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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING COMMITTEE ON LAW AND GOVERNMENT

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Room 400, City Hall

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Philadelphia, Pennsylvania

Tuesday 7/10/01

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12:16 p.m.

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RESOLUTION 000476 - Authorizing the Committee on Law
and Government to investigate whether the
City-administered health plan currently and in the
past has provided the most comprehensive and
cost-efficient coverage to City employees for the
premiums paid, and whether the City Could provide
more comprehensive and less costly coverage to the
approximately 8,000 employees and retirees currently
covered by this plan if other options were pursued.

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PRESENT: COUNCILMAN DAVID COHEN, Chair
COUNCILMAN ANGEL L. ORTIZ, Vice Chair
COUNCILWOMAN JANNIE L. BLACKWELL

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2 P R O C E E D I N G S

3 COUNCILMAN COHEN: All right. Good
4 afternoon. I'm Councilman David Cohen, the chair of
5 the Council Committee on Law and Government. We're
6 here today in our continuing investigation of the
7 City-administered health plan under Resolution 476.
8 We've been investigating this issue for over a year
9 and a half, and in that time, we've conducted seven
10 hearings.

11 On my way in, I met three veterans of
12 the City Council staff, none of whom are currently
13 in this hearing room, but all are veterans of
14 Council studies and investigations. And I reminded
15 them of this hearing, and they said, Well, we never
16 were able to get any information and we don't think
17 you're going to. And I said, well, we've only spent
18 a year and a half in trying to get some; so far,
19 you've been proven right that we haven't gotten very
20 much, if anything, but we're ready to try at least
21 another year and a half if necessary. But we've
22 conducted seven hearings in the last year and a
23 half, and I hope we don't have to conduct that many
24 in the next year and a half.

25 What we're still trying to do is to get

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2 to the facts on how much the City actually spends on
3 the health benefits coverage that it provides to
4 over 8,000 unrepresented City employees and
5 retirees, including City Councilmembers and their
6 staff. And we're trying to find out whether or not
7 it makes more sense to maintain the present kind of
8 coverage in which there are four union plans and one
9 plan administered by the City. We're trying to find
10 out whether or not it would be better if they were
11 all covered by one plan, which was what the City
12 proposed, according to press announcements and
13 according to reports we've gotten from both the
14 press and from labor negotiators at various times as
15 to the City's position in bargaining.

16 We're trying to get to the facts. We'd
17 like to know whether the plans are negotiated or
18 does the City have anybody who's knowledgeable, does
19 the City do what some of the union-represented plans
20 do -- that is, get experienced staff to help them
21 negotiate plans? Is there any form of negotiations?
22 If there is, who does it? All of this seems to be
23 cloaked in mystery.

24 And we appreciate what Secretary
25 Berkowitz's has testified to, that the documentation

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2 in the City's files seems sparse and in many cases
3 unsatisfactory or inadequate or nonexistent. I
4 think those adjectives are pretty apt descriptions
5 of what she has reported to us over time.

6 Incidentally, no one intends to cause
7 anyone grief by these hearings. What we intend to
8 do is to provide health care for all employees in
9 the best possible way, and that's the function of
10 the legislative body, to see that City employees get
11 the best available and best affordable health plan
12 coverage and do it in the way that is the -- that
13 guarantees the best results for the employees. We
14 think that's what the City Administration ought to
15 be about, they probably are about that, but we'd
16 like to get the facts. And if the facts lead us in
17 a different direction, we'd like to feel that we're
18 making decisions based on an understanding of the
19 facts.

20 Now, we've requested from the
21 Administration writing information and documents in
22 furtherance of this investigation. To date, we
23 received bits and pieces. It was only at our June
24 12th hearing that this committee authorized me to
25 issue subpoenas to get this information. As I said

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2 then, and I'm going to repeat it, I hope it's not
3 taken from the point of view that, Oh, it doesn't
4 mean anything, because I'm afraid if that's the way
5 in which the Administration regards our good-faith
6 efforts to get information voluntarily, I believe
7 that it will be to their disadvantage that we are
8 very serious about this.

9 I said originally that I hoped that such
10 action as issuing subpoenas would not be necessary,
11 but it seems to me that we're moving in that
12 direction. Section 2-401 of our Home Rule Charter
13 explicitly grants City Council the right to issue
14 subpoenas in conjunction with Council
15 investigations. Back in 1951, shortly after the
16 doctrine of the Home Rule Charter, Gerald Flood, a
17 very venerable and highly respectable jurist, had a
18 case before him in which the City Council was
19 investigating the Water Department and the mayor
20 then -- I don't believe it was Joe Clark yet -- but
21 the then-Mayor said, Well, Council, you know, you
22 never acted up like this before, we'll put you in
23 your place. And they just refused to obey, and so
24 the President of City Council filed the necessary
25 papers in court to require compliance. And in a

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2 very fine decision, Judge Flood said, Yes, Council
3 has to have a power to get the information necessary
4 to conduct its Home Rule Charter activities and that
5 the Council had the right to that information, that
6 the subpoenas had to be obeyed. Since that time,
7 it's been accepted as the law, and it's never been
8 necessary for the Council to move in the direction.

9 This, to many, appears to be required to
10 move because, I have to tell you, this committee is
11 not going to be satisfied with just dribs and drabs
12 of material. We think we're entitled to it if in
13 fact -- let's take one document and talk about it.
14 I'm going to ask the City Solicitor to appear as a
15 witness in moment. About seven years ago, there
16 appeared in the press a statement that the City said
17 that it was going to be demanding consolidation of
18 all of the health plans. This item appeared, I
19 believe, during the time that there were
20 negotiations between the City unions and the City
21 Administration. The City said it had made studies
22 and had documents approved that such a consolidation
23 would be economical and in the best interests of
24 everyone in the City. Since then, I've received
25 complaints over the years that no such information

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2 was ever produced, and allegations were made that
3 the City was not acting in good faith when it made
4 that statement.

5 I took the position -- and I hope I'm
6 not forced to eat crow about it later, but I took
7 the position that if the City said it, it had to be
8 so. Because my theory is that the only way a city
9 government survives is by continually acting in good
10 faith with the people it represents. I said if the
11 City said so, then there had to be evidence of it,
12 and that's important evidence for this committee to
13 consider as it studies the whole subject.

14 Well, thus far, we have not gotten
15 evidence. First, there was doubt expressed as to
16 whether there ever was any such document. Then we
17 were told that there might have been one document,
18 that one person might have had it, but nobody
19 inquired as to whether the person had it. Then we
20 were told that yet another person had it, but still
21 no inquiry had been made of the person to produce
22 it. We were then told, Well, the person did finally
23 produce something that appears to be such a
24 document, and then the last refuge was chosen.

25 And, Mr. City Solicitor, you're

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2 apparently (inaudible) it because what we got in the
3 mail was not the document but a letter from you, and
4 I'm now inviting you to come to the witness stand.
5 We got a letter addressed to -- I believe it was
6 signed by you but I believe it was addressed to the
7 Chief of Staff, Joyce Wilkerson, saying that the
8 material is proprietary, confidential, and
9 privileged and that it would be harmful to the City
10 if the information were released. Well, with that
11 statement, what I would like to remind you is that
12 Section 2-401-A of our Charter requires the Mayor to
13 -- and I don't want to quote from that section of
14 the Charter -- to communicate to (inaudible).

15 Now, our request is for financial
16 matters. With respect to my question to you,
17 Mr. Trujillo, in light of the legal obligation of
18 the Mayor, how can you legally justify your advice
19 to deny the City Council, a coequal branch of the
20 government, that is exercising its Charter-granted
21 power to conduct inquiries and investigations, how
22 can you deny this Council access to this financial
23 information?

24 And I'd like you to provide this
25 committee with an answer that takes into account the

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2 requirements spelled out in the Law Department
3 Client News -- that's the name, I think, of the
4 publication issued by the Law Department. In the
5 May 31, 1997 edition, there was an article entitled
6 "Privileges," which says that, and I'm quoting:
7 "The party asserting the privilege must give
8 reasons that are precise and certain."

9 And I've studied your letter, both as a
10 member of Council and as a member of the bar, and I
11 do not find any statements in the letter that would
12 give reasons that are precise and certain.

13 So, Mr. Trujillo, please go ahead and
14 respond to the questions I've raised.

15 And we thank you for your presence. We
16 know you're busy elsewhere, and we're hopeful that
17 you're going to put an end to the bobbing and
18 weaving and that we're going to be getting real
19 information.

20 MR. TRUJILLO: Thank you, sir. Good
21 afternoon, Mr. Chairman. My name is Kenneth
22 Trujillo. I'm the City Solicitor of Philadelphia.

23 And my understanding of your request
24 relates specifically to a document -- actually a
25 request, number 6-21-14, relating to a document

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2 which was a request which was, "Analysis by City
3 Administration regarding the cost-saving that could
4 be achieved if all health plans covering City
5 employees were consolidated." And my office in
6 connection with this request, upon the request of
7 the Chief of Staff and Linda Berkowitz, reviewed
8 documents that would be responsive to that request
9 by this committee.

10 There is a document that was responsive
11 that was not turned over, which is a privileged
12 document, and the privilege that has been asserted
13 and is being asserted in connection with that is the
14 work product privilege. The document that we're
15 speaking about is a document that was prepared at
16 the request of counsel in connection with the
17 preparation for the last set of municipal labor
18 negotiations, and it was a document that was
19 prepared by an expert for counsel. And,
20 accordingly, it is fairly classic work product
21 privilege.

22 COUNCILMAN ORTIZ: Excuse me.

23 COUNCILMAN COHEN: Councilman Ortiz?

24 COUNCILMAN ORTIZ: Prepared for counsel,
25 counsel that was representing the City?

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2 MR. TRUJILLO: Correct.

3 COUNCILMAN ORTIZ: So it was prepared
4 for the City?

5 MR. TRUJILLO: Correct.

6 COUNCILMAN ORTIZ: Are you maintaining
7 that the City is defined as the executive office,
8 the Mayor's Office, and that we are not a part of
9 that coequal aspect and a coequal branch of that?

10 MR. TRUJILLO: I'm not saying that at
11 all.

12 COUNCILMAN ORTIZ: Well, if you're
13 saying that it is the City's proprietary business
14 information, then I believe that we're a part of
15 that structure. That's a part of our proprietary
16 business information.

17 MR. TRUJILLO: There's no question
18 that --

19 COUNCILMAN ORTIZ: And that's
20 information that we would need to make any decisions
21 and develop any position positions as to what
22 policies and public policies should be implemented.

23 MR. TRUJILLO: Well, there's no question
24 that City Council is a part of the City, but I also
25 think that --

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2 COUNCILMAN ORTIZ: So when you say that
3 this is the City, you don't mean to say the City,
4 a/k/a the Mayor's Office, not excluding -- and
5 excluding the City Council, you don't mean to say
6 that.

7 MR. TRUJILLO: Well, Councilman, I think
8 you're aware that very often, the City acts through
9 its --

10 (Sound system failure.)

11 COUNCILMAN ORTIZ: It's on.

12 MR. TRUJILLO: Are we back? I don't
13 think it is.

14 COUNCILMAN COHEN: Would the
15 sergeant-at-arms please restore the -- the cutoff
16 was not at the request of the committee, Mr.
17 Trujillo.

18 MR. TRUJILLO: If you don't like the
19 answers, just let me know.

20 COUNCILMAN COHEN: Go ahead.

21 MR. TRUJILLO: Very often, the City will
22 act through its -- one of the its departments or
23 agencies or commissions. And very often, in fact,
24 this Council authorizes, for instance, a classic
25 example is the Commissioner of Public Property to

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2 act on behalf of the City. The City branch of
3 government that is charged with the negotiation of
4 contracts with its municipal unions is not City
5 Council; rather, it is part of the Administration.
6 We have an Office of Labor Relations and the Law
7 Department and the Mayor's Office --

8 COUNCILMAN ORTIZ: Well, we're talking
9 about withholding information from this body. We're
10 not talking about taking away the authority of
11 giving certain agencies of the City to go ahead and
12 negotiate for the City, but we function on the basis
13 of information. And when we give the authority to
14 go out, we expect to be informed as to what happened
15 and how that performance took place.

16 And what you're saying is that once we
17 give the authority for you to negotiate, we have no
18 business getting any information as to what happened
19 in your negotiations.

20 MR. TRUJILLO: To the contrary,
21 Councilman. I'm not saying, first of all, that
22 you've given the Administration the authority to
23 negotiate those contracts. I think that those
24 negotiations are not a creature of City Council's
25 authority. The authority that the Administration

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2 has --

3 COUNCILMAN ORTIZ: You mentioned Public
4 Property and you mentioned that we authorize, and as
5 an example, that's what I was referring to.

6 MR. TRUJILLO: Okay.

7 COUNCILMAN ORTIZ: And, again, what
8 we're saying is that you are part -- and you have to
9 because we are the authority that appropriates.
10 When you sign a contract, you got to come back to us
11 and we have to see where that money is going to come
12 from. And how are we going to know that unless get
13 hold of the basic information as to how you made
14 those decisions? Very easy. I don't think between
15 the Mayor's Office and this Council that there is a
16 legal privilege to withhold information.

17 COUNCILMAN COHEN: Is there in your
18 opinion, City Solicitor, and if so, we'd ask, are
19 there any cases that support your position? Because
20 I noted in your opinion, I found no citation of any
21 authorities because it represents points of view
22 that are mysterious to us.

23 We have the duty of making out the
24 budget, of passing a budget, of appropriating
25 money. We're very much interested in the question

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2 of economy of services because that helps us to
3 decide the budgetary requirements, whether there's a
4 need for tax increases. It's very vital to our
5 duties to have all of the information.

6 So we're very much interested in the
7 policy question as to whether or not consolidation
8 of all of the plans into one will achieve economic
9 gains for the City. It's not the only issue
10 involved, but it's one of the major issues that are
11 involved. And, therefore, as Councilman Ortiz just
12 said, we don't understand that there could be such a
13 thing as a privilege that protects one part of the
14 government from the other part of the government.
15 We're all part of the same government.

16 MR. TRUJILLO: May I respond,
17 Councilman?

18 COUNCILMAN COHEN: Well --

19 MR. TRUJILLO: First of all --.

20 (Unintelligible, parties talking over
21 each other.)

22 MR. TRUJILLO: And I'm prepared to
23 respond whenever you're ready for me to respond.

24 If the first question -- and I think
25 we're talking right now about two questions. I was

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2 here to respond specifically about a privilege that
3 was asserted in connection with one document.

4 COUNCILMAN COHEN: A privilege asserted
5 as a reason for not furnishing to Council
6 information?

7 MR. TRUJILLO: Correct, that's correct.
8 And that privilege -- and you'd asked for the
9 specific privilege. And I think I responded that it
10 was the work product privilege.

11 Now, the second question, as I
12 understand Councilman Ortiz's question, is --

13 COUNCILMAN ORTIZ: But the work product
14 that was produced for the City -- and I think we
15 have -- we are owners of that we are owners of that,
16 we are owners of that work product.

17 MR. TRUJILLO: And, Councilman, if what
18 your request is to me now is for me to opine as to
19 whether City Council -- or as to whether there is
20 this broad -- that the privilege that is being
21 asserted on behalf of the City is any one of the
22 branches of government is the owner of that
23 privilege as well? I mean, is -- to make a
24 distinction? I'm just trying to get to your
25 question.

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2 COUNCILMAN ORTIZ: I just want to know
3 how we are supposed to make decisions as to whatever
4 contracts you negotiate and that you then bring back
5 to this Council to be funded, and then when we ask
6 for information as to how those contracts got done,
7 you say that that's work privilege.

8 MR. TRUJILLO: No, I'm just talking
9 about one document, Councilman.

10 And my understanding is that with
11 respect to every other request that has been put, at
12 least every request that the Law Department has
13 reviewed, all documents, with the exception of this
14 one document, has been turned over to this
15 committee.

16 And so, remember one thing about
17 privilege -- both of you are lawyers. The essence
18 of privilege is a fact and the only way a document
19 can remain privileged is by it not being turned over
20 to third parties.

21 COUNCILMAN ORTIZ: But we are not a
22 third party; we are the City.

23 MR. TRUJILLO: There's no question about
24 that.

25 COUNCILMAN ORTIZ: You and us are the

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2 City.

3 MR. TRUJILLO: There's no question about
4 that.

5 COUNCILMAN ORTIZ: We are not third
6 parties.

7 MR. TRUJILLO: In connection with who is
8 the holder of the privilege, and I'll be happy to do
9 it in a more formal way, and I'll be happy to
10 respond in an opinion as to whether it -- because if
11 the question is, is there a distinction between
12 Council and the Administration or Council and other
13 departments and agencies for purposes of privilege?
14 I'll be happy to respond to that.

15 I'm not -- sitting here today, I'm not
16 prepared to give you an opinion on that, but I'd be
17 happy to do that in writing.

18 COUNCILMAN ORTIZ: Go ahead, David, go
19 ahead.

20 COUNCILMAN COHEN: I'm just trying to
21 figure out what it was, Mr. Solicitor, that you just
22 said. Are you saying that your letter was not a
23 final answer?

24 MR. TRUJILLO: No. To that document, as
25 to the document, as to the document that we're

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2 talking about, which was a request under 6-21-14, we
3 responded, and a privilege was asserted based
4 primarily upon attorney work product. And so the
5 document is not -- the advice given by the Law
6 Department was that it needed not be turned over,
7 that it was protected by privilege.

8 COUNCILMAN COHEN: Well, whose work
9 product would it be?

10 MR. TRUJILLO: The attorneys
11 representing the City in connection with the labor
12 negotiations.

13 COUNCILMAN COHEN: And who authorized
14 the appropriations that pay the salaries of those
15 City employees?

16 MR. TRUJILLO: I'm confident that it was
17 this Council.

18 COUNCILMAN COHEN: Well, then we must
19 have something to do with their employment.

20 MR. TRUJILLO: I'm confident that you
21 do.

22 COUNCILMAN COHEN: And so we must have
23 been the people, at least in part, for whom the
24 information was prepared. How could the privilege
25 be asserted against those who are paying for the

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2 services?

3 MR. TRUJILLO: Councilman, I'm
4 absolutely, absolutely happy to respond to the
5 question -- again, if the question is, is there a
6 distinction between a department and an agency and
7 Council in connection with a privilege and can a
8 department or an agency have a privilege that is
9 separate from being citywide, I'm happy to respond
10 to that. I'm fairly confident I know what the
11 answer will be. I did not come here today to
12 respond to that question, but I'm happy to do so.

13 COUNCILMAN COHEN: Go ahead.

14 MR. TRUJILLO: I'm not prepared today.

15 COUNCILMAN COHEN: Oh, you're not
16 prepared today.

17 MR. TRUJILLO: No, I --

18 COUNCILMAN COHEN: All right, we'll have
19 to arrange another date shortly.

20 MR. TRUJILLO: I'd prefer to do that in
21 writing. I'll be happy to give you an opinion on
22 this.

23 COUNCILMAN COHEN: Well, how soon do you
24 think we'd get that?

25 MR. TRUJILLO: We could probably do that

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2 within a week.

3 COUNCILMAN COHEN: Within a week, all
4 right.

5 MR. TRUJILLO: And just so I'm clear,
6 the question, as I understand it, is: Can a
7 department of the City assert a privilege for
8 purposes of that department as opposed to -- which
9 it holds, as opposed to other parts of City
10 government?

11 COUNCILMAN COHEN: That's not the
12 question as I see it.

13 MR. TRUJILLO: Then what --

14 COUNCILMAN COHEN: The question as I see
15 it is that City Council is engaged in a fundamental
16 part of its functioning, arriving at a policy
17 position with respect to what is in the best
18 interests of the City employees economically and
19 from every point of view. It understands that the
20 City, in the form of the Mayor's Office and those
21 subordinates of the Mayor, prepared a study
22 allegedly indicating that a different form than
23 exists now with respect to the provision of health
24 services is desirable. We would like to consider
25 that.

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2 If we find that it is desirable, it
3 would be helpful to us because it will mean that
4 we're going to have to appropriate less money than
5 we do now. On the other hand, if it indicates that
6 it's going to provide an inadequate service or is
7 more costly than the current system, then we are
8 going to probably feel unkindly toward adopting this
9 method because it will mean a greater financial
10 burden for the City.

11 Now, that's what we're investigating.
12 In the course of that investigation, we have asked
13 you for information on that study. We said produce
14 the study, we'd like to see it, 'cause we've never
15 seen it. We've seen reference to it in the press.
16 We don't know how it got in the press; it may well
17 have been that the City announced that to the press,
18 but we don't know how it actually got into the press
19 as of this moment. But, certainly, it's information
20 that we need to reach a conclusion.

21 Now, that's the question.

22 COUNCILMAN ORTIZ: It also-- Councilman,
23 it involves credibility, it involves credibility.

24 (Applause.)

25 COUNCILMAN ORTIZ: It involves the

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2 statements that are made to this Council time and
3 time and over again without any documentation
4 whatsoever of how much money is going to be saved or
5 how much money is going to cost, and we make
6 decisions based on non-information. And I think
7 it's a basis right now of credibility of statements
8 that are made to the public. And obviously,
9 statements were made to the press based on this
10 document.

11 And we just want to be able to get down
12 to the aspect of believing what is said to us, not
13 what is painted but an issue of credibility and that
14 we would like to make a decision based on facts and
15 not on just plain rhetorical exercises.

16 COUNCILMAN COHEN: And, Mr. Solicitor,
17 my recollection of the press report was that it was
18 based on the City's statement stating that the labor
19 organizations were acting against the best interests
20 of their members a and against the best interests of
21 the taxpayers because they were refusing to consider
22 a proposal offered by the City to consolidate the
23 plans, which would provide both a more economic
24 system of providing health care for City employees
25 and a better system. And it was the City who, I

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2 strongly believe, issued that press release.

3 So that what we're doing is asking for
4 information which you may have made available -- I
5 don't mean you personally, but which the City
6 executives may have made available to the press
7 because I cannot -- I just cannot believe that the
8 press would have accepted the statement without
9 saying, Well, we'd like to see it, show us. And in
10 view of that, we can't understand why that
11 information is not being made available to us in the
12 City.

13 MR. TRUJILLO: Mr. Chairman, I do not
14 have the benefit of a lot of background on this.
15 Again, I will look at the legal issue involved here,
16 which is whether or not there is privilege that
17 attaches, and we'll be happy to respond to you.

18 I will want to take a look at the
19 transcript because that question got a little longer
20 as the last couple of minutes went by, and so I will
21 respond to that again within a week.

22 COUNCILMAN COHEN: All right, we'll
23 accept your notion.

24 I understand the attorney for one of the
25 labor groups -- maybe more than one, I have no idea

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2 -- is here. Miss Willig? I noticed you indicating
3 agreement or disagreement with what the City
4 Solicitor was saying. Why don't you come forward.

5 MR. TRUJILLO: Councilman, may I be
6 excused at this point?

7 COUNCILMAN COHEN: Yes, go ahead.

8 MR. TRUJILLO: Thank you very much.

9 COUNCILMAN COHEN: And we'll expect to
10 hear from you, Mr. Trujillo, within a week.

11 MR. TRUJILLO: Yes.

12 COUNCILMAN COHEN: Very good and thank
13 you very much for being here.

14 Miss Willig?

15 (Witness comes forward.)

16 MS. WILLIG: Thank you very much,
17 Councilman Cohen and Councilman Ortiz.

18 I frankly don't know where to begin.

19 COUNCILMAN ORTIZ: Well, begin with the
20 beginning.

21 MS. WILLIG: My name is Deborah Willig
22 of Willig, Williams & Davidson. And for the past
23 thirty years, we have had the privilege of
24 representing District Council 47; for the past
25 fourteen years, we've had the privilege of

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2 representing Firefighters Local 22; and we are
3 formally general counsel to District Council 33.
4 So, unlike Mr. Trujillo, we -- in particular, I have
5 substantial experience in the negotiations of the
6 labor contracts with the City of Philadelphia.

7 I'd like to address first the question
8 of whether the City Administration would be
9 obligated to produce the consolidation memo in
10 response to a request of one of our clients and also
11 whether the City's argument of proprietary business
12 information would justify a refusal. I'm going to
13 cite cases and I will submit them this the Council
14 if they would like.

15 "The duty to bargain includes an
16 employer's obligation to provide information to the
17 unions that is necessary for the unions to carry out
18 their bargaining functions. This duty to provide
19 information is very broad. Requested information
20 need only be relevant to the union's exercise of its
21 duties as bargaining unit representatives in order
22 for the obligation to attach." Commonwealth of
23 Pennsylvania, Department of Public Welfare.

24 "Whether requested information is
25 relevant to the union's bargaining function is to be

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2 cases.

3 As applied to our facts, a City union
4 request for the consolidation memo would clearly
5 fall within the scope of the employer's duty to
6 provide information since the memo is relevant to
7 the formulation of bargaining proposals on the issue
8 of health care and arguably relevant to existing --
9 to policing the existing contract.

10 As stated above, we are guaranteed
11 access to the information that's relevant. The
12 right is not absolute, however, and it can be
13 limited. The employer cannot merely, however,
14 assert confidentiality, for example, and issue a
15 blanket rejection of the union's request for
16 information. The employer asserting the
17 confidentiality must first make a reasonable effort
18 to accommodate the information request, including
19 bargaining with the union about its response. If
20 the employer makes no effort, then the employer has
21 committed an unfair labor practice, even if the
22 information is in fact confidential.

23 I could go on, but it is well settled.

24 COUNCILMAN ORTIZ: But, Miss Willig --

25 COUNCILMAN COHEN: Let me announce the

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2 presence of Councilman Blackwell as well as
3 Councilman Ortiz and myself.

4 COUNCILMAN ORTIZ: Miss Willig, I can
5 see when there is employer-employee negotiations
6 taking place and the employer trying to keep
7 information from the employees. And I know that at
8 the one point -- but we are -- they're trying to
9 keep information from us.

10 MS. WILLIG: Councilman Ortiz, I do not
11 profess to be an expert in privilege, although I've
12 had some experience with it. And I will tell you
13 that I spoke in depth to my colleague and partner
14 Ralph Teti, who, as you may remember, was Chief
15 Deputy City Solicitor for Labor Relations for this
16 City for 16 years.

17 COUNCILMAN ORTIZ: Yes, 16 years.

18 MS. WILLIG: And when he saw
19 Mr. Trujillo's response to City Council, he said in
20 his knowledge there is no intergovernmental, no
21 interagency, no interdepartment privilege that he
22 knew of and, although it was a bad time in his life,
23 I can tell you that he was counsel to several, if
24 not many, of the City officials during the MOVE
25 investigation.

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2 COUNCILMAN ORTIZ: Yes.

3 MS. WILLIG: And if anyone would no
4 whether there's an intragovernmental privilege,
5 Mr. Teti would know.

6 But let me put this in a slightly
7 different context. Although reliving the pain of
8 the 2000 negotiations is not easy, but the City
9 Solicitor's letter to this Council and statements
10 today are a repetition of the arrogance and
11 ignorance of the entire legal team during the 2000
12 negotiations, as I can speak to it, with District
13 Council 47 and Local 22. And let me say how.

14 I don't believe that you have even been
15 given the name of the so-called consultant whose
16 study is allegedly work product. I firmly believe
17 that the work product -- just because it's requested
18 by an attorney, if it has not been done by an
19 attorney doesn't provide that it is work product,
20 and I think you have both eloquently stated that
21 basically you paid for the study so you're entitled
22 to it, and I think that is well settled.

23 But having said that, if this study was
24 one done by one Frank Doyle & Associates, let's give
25 a little bit of history to that because I have not

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2 had the privilege of attending the previous hearings
3 of this committee. And if I am repeating, please
4 feel free to stop me.

5 But through, I guess, beginning in May
6 and through July or August of the year 2000, there
7 were tens, if not dozens, of hearings in an Act 111
8 proceeding, which is the basis for formulating
9 uniform collective bargaining contracts in this
10 state, as you are well aware. I had the
11 responsibility and privilege of preparing the health
12 care testimony for Local 22 and for cross-examining
13 the City's so-called expert.

14 The first thing that came to mind when
15 Mr. Trujillo was testifying was if I thought that a
16 subpoena issued to us wouldn't include the turning
17 over of my expert's reports as confidential, that is
18 so far from accurate that I can't even imagine
19 someone who has practiced law asserting that.

20 Now, I can pull out the subpoenas that
21 we issued to the City of Philadelphia requesting
22 each and every document they had concerning the
23 allegation, bold allegation, never proven that
24 consolidation of the four union health care and
25 non-represented plans would be in the best

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2 economical interests of the City. They never
3 produced this consolidation memo to us, which means
4 they committed a fraud upon the arbitration panel.
5 That is outrageous and probably illegal. And I can
6 tell you, after today, we will be investigating
7 that.

8 But can you imagine your predecessor
9 City Council President sitting up on that podium
10 when a City Solicitor of the former administration
11 refused to turn over a document that he passed a
12 budget to pay for, a veritable United Nations, four
13 law firms hired by the City, in addition to the
14 Solicitor's Office to defend these proceedings, four
15 law firms saying we can't turn this over. He would
16 have gone ballistic. There isn't any question in my
17 mind about that.

18 COUNCILMAN ORTIZ: That's right.

19 MS. WILLIG: I cross-examined Frank
20 Doyle of Doyle & Associates. And I believe getting
21 through all of the periphery of turning over the
22 document with regard to the seminal issue that this
23 committee is confronting, and that is what is --
24 what comprises the cost of health care, what
25 comprises the cost? And let me actually take a step

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2 backwards.

3 I also asked Mr. Doyle for his
4 credentials. Local 22 had hired the hired the Segal
5 Company, which is a nationally known employee
6 benefits consulting company with offices all over
7 the United States, including one recently opened in
8 Philadelphia. They testified, in answer to the same
9 question, that it was demographics, experience, and
10 a margin. Mr. Doyle, with experience virtually
11 nowhere except in the State of New Jersey,
12 representing some districts with employers-only
13 sponsored plans, no negotiated plans, basically did
14 testify to the same answer: experience,
15 demographics, and margin.

16 And I asked him -- and if no one has
17 submitted this -- the testimony of these hearing to
18 the Council, I have checked with the new president
19 of Local 22, I will be happy to dig them out of
20 storage and submit this to you. Demographics is how
21 many single people are in a unit, how many married
22 people are in a unit, how many kids, and what are
23 their ages. Experience is over a past defined
24 period, a year or two of a given contract with Blue
25 Cross or Aetna or whoever, how many people have gone

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2 the percentage of profit that Blue Cross wants to
3 take, and when asked about that, it was like
4 1 percent, if I recall his testimony, meaning that
5 98 or 99 percent of a premium for health care costs
6 is based on the demographics and experience, and
7 1 percent is the margin for contingencies. What if
8 these people get sicker than we predict?

9 Then we came to the Administration, and
10 it was remarkably similar to the shell game that the
11 Administration is playing with you today.
12 Allegedly, allegedly, there are, I think, two or
13 three people in the Personnel Department who
14 administer the non-represented class health. It's
15 such a boldfaced lie that it is offensive. The
16 arrogance level is just extraordinary.

17 When questioning the City official,
18 Well, when somebody's hired in a department, who do
19 they talk to? Well, they talk to the personnel
20 officer. Where do they get their health-care
21 information from? I really don't care whether
22 they're represented by any of the four City unions
23 or not represented. They get their initial
24 information from the Personnel Department, and each
25 one of the, how many, 17, 21, whatever it is, City

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2 departments. Well, did you count any of their
3 salaries in the administrative costs? No. I mean,
4 it's just -- it is a shell game.

5 What also occurred to me listening to
6 Mr. Trujillo is one thing: Why, I asked myself, are
7 they afraid to show you that memo?

8 We, by law, will have to make a demand
9 by November of this year to start bargaining again
10 on behalf of Local 22. We will be very shortly in
11 the process of formulating our proposals for
12 bargaining. Formulating the proposals for
13 bargaining is one of the legal bases on which we are
14 entitled to information. Rest assured that we will
15 be looking for that information, and if they don't
16 give it to us, we will go to court for sanctions.

17 COUNCILMAN ORTIZ: You're going to --

18 MS. WILLIG: Let me just finish if I
19 play.

20 Why won't they give it to you? Because
21 it either doesn't exist, or if it does exist, it
22 doesn't prove what they say. If it did support
23 their contentions that consolidation would save them
24 money, they would have given it to you right off the
25 bat. Here we are, this is our proof.

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2 But the bottom line is, I would bet
3 almost everything I own that Frank Doyle did the
4 study, that the study is flawed, that it was bought
5 and paid for by political contributions, and that it
6 has no merit. And you can see that in the directed
7 cross examination of the Local 22 interests
8 arbitration hearings in of last year.

9 COUNCILMAN COHEN: Thank you very much.
10 (Applause.)

11 COUNCILMAN COHEN: Councilman Ortiz.

12 COUNCILMAN ORTIZ: What makes you think
13 anything you negotiate is going to be complied
14 with?

15 MS. WILLIG: You know, I would say,
16 having talked to members of the executive board, but
17 also attending numerous meetings with members of
18 Local 22, the single most asked question after
19 November 30th, whenever the award finally came out,
20 was, what does "final" mean? We thought the award
21 was final and binding.

22 Regrettably, this administration follows
23 closely in the footsteps of the prior administration
24 of ignoring the law when it so chooses. And we are
25 currently in the process of arbitrating one of the

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2 key provisions very clear from the arbitrator
3 regarding turning in sick leave and using it to
4 purchase additional health care coverage after
5 retirement.

6 It is outrageous at best that the City
7 has chosen to follow this course. It is once again
8 paying for the architect of this entire
9 consolidation, Mark Foley, who has, I think, never
10 sat at a health and welfare meeting in his entire
11 professional life and, therefore, is ignorant of the
12 working of health and welfare coverage and is,
13 frankly, I believe, from his own mouth to me, the
14 single most vociferous proponent of this
15 meaningless, baseless, and unsupported contention.

16 COUNCILMAN COHEN: Miss Willig, we were
17 told at the last hearing that the City was refusing
18 to pay the medical expenses for work-related
19 injuries. Are you familiar with that problem?

20 MS. WILLIG: A little bit from District
21 Council 47, a little bit more from Local 22.

22 There is an ongoing problem. It affects
23 all of the City unions and I think, frankly, FOP
24 Lodge 5 has made a little bit more progress than we
25 have, not for lack of trying.

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2 It's kind of -- again, it's just
3 ignorant because you're robbing Peter to pay Paul.
4 The City, as I'm sure Council is well aware, is
5 self-insured for Worker's Compensation, but there
6 are benefits -- there are benefits and burdens for
7 going one of two routes that you can if you are a
8 City employee injured on the job. You can either go
9 under what we call Regulation 32 of the civil
10 service regulations or you can proceed through
11 Worker's Compensation.

12 The City insures most of its employees
13 or -- I take that back. Most of the employees of
14 the city are insured through Blue Cross, regardless
15 of what union they're in or non-represented. A
16 wholly-owned subsidiary of Blue Cross, Comp.
17 Services Inc. (CSI), is the third-party
18 administrator of the Worker's Compensation program.

19 The unions' argument has been that the
20 union health and welfare funds should not be
21 providing either health coverage -- for example,
22 operations, which are part of the experience that
23 goes into a premium factor, or maybe even a bigger
24 per-person cost, the prescription dollars, because
25 in the City-administered plans, we pay the

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2 prescription for people who are injured on duty.
3 They ought to be covered by CSI. It is a huge bone
4 of contention. It has been an ongoing problem for
5 years that I know of. But, again, it's myopic, it's
6 robbing Pete to pay Paul.

7 What the City ought to be doing is
8 making sure that CSI is monitoring the claims and
9 paying the ones that it should, because when we come
10 to the bargaining table, the City's -- and I don't
11 care what union it is. The City's first answer is
12 always, You cost too much. Well, yeah, when we're
13 shouldering the burden of work-related injuries that
14 ought to be on your budget line, not ours, maybe we
15 are, but they don't care.

16 COUNCILMAN COHEN: 'Cause that's a
17 problem I think we're going to be having to deal
18 with at a later time.

19 MS. WILLIG: Mm-hmm.

20 COUNCILMAN COHEN: All right, any
21 further questions?

22 (No further questions.)

23 MS. WILLIG: Thank you very much.

24 COUNCILMAN COHEN: Thank you for being
25 here today.

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2 (Applause.)

3 COUNCILMAN COHEN: Miss Berkowitz, would
4 you come forward.

5 (Witness comes forward.)

6 COUNCILMAN COHEN: We'd like to know the
7 status of the production of the documents and the
8 information we've requested.

9 MS. BERKOWITZ: Good morning, Councilman
10 Cohen and members of the committee.

11 COUNCILMAN COHEN: Good morning.

12 MS. BERKOWITZ: I'm Linda Berkowitz,
13 Deputy Secretary of Financial Oversight.

14 At the last hearing, the committee
15 requested certain information, and I have a packet,
16 I have material with a cover letter to the committee
17 Chair and I'll be happy to go through. . . the
18 material.

19 (Packet of information distributed to
20 committee members.)

21 COUNCILMAN COHEN: Thank you.

22 MS. BERKOWITZ: I would also, if I may,
23 just like to make a very brief statement about
24 something that's of concern to me.

25 I have a copy of a letter that was sent

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2 to the committee chair by AFSCME District Council 47
3 in which my comments to the committee were
4 characterized, and characterized very inaccurately.
5 According to the letter, it says that Linda
6 Berkowitz's recent testimony before the subcommittee
7 on Law and Government was that the -- that I
8 testified about the poor quality of both the
9 benefits and administration of the City's health
10 plan.

11 I think, as everyone who was present for
12 all of those hearings is well aware, I never
13 testified to that effect. In fact, at the first
14 hearing that I did testify before, Joyce Wilkerson
15 was here, the Mayor's Chief of Staff, and we both
16 characterized the benefits as excellent. And what
17 we said and that was in Miss Wilkerson's letter to
18 the Councilman, the first letter, conveying material
19 to the committee was that the benefits were
20 excellent. It was the documentation, not the
21 administration, but the documentation that was
22 unsatisfactory.

23 So I want to clarify that before the
24 committee and those who were here in the audience
25 who may have had a part in the erroneous

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2 characterization of my testimony.

3 Thank you.

4 COUNCILMAN COHEN: All right, the
5 committee notes Miss Berkowitz's interpretation of
6 her previous testimony.

7 Now I'm going to ask the staff members
8 -- to what degree do you believe you've complied
9 with the request of the committee for the production
10 of the material?

11 MS. BERKOWITZ: I'm sorry, are you
12 talking to me, Councilman Cohen?

13 COUNCILMAN COHEN: The question was, to
14 what extent have you complied with the request of
15 the committee?

16 MS. BERKOWITZ: I believe that in going
17 through your request of June 4th, we have complied
18 with, I would say, the vast majority of
19 documentation, with the exception of the request
20 that the City Solicitor testified to earlier today.

21 COUNCILMAN COHEN: All right.

22 MS. BERKOWITZ: In the letter dated July
23 10th from Miss Wilkerson to you, we have -- and I
24 would like to read that record if I may into the
25 record.

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2 COUNCILMAN COHEN: Go ahead.

3 MS. BERKOWITZ: Dear Councilman Cohen:

4 In further response to the request from the
5 Committee on Law and Government for information on
6 the City-administered health plan, additional
7 information is enclosed.

8 3-8-13. The attached is an analysis of
9 the health plan savings and avoided costs generated
10 by the City since FY 1993 with the assistance of
11 Capital Management Inc.

12 3-8-16. The attached compares the
13 medical, dental, optical and prescription coverage
14 under the City-administered plan with that provided
15 through District Council 47's plan.

16 In addition to this material, the
17 committee requested a chronology of the process used
18 for the City-administered year 2001 health plan.
19 That timeline is attached and it also includes the
20 anticipated schedule for the year 2002 plan.

21 The committee also requested information
22 pertaining to spousal coverage. The new labor
23 contracts with DC 33 and DC 47 negotiated last year
24 extended retiree health benefits for spouses and
25 other eligible dependents for five years after

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2 retirement effective July 1, 2000. This benefit was
3 also extended to the spouses and dependents of City
4 retirees who were not represented by a union.

5 Questions had also been raised
6 concerning the change in prescription coverage for
7 post-City credit retirees in 2001. In year 2000,
8 these individuals could purchase prescription
9 coverage for approximately \$682 annually with
10 co-payments of the higher of \$5 generic, \$10 brand,
11 or 20 percent, up to a maximum benefit of 1500
12 annually.

13 Unfortunately, the existing provider,
14 PCS, quoted substantially increased costs for year
15 2001 due to the high utilization rates among
16 subscribers. In effect, continuing the existing
17 program would have meant that a single subscriber
18 would have had to pay approximately \$1500 annually
19 in order to receive the maximum annual benefit of
20 \$1500.

21 In an effort to provide coverage options
22 for retirees at more reasonable costs, the City's
23 personnel director approached Independence Blue
24 Cross, which agreed to include prescription coverage
25 in its plan options. In January 2001,

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2 representatives of Blue Cross and the Administration
3 briefed interested members of City Council and
4 Council staff on the various alternatives.
5 Subsequently, five different prescription options
6 were offered to retirees, depending upon the medical
7 plans they selected. For example, a retiree under
8 age 65 who selected the Keystone HMO plan receives
9 unlimited prescription drug coverage. Additional
10 information concerning coverage rates for post-City
11 credit retirees was already given to the committee.

12 As we continue to gather documentation
13 on the City-administered health plan, we will share
14 it with you.

15 And attached is the Philadelphia
16 City-administered group dental, optical, and
17 prescription savings; comparison of plans, both
18 medical and prescription; and the timelines for the
19 year 2001; and the tentative schedule for the year
20 2002.

21 COUNCILMAN COHEN: Thank you. We'll
22 have the staff go through the material and we will
23 be further in touch with you.

24 There's one question, though, that I
25 would like as direct an answer to as possible.

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2 administrators, and if they did not explain a
3 benefit to a new employee, if they did not hand out
4 a form and collect a form, they would still have a
5 full-time job. And we would certainly include in
6 the cost of administering the City-administered plan
7 the cost of any overtime engendered by those other
8 departmental employees.

9 But to our knowledge, that overtime cost
10 is not incurred.

11 COUNCILMAN COHEN: Well, is there any
12 study or any documentation of what services are
13 rendered by any departments, by whom and how much
14 time it takes?

15 MS. BERKOWITZ: There has never been a
16 study.

17 COUNCILMAN COHEN: So that if, for
18 example, someone is devoting half of their time to
19 benefits administration, there would be no record of
20 it, say, in the Public Property Department?

21 MS. BERKOWITZ: Councilman, I know of
22 having talked about personnel and budget issues with
23 departments in the City for eleven years now, I do
24 not believe that there are employees in the various
25 departments, outside of the central personnel

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2 department, that expend half of their time on
3 benefits administration.

4 COUNCILMAN COHEN: Well, may it be a
5 little than half, a quarter?

6 MS. BERKOWITZ: I think it's a lot less
7 than half.

8 COUNCILMAN COHEN: How much?

9 MS. BERKOWITZ: I think it's a lot less
10 than a quarter. I think it is a minimal amount of
11 their regular job duties. And most City job
12 descriptions include the wording "and other duties
13 as required." They are a small, a very, very small
14 portion of the responsibilities of people outside of
15 the Personnel Department.

16 COUNCILMAN COHEN: Well, from the
17 experience of my office, if a small amount of time
18 is spent on benefits administration, it's not
19 because there are not problems. It may be because
20 employees have learned by experience that the City
21 does not represent them.

22 MS. BERKOWITZ: Councilman, I would -- I
23 don't --

24 COUNCILMAN COHEN: 'Cause we get many
25 complaints in our office.

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2 MS. BERKOWITZ: I do not accept that as
3 a true depiction, number one. Number two, I don't
4 know what material you have. I don't know the
5 volume of complaints that come to your office, and I
6 don't know the magnitude that those complaints
7 represent.

8 Perhaps if you would be willing to share
9 that -- as you know, the Mayor's Office has asked me
10 to look at the City-administered plan over the next
11 few months, and if you have any information that
12 could inform my review, I would be very appreciative
13 in receiving it.

14 COUNCILMAN COHEN: Well, my personal
15 experience has been that whenever I've sought to get
16 assistance either because of problems I've had or
17 problems that have been brought to our office that I
18 became acquainted with, I would be told to call the
19 person who is the -- who gets paid by the company
20 furnishing, say, the prescription plan. With
21 respect to health benefits, I never was able to
22 discover anybody who would be able to give us any
23 information to me or to any employee of the City.

24 With respect to the prescription plan,
25 there was one person not paid by the City but paid

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2 by the company that supplied the prescriptions.

3 MS. BERKOWITZ: Councilman, I hear what
4 you're saying, and consumer advocacy will be one of
5 the things that I will be looking at in my review,
6 because I agree with you that that is important. I
7 do not now know the extent to which we do or do not
8 perform that activity, and I don't know how we
9 perform it if we do.

10 COUNCILMAN COHEN: All right. Then
11 we'll look forward to some recommendation from you
12 with respect to that.

13 All right, well, thank you, Miss
14 Berkowitz.

15 MS. BERKOWITZ: Thank you.

16 COUNCILMAN COHEN: You're dismissed for
17 today.

18 MS. BERKOWITZ: For today?

19 COUNCILMAN COHEN: Yeah, for today,
20 because there will be a recessed hearing. Following
21 the examination by the staff, they may want to
22 communicate with you informally with respect to any
23 questions they may have about material that they
24 feel should have been supplied which may not have
25 been or for further clarification of what you've

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2 supplied.

3 MS. BERKOWITZ: I will be here all
4 summer, Councilman.

5 COUNCILMAN COHEN: Okay, very good, Miss
6 Berkowitz. Thank you.

7 MS. BERKOWITZ: Thank you.

8 (Witness comes forward.)

9 COUNCILMAN COHEN: Mr. O'Drain, the new
10 President of the Firefighters Union, we welcome you
11 to these hearings and congratulate you upon your
12 installation as president and console you with
13 respect to the burdens you're about to begin bearing
14 or that you've already begun bearing. And we're
15 convinced that you will do an outstanding job.

16 MR. O'DRAIN: Okay.

17 MS. WILLIG: Councilman, before
18 President O'Drain speaks, may I just respond to a
19 couple of comments.

20 COUNCILMAN COHEN: Yes, Miss Willig.

21 MS. WILLIG: I don't believe Miss
22 Berkowitz attended any of the Act 111 proceedings
23 last summer for Local 22, but in response to what
24 she just said to you, a chart, or several charts,
25 were prepared for Local 22, as I'm sure the City

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2 prepared them for FOB Lodge 5. In their charts in
3 order to try to support the allegation that the
4 City-administered plans had less administrative
5 costs than the union plans, they listed, I think,
6 for example, two and one half bodies in the
7 Personnel Department as one of the costs of
8 administration.

9 Linda Seyda, Director of Personnel, in
10 my experience, a truth-teller, when asked on
11 cross-examination, Well, when someone, for example,
12 in the Health Department wants to add a dependent to
13 the health care plan, who do they see? Do they see
14 one of these two people on the chart? No. When
15 someone in Recreation wants to do similar, do they
16 see one of the people on this chart? No. In fact,
17 people in every department, as I stated earlier, in
18 the Personnel Department of every department answers
19 those kinds of questions, so it may not be halftime
20 but it's not a small percentage.

21 In addition, there were, for example,
22 typically both in public-sector and private-sector
23 health and welfare plans -- and, again, this comes
24 out of the ignorance of the chief negotiator for the
25 City, because he's never sat at a health and welfare

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2 meeting. It is required that these plans be audited
3 and it is required that they comply with the law.
4 In order to do so, generally they hire legal
5 counsel.

6 In 1992 City negotiations, under the
7 Rendell Administration, there were mammoth fights
8 both for Local 22 and, I believe, for Lodge 5 in
9 connection with their health-care plans. They
10 lasted for, I think, a year and a half after the
11 expiration of the contract. Nothing, nothing is
12 included for the legal costs of that kind of fight
13 any more than the City will currently account for
14 what it is paying outside counsel to fight the
15 health care portion of the firefighters' contract
16 right now. It is deliberately -- at worst, it is
17 deliberately misleading; at best, it is deliberately
18 ignorant.

19 So these costs don't bear any, any
20 realistic assessment of what it costs the City.

21 Thank you.

22 COUNCILMAN COHEN: Thank you.

23 Miss Berkowitz, if you choose to, you
24 would have the opportunity to offer a reply to what
25 Miss Willig just stated. If not, you don't have to.

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2 I'm just offering you the opportunity.

3 MS. BERKOWITZ: Councilman Cohen, Linda
4 Berkowitz.

5 The one point I would like to make and I
6 agree with Miss Willig that in my experience, Linda
7 Seyda is a truth-teller. It was Linda Seyda, the
8 City's Personal Director, I think, who should have a
9 feel for this, that only a very small portion of the
10 time of departmental employees is used for benefits
11 administration and that benefits administration is
12 done out of the central personnel department. And
13 we can put costs together on that.

14 With regards to whether the cost of
15 legal counsel hired by the unions or hired by the
16 City to perform labor negotiations should be
17 included in either the administrative costs of the
18 unions or the administrative costs for the City's
19 plan, I think, I think that that is a specious
20 argument, and I'll just leave it at that.

21 I think that there are legitimate costs
22 that ought to be looked at, and the City will be
23 doing that, I will be doing that. I have expressed
24 that from my very first testimony here that I am
25 going to be looking at the way in which the City

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2 administers its plan.

3 If I determine that much more than a
4 minimal amount of time is used by departmental
5 employees to provide benefits administration, those
6 costs -- I will attempt to document those costs.

7 COUNCILMAN COHEN: But if you find, say,
8 that only a minimal amount of attention is presently
9 being expended, isn't that an indictment to the way
10 in which the plan is being administered?

11 MS. BERKOWITZ: I don't think so. I
12 think we're talking about time and attention. And I
13 think the City should have the mechanism for
14 understanding the extent to which the consumers of
15 the City-administered plan have complaints about
16 their plans.

17 COUNCILMAN ORTIZ: Miss Berkowitz?

18 MS. BERKOWITZ: Yes.

19 COUNCILMAN ORTIZ: And if your findings
20 are such, will those findings be allowed to be
21 shared with us, with the City Council?

22 (Applause.)

23 MS. BERKOWITZ: I believe that both
24 Miss Wilkerson and I testified to the fact that when
25 I have completed my review, we will share my

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2 findings with this committee.

3 COUNCILMAN COHEN: We're going to take
4 you at your word.

5 MS. BERKOWITZ: My word has always been
6 known to be good.

7 Thank you.

8 COUNCILMAN COHEN: I think Miss Willig
9 was prepared to offer a rebuttal.

10 MS. BERKOWITZ: We should probably just
11 sit there together.

12 MS. WILLIG: Just one more point. I
13 didn't say the cost for legal services for
14 negotiating a contract. Not only should that not be
15 included, it would be illegal for a health and
16 welfare fund to pay for that. What I did say,
17 however, is that in fighting -- in fighting for
18 particular issues on health and welfare, they have
19 never included a cost.

20 But let me give you a more neutral
21 for-instance. I find it hard to believe that the
22 City would enter into an agreement with a
23 prescription provider or an insurance provider such
24 as Blue Cross without reviewing the contract. I'd
25 bet my house that if the contract, if it's reviewed,

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2 is reviewed by a lawyer.

3 Even if it's reviewed by the City
4 Solicitor's Office as opposed to outside counsel,
5 not one minute of time is recorded as part of the
6 administration of the health plan benefits. It has
7 to be. Under any negotiated plan, it would be a
8 legality, it would be a legal requirement.

9 But when I asked again, when I asked
10 Mr. Doyle, Does anybody review the contracts? You
11 know, does the City Solicitor's Office or outside
12 counsel look at the legal underpinnings of your
13 agreements with your health-care providers, where is
14 the cost associated with that? Zero. That's why I
15 said they're living in a fantasy world.

16 I mean, Miss Berkowitz would have you
17 believe that they can't tell you the truth. Maybe
18 that's true, but they should be required to tell you
19 the truth in order to make an apples-to-apples
20 comparison. If they say, My client's plan cost too
21 much, then they'd better be required to make the
22 apples-to-apples comparison of what it costs for
23 them to run their plan. They don't do it.

24 I'll end it there.

25 COUNCILMAN COHEN: All right, I think

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2 that's helpful.

3 Miss Berkowitz, I have one question of
4 you. I admit I learned one new thing today, and
5 that is the name of Frank Doyle?

6 COUNCILMAN ORTIZ: Frank Doyle.

7 COUNCILMAN COHEN: Did you know that
8 name before?

9 MS. BERKOWITZ: Well, I believe it was
10 not maybe the last hearing but the hearing before, I
11 could not recall the name, and the benefits
12 administrator from District Council 47 graciously
13 shouted it out from the audience, and I said, yes,
14 that was him.

15 COUNCILMAN COHEN: Does he do anything
16 currently for the City?

17 MS. BERKOWITZ: I do not know that.

18 COUNCILMAN COHEN: Could you make a
19 special effort to find that out?

20 MS. BERKOWITZ: Yes, I will. Yes, I
21 will.

22 COUNCILMAN COHEN: 'Cause that was a new
23 name; I had never heard that name before.

24 MS. BERKOWITZ: Yes.

25 COUNCILMAN COHEN: The shout did not

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2 read my hearing-aided ears.

3 MS. BERKOWITZ: He's going to have to do
4 it louder next time, right, Bob?

5 COUNCILMAN COHEN: Yeah, we'd like to
6 know the services he provides and the pay he
7 receives, if there is services and/or pay.

8 MS. BERKOWITZ: I will get you
9 information on that.

10 COUNCILMAN COHEN: Thank you.

11 MS. BERKOWITZ: You're welcome.

12 COUNCILMAN COHEN: And if there's a
13 history of his prior services, the payment for that
14 too and the amount of the services. We'd like to
15 know what services --

16 MS. BERKOWITZ: I'm sorry? The history
17 of his services --

18 COUNCILMAN COHEN: Up until now and what
19 he's doing now.

20 MS. BERKOWITZ: The history of his
21 services to date with the City.

22 COUNCILMAN COHEN: Very good.

23 MS. BERKOWITZ: Okay.

24 COUNCILMAN COHEN: Thank you very much.

25 MS. BERKOWITZ: You're welcome.

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2 COUNCILMAN COHEN: Mr. O'Drain, sorry
3 for the delay, but I think the witnesses were
4 helpful in bringing more clarity.

5 Why don't you go ahead and tell us what
6 you feel.

7 MR. O'DRAIN: Okay. Good afternoon,
8 Councilmembers and members of the committee. My
9 name is Tom O'Drain, and I'm the newly elected
10 president of Local 22.

11 As you remember, earlier this year,
12 George Casey, who was just retired as president of
13 Local 22, addressed this committee. On behalf of
14 Local 22, I commend the subcommittee for its
15 investigative work in disclosing the slipshod and
16 haphazard manner in which the City of Philadelphia
17 administers its own health plans. I believe I can
18 provide the City with some insight into the issue of
19 the City's refusal to provide any documentation to
20 support its claim that the City could save money by
21 consolidating all of the current health plans.

22 Last summer, I attended the Act 111
23 interest arbitration hearings and listened to the
24 City's high-priced lawyers and their high-priced
25 consultants tout the alleged benefits that could be

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2 achieved if the health plans were all consolidated.
3 Representatives of the union and the trustees of the
4 fund were forced to listen day after day to claims
5 that the City could administer the health benefits
6 much more efficiently and economically than the
7 trustees of the firefighters' fund. The City's
8 presentation was full of claims that the
9 firefighters' plan was mismanaged and claims that
10 the City could administer the benefits much more
11 professionally.

12 I might note, as the Act 111 neutral
13 arbitrator did, that during all of those days,
14 notwithstanding the charts and graphs and expensive
15 suits, neither the City's lawyers nor their
16 consultants produced even a single piece of hard
17 evidence about how any of these savings were to be
18 achieved.

19 Given all of these claims, you can
20 imagine how surprised I was to find out during the
21 course of these hearings that the City not only has
22 no streamlined process for administering its health
23 plans but has so little idea of how its benefits
24 plans runs, it only has now appointed a special
25 person to investigate how the health plans are run.

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2 This subcommittee's investigation simply proves that
3 the City doesn't do a good job in administering its
4 own health benefits and is not ready to administer
5 ours.

6 We reviewed the transcripts recently and
7 we were struck by the fact that although there were
8 a lot of lofty claims about achievable cost savings
9 and efficiencies, there were never any facts to
10 support the claims. Moreover, the charts that the
11 City's experts provided were deliberately
12 misleading. For example, the City tried to show
13 that the police and fire funds provided were more
14 expensive than those provided by the City. I'm not
15 talking about the fact that the experts did not
16 conduct an apples-to-apples comparison of the
17 benefits; I'm talking about fact that the City's
18 experts gave an amount for the cost of police and
19 fire benefits that, of course, included only people
20 who actually received benefits as well as the fund's
21 administrative cost.

22 Interestingly, when the excerpts
23 calculated the City's supposed cost of benefits,
24 they reduced the City's costs by one, failing to
25 include the cost that has been shifted to the

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2 employees; i.e., employees' payroll deduction of the
3 portion of the premium; and number two, including in
4 their calculation of benefits hundreds of people for
5 whom no benefits are actually provided; and three,
6 most notably, including no administrative expenses.

7 We also know now that the reason that no
8 administrative costs are included in the City's
9 benefit costs is because the City doesn't know them
10 and won't let anybody else know them, including the
11 City Comptroller calculating them. It's like the
12 old saying: Figures lie and liars figure. It's
13 easy to doctor the numbers if you just don't pay too
14 closer attention to the facts.

15 Local 22 applauds this committee's
16 efforts to get to the facts. The City's failure to
17 respond to the committee's request for the alleged
18 study that allegedly supports the City's position
19 that it would save money by consolidating the health
20 plans is just another round in a shell game.

21 Although I'm surprised that the
22 Administration treats City Council with the same
23 disrespect that it treats its employees and their
24 representatives, if the City wants to prove that
25 consolidation of the plans is really in the best

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2 interests of the City and its employees and not just
3 the naked power grab that it appears to be, why is
4 it afraid to release the facts that support it?
5 There are at least two answer: The City won't
6 release the facts and figures because, one, they
7 don't exist and, two, if they exist, they don't
8 support the City's position.

9 Local 22 adds its support to your effort
10 to say to the City, Enough playing politics with the
11 health benefits. It might just be a part of the
12 power game to the City but it's a matter of the
13 utmost seriousness to the men and women of Local 22.
14 The firefighters and paramedics of this city and all
15 City deserve better.

16 Thank you.

17 (Applause.)

18 COUNCILMAN ORTIZ: We want to welcome
19 you to this scenario. Your predecessors have
20 enjoyed sitting in that chair and not getting the
21 information that you need. Now you understand how
22 difficult government is at times.

23 But it would be interesting for you to
24 know that while hepatitis C and the firefighters
25 still do not have a contract that is being complied

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2 you were here when Debbie Willig talked about the
3 piece of the contract that is not being complied
4 with by the City. There are also four additional
5 pieces of our contract that are still not being
6 complied with. This morning, I had a meeting with
7 Labor Relations and it's to no avail. You know,
8 we're not going to get to any middle ground until
9 get to arbitration.

10 COUNCILMAN ORTIZ: How can you negotiate
11 a new contract when your old one is still not being
12 complied with?

13 MR. O'DRAIN: I know. That's what I'm
14 going to be faced with as the new president.

15 COUNCILMAN ORTIZ: This is a very
16 surreal situation. I don't think we ever had that
17 in our history.

18 COUNCILMAN COHEN: We wish you luck.

19 MR. O'DRAIN: Thank you.

20 COUNCILMAN COHEN: And we're very
21 prepared to help you achieve it.

22 MR. O'DRAIN: Thank you, Councilman.

23 COUNCILMAN COHEN: Great.

24 (Applause.)

25 COUNCILMAN COHEN: Are there any other

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2 union representatives who wish to be heard who have
3 not been heard?

4 (No response.)

5 COUNCILMAN COHEN: Kathy Scott or Linda
6 Ryan or from any other union?

7 If not, Joe Goldberger from the
8 retirees.

9 And then if there's anyone else present
10 who wishes to be heard, the committee will be glad
11 to hear you.

12 Reverend Blount, if there's anything you
13 would like to add, you would be welcome.

14 REVEREND BLOUNT: Thank you.

15 (Witness comes forward.)

16 COUNCILMAN COHEN: Just identify
17 yourself for the record.

18 MR. GOLDBERGER: My name is Joe
19 Goldberger, a retired City employee.

20 Mr. Chairman, thank you for allowing me
21 to again present my thoughts about problems in
22 developing an adequate pharmaceutical benefit for
23 retired non-represented City employees.

24 There are numerous important issues that
25 this committee has uncovered in its attempts to

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2 investigate the City's failure to develop a
3 cost-effective and efficient pharmaceutical benefit
4 for non-represented retirees and non-represented
5 employees. Perhaps the most important related issue
6 is the Administration's failure to cooperate by
7 providing requested documents and answers to past
8 Administration actions.

9 The role of the City Council in
10 Philadelphia government has been minimized, and this
11 committee represents the finest attempt to correct
12 this government imbalance. The use of the subpoena
13 power is absolutely critical. If the Administration
14 is allowed to ignore City Council's requests, what
15 can retirees expect from that administration in
16 resolving our problem?

17 The Administration has exercised poor or
18 no judgment in past pharmaceutical benefit
19 negotiations, as evidenced by their inability or
20 unwillingness to answer specific questions related
21 to existing and past pharmaceutical benefit plans,
22 coverage statistics, contract negotiations, and
23 actual contract documents.

24 This said, where are we now and what
25 should be the priority? There is a need to focus on

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2 referring to the invidious separation of older
3 non-represented retirees from other non-represented
4 retirees. While I am not a lawyer, I wish to bring
5 to your attention a Third District Court of Appeals
6 ruling affecting the States of Delaware, New Jersey,
7 and Pennsylvania that the County of Erie,
8 Pennsylvania violated the Age Discrimination in
9 Employment Act by providing Medicare-eligible
10 retirees with health insurance benefits that were
11 inferior to those provided to younger retirees.

12 Perhaps the City Law Department can
13 shift its attention away from studying ways to
14 prevent this committee from obtaining necessary
15 documents to examine the effects of this decision.
16 Or should we plan on taking the City to the United
17 States District Court to obtain resolution?

18 The City Administration has over the
19 years been allowed to follow a path of no resistance
20 in its poor health benefit negotiations. The City
21 has been "rewarded" by having retirees drop from the
22 City-administered plans to fend for themselves.
23 Those retirees who dropped out of City-administered
24 plans last December, who did not participate in the
25 may plans offering must be allowed to return to

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2 newly negotiated adequate plans effective January 1,
3 2002.

4 No negotiation or fact-gathering can be
5 undertaken without some idea of the values the
6 negotiator wishes to maximize. We have been treated
7 to the Personnel Director's statements that the City
8 has no "obligation" to those retired over four or
9 five years. Isn't that strange, when the City
10 provides free pharmaceuticals to the City health
11 Center clients who do not have insurance coverage?
12 This Council has been providing funding for that
13 program for many years.

14 City Council in the Resolution No.
15 000476 establishing this investigation stated a
16 value that should be shared by Administration
17 benefit negotiators. It asks the question whether
18 the City could provide more comprehensive and less
19 costly coverage. . . if other options were pursued?
20 Can we expect the same value from the
21 Administration? Is this an unreasonable question
22 request?

23 I conclude my remarks by again stating
24 that although there are very vital issues to be
25 resolved with respect to past union negotiations and

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2 under-funding of District Council 47's health plans
3 and the critical need to establish a strong City
4 Council presence in the conduct of municipal
5 government, there is an immediate and time-critical
6 need for announced decision to abolish the
7 discriminatory grouping of non-represented retirees
8 (over four or five years) for health benefit
9 purposes.

10 Thank you.

11 COUNCILMAN COHEN: Thank you very much,
12 Mr. Goldberg. The committee will consider your
13 comments.

14 Is there anybody else to be heard?
15 Please come forward. Whoever wishes to be heard,
16 please come forward and sit around the table.

17 (Witnesses come forward.)

18 COUNCILMAN COHEN: Reverend Blount,
19 identify yourself for the record and proceed.

20 REV. BLOUNT: Yes. Reverend Harold
21 Blount. I am also a retired employee for the City
22 of Philadelphia. And I'd like to apologize for the
23 way I sound but I came straight from the dentist's
24 office this morning to be here at the hearing. So,
25 therefore, the novocain is wearing off a bit,

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2 period.

3 But one of the things from listening and
4 particularly from the City Solicitor, and I'm not a
5 lawyer. However, you know, I have a master's degree
6 from Temple, I have a master's degree from the
7 University of Pennsylvania, and I'm now pursuing a
8 master's degree at Eastern College in education.
9 And what I don't understand for one thing is how do
10 you come up here and you have to develop a written
11 response to a request by City Council about some
12 document that he had that he's concerned being
13 privileged; when, in fact, Miss Berkowitz, who is
14 doing almost the same kind of thing, presenting a
15 document of some kind, and she had no problem
16 whatsoever in complying with that request that came
17 from the chair of the Council at this time, period.

18 And to me, you know, I don't understand
19 hop City Council and itself and this committee will
20 allow itself to be placed in a position where they
21 are third-class in the City of Philadelphia.

22 COUNCILMAN COHEN: Thank you very much.
23 We share your sentiments and are working to try to
24 avoid being second- or third-class citizens.

25 Thank you very much, Reverend Blount.

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2 We appreciate your coming here today.

3 REV. BLOUNT: I had no intentions of
4 saying anything whatsoever, but I just couldn't sit
5 by here and go through this shenanigan.

6 COUNCILMAN COHEN: Very good, sir.
7 Please identify yourself for the record.

8 MR. LAMB: Yes, sir, Mr. Chairman.
9 Thomas Lamb. I administer the FOP Blue Cross
10 Program. Today with us is Robert Hirsch (ph.), who
11 administers our dental, optical, prescription plan.
12 If the chairman would, I'm requesting an
13 update. In previous hearings, you requested the
14 City Controller's employees be present to conduct an
15 audit. I think the last two audits were 1994 and
16 1995. Regretfully during those hearings, we heard
17 the same smoke and mirrors that we've heard all
18 along and that we've experienced in the last four
19 contracts.

20 Is there any update, Mr. Chairman, on
21 when the City Controller can finally review the City
22 medical plans?

23 COUNCILMAN COHEN: Is there anyone here
24 from the Controller's office that's authorized to
25 give us a reply?

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2 (No response.)

3 COUNCILMAN COHEN: We understood that
4 there was a promise by the City to comply with the
5 City Controller's request.

6 Yes, Miss Albert. We don't want you to
7 go beyond your authorization, but if you could shed
8 any light.

9 (Witness comes forward.)

10 COUNCILMAN COHEN: Miss Albert, identify
11 yourself for the record.

12 MS. ALBERT: My name is Stacey Albert of
13 Controller's Office. I'm auditor of the City
14 Controller's Office. I came today as just an
15 observer; I'm not authorized to answer any
16 questions, I can't answer any questions.

17 COUNCILMAN COHEN: But you've been here
18 all through the hearings.

19 MS. ALBERT: Yes, sir, I have been to
20 the hearings as an observer and I've been receiving
21 documents that you've been receiving.

22 COUNCILMAN COHEN: And I know that the
23 City Controller is very anxious to conduct the
24 audit. We will further communicate with him.
25 Today's hearing was basically for the purpose of

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2 getting clarity on the production of document
3 requests we made to the City and to see to what
4 degree they were ready to comply with it.

5 We were not expecting a call to the City
6 Controller because he has his own relationship with
7 the City and we want to do respect his right to work
8 it out, but he's assured us that he's very serious
9 about getting the information and that he's been
10 promised that the City will cooperate.

11 Okay, we're going to stand in recess
12 until Tuesday, July the 31st, at 2 p.m. And among
13 the questions raised will be the question, and you
14 may, Miss Albert, so inform the City Controller --

15 MS. ALBERT: I will.

16 COUNCILMAN COHEN: I'm going to him or a
17 representative of his office to be present to update
18 us on the status of the City Controller's request to
19 audit the health records of the City.

20 MS. ALBERT: I will pass that along,
21 sir. Thank you.

22 COUNCILMAN COHEN: All right and thank
23 you very much.

24 The committee will stand in recess until
25 Tuesday, July 31st at 2 p.m.

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2 Thank you.

3 (Adjourned 1:52 p.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of Tuesday, July 10, 2001, were
reported fully and accurately by me, and that this
is a correct transcript of same.

RE: COUNCIL COMMITTEE ON LAW AND GOVERNMENT
RES. NO. 000476

_____,
JOSEPHINE CARDILLO,
Registered Professional Reporter