is \$1,217,
4 and the cost of entering employment is \$3,928 and we
5 have a 60 percent retention rate of over 92 days. We
6 are doing very well.

7 But let's put that into dollars and cents.
8 I've heard a lot of conversation about return on that
9 investment. If you look at those women going back to
10 work, at a minimum wage, we are returning on a \$7
11 million program \$19,709,000. I think that's a really
12 good return on investment. And most of our women do not
13 go back to work at a minimum wage, so it could reach \$30
14 million.

15 How much better can you do knowing you're
16 helping to move families forward. We hear a lot of
17 talk, too, lately about moving families forward, helping
18 build a stronger New York State. How do you build a
19 stronger New York State if you are not doing it through
20 families, you are not doing it through gainful
21 employment?

22 Your voice has given us a voice and together
23 we've given these women and their families a voice and a
24 pathway to independence.

1 You have the testimony that's there, and I
2 don't want to take any more time because I respect your
3 time and the people who are here. Just keep in mind as
4 you are looking at the payback on this program, when
5 women go to work taxable revenues go up. Consumer
6 spending goes up. Welfare rolls go down. And families
7 become stronger and more independent.

8 I thank you, again, for all of the support
9 you have given us over the years. I ask you to please
10 look at the impact we have on New York State and to
11 continue to support us. We appreciate all that you have
12 done for us and we want to continue to work for our
13 families.

14 Thank you again, and if there is any
15 questions I'd be happy to answer them.

16 ASSEMBLYMAN HAYES: One quick comment. I
17 just would also thank you for what you do to keep us
18 informed about the operations. I have had numerous
19 opportunities to visit and to see first hand the good
20 work that's being done in the lives of so many and
21 graduation ceremonies and things like that that are
22 really touching. And it's a great, great program. So,
23 thank you for all you do making the effort for keeping
24 us informed about how it all works.

1 SENATOR KRUEGER: Susan John also from the
2 Assembly.

3 ASSEMBLYWOMAN JOHN: Thank you, Senator.

4 Thank you for taking the time to come and
5 testify today. I know that the Legislature,
6 particularly the Assembly, has been a strong supporter
7 of this program. We share your disappointment that the
8 Governor has eliminated the funding from the 2010-11
9 budget. We are shocked as you are that the Governor is
10 seeking to take back part of the appropriation from the
11 2009-2010 appropriation. And it is a priority of the
12 labor committee to get the funding restored and to get
13 your appropriation for 2009-2010 to be whole.

14 And it's been my life experience that
15 programs run by women really know how to stretch a buck.
16 And I think your testimony today has emphasized that
17 point. And unfortunately, there are too many examples
18 in the budget where black and brown women who are trying
19 to head households on their own with children are
20 getting hurt, and this is just one more example of that.

21 So, thank you for coming to high light that,
22 and we will do our best to make sure you continue to be
23 there for women who are struggling to raise their
24 families on their own. Thank you.

1 SENATOR KRUEGER: Thank you very much.

2 To close hearing one, Joseph Macbeth,
3 Co-President of Direct Support Professional Alliance of
4 NYS.

5 MR. MACBETH: Good to see you. Thank you
6 for your time. I will be brief.

7 I am here to talk about Direct Support
8 Professionals for the second time, about the looming
9 work force crisis that confronts our healthcare system.

10 My name is Joe Macbeth and I am the
11 Assistant Executive Director for the New York State
12 Association of Community and Residential Agencies, which
13 is a membership organization that consists of nearly 200
14 non-profit organizations that employ approximately
15 70,000 people, most of whom provide direct support work.

16 I am also the founder of the Direct Support
17 Professional Alliance of New York State. I am
18 testifying on their behalf in nearly 1,000 members.

19 Direct support professionals are known by
20 many names and they work in many different types of
21 state offices. They are therapy aides. They are
22 caregivers. They are home health aides. They are
23 personal attendants. They are direct support
24 professionals.

1 They work in OMRDD. They work in the Office
2 of Mental Health. They work at OASIS. They work at the
3 Office of Children and Family Services. But regardless
4 of where they work, they are all doing the same thing,
5 they are protecting, nurturing and supporting some of
6 New York's most vulnerable people.

7 Direct Support, it's a noble profession and
8 it's challenging and it's low paid, we all know. And
9 it's those reasons that's created a looming crisis in
10 human services.

11 In 2010, January 2010, the National Council
12 on Disability indicates that the current disability
13 services infrastructure is already strained and will
14 become even more so as baby boomers age and baby boomers
15 start requiring the care of direct support workers.

16 In the arena of developmental disability
17 services, where there's a number of factors that could
18 converge to increase the demand for those services,
19 including babies who are surviving from very low birth
20 rates to increased incidences of autism, people are
21 requiring their services more.

22 It is projected that by the year 2020 the
23 need for direct support professionals will grow by
24 37 percent, while traditionally most of the people,

1 mostly women caregivers, will only grow by seven
2 percent, so we got a perfect storm here.

3 We have to do something about it.
4 Recruitment and retention in this work force is
5 incredible. Turnover rates in home health agencies is
6 up just 71 percent. Home care agencies, 40 to
7 60 turnover rate. Mental health and DED up to
8 50 percent. We need to do something to create a job
9 where people come and stay.

10 Salaries are nice, but we all know those
11 salaries are not going to be the only answer. We do
12 have some ideas. To grow and nurture quality
13 professional direct support work force there needs to be
14 competency based training, credentialing that leads to
15 salaries, and career ladders. Career ladders. People
16 are leaving jobs that they love because they can't
17 afford to stay and provide for their families.

18 We need to provide career ladders.
19 Credentialing would also ensure that people can move
20 from one agency to another and have the same training.
21 It can be done. As with other professions, there should
22 be a code of ethics that guides the direct support work
23 force.

24 Finally -- I said I would be brief. You can

1 read the whole testimony, but I'm going to quote a guy
2 named Dr. Frank Bowe, who is disabled, an advocate, he
3 was the Founding Director of the American Coalition of
4 Citizens with Disabilities.

5 His point was disabilities are a common
6 destiny here. If we live long enough usually the
7 hearing begins to go first, then your vision and then
8 your mobility. We are all going to need services from a
9 direct support professional at some point in our lives.

10 I don't know, I can't speak for you, I can
11 only speak for myself, I want those people to be trained
12 and competent and skilled.

13 I'm happy to answer any of your questions.
14 Thank you for your time.

15 SENATOR KRUEGER: Again, thank you very much
16 for coming to testify this afternoon.

17 We are going to take a few minute break
18 before we start the Human Services/Social Service
19 hearing.

20 (Hearing concluded.)

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