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COUNCIL OF THE CITY OF PHILADELPHIA

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JOINT COMMITTEES ON

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LABOR & CIVIL SERVICE AND PUBLIC SAFETY

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Thursday, June 16, 2005
9:45 a.m.

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Room 400, City Hall
Philadelphia, Pennsylvania

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RES. NO. 050537 - A Resolution authorizing
City Council's Committee on Labor and Civil
service and The Committee on Public Safety
to hold public hearings to make inquiries
and investigations relating to the
reemployment rights of City employees who
return from active duty.

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PRESENT:

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COUNCILMAN JUAN F. RAMOS, Chair
COUNCILMAN DONNA REED MILLER, Chair
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN JAMES F. KENNEY
COUNCILMAN FRANK RIZZO
COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN RICHARD T. MARIANO
COUNCILMAN BRIAN J. O'NEILL

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V A R A L L O Incorporated
Litigation Support Services
1835 Market Street, Suite 600
Philadelphia, PA 19103
(215) 561-2220

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3 COUNCILMAN RAMOS: Good morning,
4 everyone. This is a hearing of the Joint
5 Committees on Labor and Civil Service and
6 Public Safety. I will ask the clerk to please
7 state the number of the resolution.

8 THE CLERK: Resolution 050537,
9 resolution authorizing City Council's
10 Committee on Labor and Civil Service and the
11 Committee on Public Safety to hold public
12 hearings to make inquiries and investigations
13 relating to the redeployment rights of city
14 employees who return from active duty in the
15 National Guard and Reserve components of the
16 Armed Forces of the United States.

17 COUNCILMAN RAMOS: For the record, I
18 will note that present at this hearing is the
19 Chair of the Committee on Public Safety, Donna
20 Reed Miller. Also with us Councilman Goode;
21 to my left, Councilman Rizzo and Councilman
22 Kenney.

23 Will the clerk please call the names
24 of the first panel.

25 THE CLERK: Chris McCormick, Rich

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2 Brown, and Jim Bonner.

3 COUNCILMAN RAMOS: Good morning,
4 officers. Please proceed with your testimony,
5 please state your name and your department.
6 And I see you are not wearing -- are those
7 Fire Department uniforms? It doesn't seem
8 that way.

9 MR. RICHARD BROWN: We are not that
10 foolish.

11 COUNCILMAN RAMOS: Please proceed.

12 MR. BROWN: Richard Brown, with the
13 Philadelphia Fire Department, also with the
14 Air National Guard. To my right is
15 Christopher McCormick; to my left is James
16 Bonner, the same situation as me.

17 We wanted to thank City Council for
18 your concern and for your interest in this
19 situation.

20 We were deployed twice now for a
21 total of two years, two different times, sent
22 to the desert, returned, and were given the
23 opportunity to take the promotional exam. At
24 which time we -- the city drug their feet on
25 giving us the second part.

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2 When we finally did receive it, our
3 scores were high enough that we should have
4 been promoted in the first batch of
5 lieutenants. That became a struggle, also.

6 We were just recently promoted, and
7 we want to thank you for that. However, we
8 haven't been made whole as the USERA law
9 states.

10 We should have been entitled to our
11 seniority, our back pay, and that's about it.

12 But we wanted to thank you for
13 taking the time to hear us.

14 COUNCILMAN RAMOS: Thank you.

15 Any of your colleagues care to
16 testify for the record?

17 MR. JAMES BONNER: My name is James
18 Bonner. I would just like to say thank you
19 very much. Rick Brown pretty much summed it
20 up and speaks for everyone.

21 MR. CHRISTOPHER McCORMICK:
22 Christopher McCormick. Again, thank you very
23 much.

24 The situation that we are concerned
25 with isn't really involving ourselves. We are

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2 concerned for all the servicemen and women
3 that work in the city, those that have been
4 deployed before, those that will be deployed
5 in the future.

6 When they come back, we are
7 concerned that their rights get observed the
8 way it should be, the way that the laws are
9 written out. And we have had this difficulty
10 with our situation.

11 We're very interested in trying to
12 make sure that the appropriate patches get in
13 place so that this kind of situation doesn't
14 happen to all our returning vets.

15 COUNCILMAN RAMOS: Thank you for
16 your testimony.

17 For those of you joining us, this is
18 a Public Hearing to make inquiries and
19 investigate the redeployment rights of city
20 employees who return from active duty in the
21 National Guard and the Reserve components of
22 the Armed Forces of the United States.

23 Please correct me if I have this
24 wrong. You three gentlemen are firemen, you
25 were slated for or on a list for promotion.

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2 Am I doing good thus far?

3 MR. BROWN: Yes, sir. We took the
4 test late and finished in the top 20.

5 COUNCILMAN RAMOS: And after you
6 were put on the list for promotion, you were
7 called into service by the armed forces; is
8 that correct?

9 MR. BROWN: No, sir. We were
10 already deployed when the list -- or, when the
11 test was given. We had to take it at a later
12 date.

13 COUNCILMAN RAMOS: And then what
14 subsequently happened? You came back home,
15 and what did you find out?

16 MR. BROWN: The current
17 Commissioner, Commissioner Ayers, at the time
18 was Deputy Commissioner, put a memo in letting
19 the city know that we would be deployed and
20 eligible for the test when we came back.

21 It was through his actions that we
22 were able to take the written portion of the
23 exam. That was in April of 2004.

24 Normally the oral exam follows about
25 two months later. In this case it didn't

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2 happen until February of 2005, at which time
3 we were given our scores and should have been
4 placed on the list of the 70 that were already
5 promoted.

6 Instead, the city's decision was to
7 put us on the next list, or make us No. 72,
8 73, 74, 75, when in fact I finished No. 6,
9 the gentlemen on either side of me finished
10 No. 12.

11 COUNCILMAN RAMOS: Since then, you
12 have been, in fact all three of you, correct
13 me if I am wrong, have gotten your promotion;
14 right?

15 MR. BROWN: Yes, sir. That was, I
16 understand, through Commissioner Ayers.

17 COUNCILMAN RAMOS: So it took a
18 little longer than it probably should have.
19 But, nevertheless, today you have gotten your
20 promotion.

21 Can you tell us to what rank you
22 were promoted to?

23 MR. BROWN: The three of us are fire
24 lieutenants now.

25 COUNCILMAN RAMOS: Fire lieutenants.

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2 Congratulations.

3 MR. BROWN: Thank you.

4 COUNCILMAN RAMOS: We are proud of
5 you for all that you do for us a firefighters
6 but also for serving our country in such
7 difficult times.

8 I would ask if any members of this
9 committee would have any inquiries on these
10 three gentlemen.

11 Councilman Kenney.

12 COUNCILMAN KENNEY: Thank you, Mr.
13 Chairman.

14 First, again, I would like to echo
15 Councilman Ramos' comments relative to your
16 service both to the country and the city, and
17 I am happy to see you have been promoted.

18 I think the record needs to be very
19 clear, and I am confident that Local 22 will
20 follow through with making sure that the
21 seniority, benefits, and back pay.

22 I mean, it is important that they
23 were promoted; but they did miss out and are
24 missing out on economic issues relative to
25 their promotion.

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2 And I am glad Councilman O'Neill is
3 here, because I know he was at the forefront
4 of trying to make sure this happened. And I
5 want to thank him for all his involvement and
6 the efforts on behalf of the four of you, but
7 the three of you that are here today.

8 Councilman O'Neill, you and Local 22
9 I am confident will make you guys whole. And
10 thanks, again, for your service.

11 MR. BROWN: Brian McBride from Local
12 22 also wanted to speak, sir.

13 COUNCILMAN RAMOS: I think we have a
14 couple of questions here for this panel.

15 I recognize Councilwoman Donna Reed
16 Miller.

17 COUNCILWOMAN MILLER: My good
18 morning and congratulations.

19 Can you explain the retroactive pay?
20 Does it work sort of like jury duty, you make
21 what you make and then the city still is
22 obligated to pay you the balance?

23 MR. McCORMICK: I am not qualified
24 to answer that. I really don't know. I would
25 let my counsel clarify this a little further.

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2 But I think, in a nutshell, the USERA law
3 basically says that a military member who is
4 deployed, when he returns, has certain rights
5 and he should be included as if he were not
6 sent for service. He should not be penalized
7 for his service. So when he comes back, those
8 rights are observed.

9 And that is part of the problem with
10 our situation. Is that in every step of the
11 way, we have had to make active and insistent
12 inquiries to make sure that this process has
13 been continuing. Nothing has been automatic,
14 and everything has been on our efforts. We
15 have had to push this cart the whole way.

16 COUNCILWOMAN MILLER: Thank you. I
17 am really sorry that you have had to struggle
18 just to get treated equal and fairly. So we
19 just need to have a better understanding.

20 MR. McCORMICK: That's half the fun.

21 COUNCILWOMAN MILLER: Thank you.

22 COUNCILMAN RAMOS: I recognize
23 Councilman Mariano and Councilman Brian
24 O'Neill has joined us.

25 Councilman O'Neill.

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2 COUNCILMAN O'NEILL: I just want to
3 first thank the Chairmen of the joint
4 committee, Councilwoman Miller and Councilman
5 Ramos.

6 They scheduled this hearing very
7 quickly in a very tight schedule near the end
8 of our session, not knowing that this was
9 mostly going to be resolved, the main part of
10 it would be resolved, by the time we had the
11 hearing. So I want to thank them.

12 And I just wanted to ask you a
13 question. I know a lot of people are confused
14 on this, and I think there is a clear answer.

15 When you go overseas, when you go
16 into active duty, you take a great personal
17 sacrifice financially.

18 MR. MCCORMICK: Yes.

19 COUNCILMAN O'NEILL: Could you just
20 comment on that. I think a lot of people
21 think the city just pays the difference.

22 I think Councilwoman Miller was
23 mentioning jury duty. Some employers make up
24 the difference between the jury duty pay and
25 their salary.

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2 And in terms of the military, even
3 in war, I don't believe we do that; is that
4 correct?

5 MR. BROWN: You are right,
6 Councilman. I know, serving with other people
7 who are civil servants around the country,
8 they are much more gracious.

9 One thing we have proposed, I
10 believe through your office, before was, our
11 pensions suffer when we are away.

12 When we return -- we are given a
13 stipend fund while we are away, our families
14 are given that. It pretty much helps pay for
15 our pension when we return to the city
16 service.

17 That's one thing I would ask, if you
18 could look at anything, could you carry our
19 pension during the time we are on active duty.
20 That's one thing I would ask City Council, if
21 that's possible.

22 We did lose two years on either
23 side. I lost two and a half years in my
24 deployment.

25 COUNCILMAN O'NEILL: And that may be

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2 something we can work with the local,
3 firefighters local and their attorneys, to
4 rectify.

5 Councilman.

6 COUNCILMAN MARIANO: Thank you,
7 Councilmen.

8 Gentlemen, I am not going to count
9 the stripes, but I guess most of you are
10 senior airmen, so that makes you about E5, E6.

11 MR. BROWN: Two E6's and one E5.

12 COUNCILMAN MARIANO: When you are on
13 active duty, how much does an E6 make?

14 MR. BROWN: My income tax statement
15 says \$26,000.

16 COUNCILMAN MARIANO: How much do you
17 make as a fireman, if you were home?

18 MR. BROWN: I believe it is \$52,000.

19 COUNCILMAN MARIANO: So, basically,
20 one of my staffers is an E6, he got deployed,
21 he is in the Army. And I think he will get
22 deployed again. He is an attorney in civilian
23 life. He makes decent money. If he wants to
24 as an attorney, he probably makes \$50,000,
25 City Council we will say. He was in Iraq for

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2 out months, he is probably going back.

3 And I know City Council, it was easy
4 for me to talk to Council President and say,
5 "Look, Pat doesn't miss anything when he is
6 gone." His family got a stipend of some
7 money, his insurance was carried, and he was
8 okay.

9 But I think what I am getting here
10 is, the difference between your E6 pay and
11 your fireman pay is \$25,000.

12 MR. BROWN: Roughly. I know
13 Councilman O'Neill's secretary, her husband is
14 a chief inspector for the police department,
15 that's -- he is an E5 in the service. Yes,
16 sir.

17 COUNCILMAN MARIANO: So in some
18 jurisdictions in this country, bigger city,
19 smaller cities, maybe with different budget
20 deficits they have or don't have as compared
21 to this city, they would make up that
22 difference of, say, \$25,000.

23 MR. BROWN: Yes, sir.

24 COUNCILMAN MARIANO: Now, if I
25 understand what you guys are saying, and it

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2 should be done, my opinion, if you go
3 anywhere, if you are in combat or not, or you
4 are in a combat zone, next time you take a
5 test, you should probably get some points for
6 that, too. Combat veterans get points, people
7 who are deployed get points, maybe not as much
8 as a combat veteran.

9 I don't know if we can get to the
10 point where we can make \$25,000 up for every
11 one of you. In a perfect world, it would be.
12 They should at least cover the two years you
13 are deployed for your pension, so you don't
14 miss the gap in your pension.

15 That's your main concern; correct?

16 MR. BROWN: Yes. I believe I can
17 speak for the gentlemen on either side of me.
18 We volunteered to go both times. We are not
19 crying poor or anything like that, but it
20 would be nice to have our pensions made whole.

21 I would do it again, and I know they
22 would too, knowing it does bring hardship on
23 your family.

24 COUNCILMAN MARIANO: But you are a
25 real American, and we appreciate that. But

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2 the hardship on your family should be
3 supplemented by those of us that can't go some
4 how, some way.

5 So come September I promise you, and
6 I am sure everyone up here understands -- we
7 are finding out slowly. It looks like the
8 Commissioner, when he found out what happened,
9 he jumped right onto it because of the
10 Councilpeople on this committee that asked
11 about you.

12 But there needs to be other things.
13 There are policemen that are going away that
14 might have the same problem. There are other
15 City Council -- Councilman Cohen has a guy
16 that worked for him that's deployed and hasn't
17 been back for a year.

18 It is my understanding from the
19 people I know that are still active in the
20 military and in the Reserves, the pool of
21 people are so small, if you got deployed once,
22 you are probably going to get deployed again
23 within the next two years.

24 I'm not sure how the Air Force
25 works. But I know in the Army, you don't have

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2 a choice. If you are in the Reserves, you are
3 going again. Maybe twice in three years.

4 MR. BROWN: It is the price you pay
5 for being a qualified individual. We wouldn't
6 have it any other way.

7 COUNCILMAN MARIANO: We thank you.
8 And I promise you if there is anything I can
9 do -- and I am sure everyone up here feels the
10 same way -- that we can try to somehow get
11 that gap where you don't lose \$25,000, that
12 would be great. But if we could at least get
13 you pension credits, that should be something
14 we should be able to do.

15 Thank you for everyone. Thank you
16 for myself. Thank you for my family and
17 everyone in the City of Philadelphia. Keep up
18 the good work.

19 COUNCILMAN RAMOS: Councilman
20 O'Neill.

21 COUNCILMAN O'NEILL: This was a
22 unanimous resolution. I will make sure I work
23 over the summer on the benefit issue. And I
24 thank Councilman Mariano for really going into
25 it in detail. Thank you.

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2 COUNCILMAN RAMOS: Are there any
3 other questions from this committee for this
4 panel?

5 Seeing none, thank you so much and
6 keep up the good work that you do.

7 MR. BROWN: Thank you, sir.

8 COUNCILMAN RAMOS: Would the clerk
9 please call the names of the next panel.

10 THE CLERK: Mr. Brian McBride, head
11 of Firefighters Union.

12 COUNCILMAN RAMOS: Good morning.
13 Please state your name for the record, please,
14 and proceed with your testimony.

15 MR. BRIAN McBRIDE: I am Brian
16 McBride, President-Elect of Local 22
17 International Association of Firefighters.

18 Honorable members of Council,
19 brothers and sisters of Local 22 members, and
20 fellow citizens, we come before you today in
21 this great city, this the cradle of liberty,
22 where our courageous forefathers fought for
23 our country and our rights.

24 Over the years, laws have been
25 developed to protect the rights of men and

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2 women who place their lives on the line in
3 service to this United States of America.

4 We stand here with three and four
5 courageous men who not only served this great
6 nation in the military, but also in this city
7 honorably as firefighters.

8 We all recognize that the Fire
9 Department has given these men their just
10 promotions to lieutenant, and we thank the
11 Fire Commissioner for seeing to this.

12 But this battle is not just about
13 these four patriots; it is for all the brave
14 men and women who selflessly give of
15 themselves in every work to both country and
16 city.

17 Their promotions were the first step
18 in the process. They are entitled to
19 seniority as lieutenants, back pay, proper pay
20 grade, and pension, that would be if they had
21 not left to serve this country.

22 Local 22 will stand with these brave
23 men and with all veterans who serve this city
24 and this country, as it is our duty to protect
25 their rights.

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2 I am urging this Council and our
3 Mayor to respect the USERA laws without
4 further delay and honor these men who have
5 served with us with honor just as our
6 courageous forefathers would have expected us
7 to do. Thank you.

8 COUNCILMAN RAMOS: Does the person
9 that's accompanying you care to testify, as
10 well? Please proceed and state your name.

11 MS. LASSEN: My name is Nan Lassen.
12 I am General Counsel to Local 22, and I also
13 am a member of the firm Willig, Williams &
14 Davidson.

15 Willig, Williams & Davidson doesn't
16 just represent the Philadelphia firefighters.
17 For those of you who know our firm, we
18 represent city employees from sanitation
19 workers to firefighters, mechanics to social
20 workers.

21 And all across the City of
22 Philadelphia, the employees of the city are
23 part of the United States military. They
24 serve honorably, they come back to their
25 employment in the City of Philadelphia.

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2 The real story here from Local 22's
3 perspective and on behalf of all the rest of
4 those employees is that this isn't let's make
5 a deal.

6 This isn't a situation where the
7 noble volunteer and serve honorably and are
8 treated justly and appropriately by their
9 country, and then come back to employment in
10 the City of Philadelphia.

11 And, like these three men and the
12 other fire lieutenant who couldn't be here
13 today, Joe Farrell, they have to beg for a
14 year to get what federal law undisputable,
15 indisputable entitles them to.

16 The Uniformed Services Employment
17 and Reemployment Act operates under something
18 called the escalator provision. And that
19 means that wherever you would have been when
20 you went away, as if you had been in active
21 service for the entire duration, active
22 service with the city for the entire duration
23 of your military service, you are entitled to
24 those benefits.

25 What happened in this case is that,

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2 when our four firefighters came back, they had
3 to literally advocate for themselves to
4 anybody who would give them an ear for a year
5 just to get promoted to lieutenant.

6 Did they get promoted to lieutenant?

7 Yes. As Councilman O'Neill has pointed out,
8 they did get promoted two weeks ago.

9 But have they been promoted
10 effective the date that their promotions would
11 have and should have been made had they been
12 in service, which was last August, August of
13 2004?

14 No, they don't have that seniority,
15 they don't have that back pay, they don't have
16 those pension credits.

17 Our concern on behalf of Local 22
18 and on behalf of our members, bargaining unit
19 members, who are city employees, is that the
20 City of Philadelphia as a policy matter -- and
21 this is why we have brought this to City
22 Council -- as a policy matter, other cities
23 around the country have an Office of Military
24 Liaison, they have a military personnel office
25 that doesn't require returning heroes to beg

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2 for their rights.

3 They have an office that goes to
4 returning military personnel, knows when
5 military personnel are returning to city
6 service or municipal and government service,
7 meets with the departments, identifies what
8 rights they are entitled to, and confers those
9 rights upon them.

10 I didn't come here today and I know
11 Brian McBride didn't come here today to talk
12 to you about the law or litigation or the
13 demands that we have made on the city to
14 address the specific rights of these four
15 individuals.

16 We came here today to plead with you
17 as a policy matter to look more systematically
18 at the needs of military service people in the
19 City of Philadelphia whether they pick up the
20 trash, whether they put out the fires, whether
21 they are police officers or social workers, to
22 look more systematically at the needs of our
23 military personnel and to create a policy in
24 the City of Philadelphia where our city -- and
25 I am a city taxpayer proudly -- where our city

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2 reaches out to them and doesn't force them to
3 come back and beg for a year and be treated
4 less honorably than our government treats
5 them. Thank you very much.

6 COUNCILMAN RAMOS: Thank you,
7 Council. We hear you loud and clear, and we
8 will definitely look into this situation.

9 And since we are talking about
10 promotions, I want to take this time to
11 congratulate Mr. McBride's elevation to
12 President of Local 22.

13 And it looks like you got started on
14 the right track defending your members. And
15 congratulations and look forward to working
16 with you.

17 Any questions for this panel?
18 Councilman Kenney.

19 COUNCILMAN KENNEY: Thank you, Mr.
20 Chairman.

21 Mr. McBride or Ms. Lassen, could you
22 tell me what, if any, legal fees have been
23 accumulated as a result of this particular
24 case? And, Nan, could you give me some idea
25 as to what maybe some of the other locals have

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2 spent, if anything, on not full litigation,
3 but on having to do this with lawyers, as
4 opposed to doing it with the Administration?

5 MS. LASSEN: Well, on this
6 individual matter, frankly, Councilman Kenney,
7 I'm not certain what the fees are.

8 But I think you have wisely pointed
9 out that the alternative to the City of
10 Philadelphia addressing this issue as a policy
11 matter and in a more systematic way is that
12 the USERA Act does provide for private rights
13 of actions for ant affected military members.
14 And for willful violations, there are multiple
15 damages.

16 The entity that violated the act is
17 also liable for full attorneys' fees and costs
18 of the parties that commence that litigation.

19 COUNCILMAN KENNEY: Would it not
20 make sense, then, for your firm to file suit
21 against the city on behalf of all of the
22 active returning and active city employees?

23 And I guess that would be a federal
24 action? That would be an action in Federal
25 Court?

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2 MS. LASSEN: Probably.

3 COUNCILMAN KENNEY: That may seem to
4 be the quickest way to get this
5 Administration's attention on an issue like
6 this.

7 Certainly what we are doing here is
8 important. And I know it will be promulgated
9 in the media and people will agree that it is
10 the right thing to do to treat them
11 appropriately, as opposed to making them beg
12 and plead.

13 But I think if you march down to 6th
14 and Market and file a federal lawsuit, perhaps
15 that might get their attention a little
16 quicker than normal.

17 MS. LASSEN: That has occurred to
18 us. But --

19 COUNCILMAN KENNEY: As litigious as
20 this Council has been with this
21 Administration, I would suggest you leave here
22 this morning and go down to 6th and Market and
23 file it, because that may get it resolved.

24 MS. LASSEN: The honest answer is
25 that we will do what we have to do. As we

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2 represent numerous city unions and employees
3 throughout the city, we have tried, as we
4 always try, to amicably resolve this dispute
5 with the city.

6 Yesterday I hand-delivered to Mr.
7 Diaz, Acting City Solicitor, a very
8 comprehensive legal position statement and
9 demand letter on behalf of these four
10 firefighters.

11 We certainly will give the city an
12 opportunity to step up to the plate with them
13 and resolve this particular dispute without
14 resorting to litigation.

15 If that doesn't work, then we will
16 do what we have to do, honestly, for them and
17 for any other city employee.

18 COUNCILMAN KENNEY: Good luck. But
19 I think Market Street may be the way to go.

20 COUNCILMAN RAMOS: Thank you,
21 Councilman Kenney.

22 Any other questions from this
23 committee for this panel?

24 Thank you very much.

25 Is there anyone here that cares to

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2 testify on this resolution at this time? And
3 if so, please come forward.

4 Seeing none, thank you all for
5 coming and being part of this very important
6 hearing on this resolution concerning our
7 employees that go off to war and their rights
8 when they return when it comes to
9 compensation, promotions, and so forth.

10 And I will recess this to the call
11 of the Chair. Thank you so much.

12 (Public Hearing adjourned at 10:09
13 a.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the
foregoing proceedings of the Council of the
City of Philadelphia of Thursday, June 16,
2005, were reported fully and accurately by
me, and that this is a correct transcript of
same.

RE: JOINT COMMITTEES ON LABOR & CIVIL SERVICE
AND PUBLIC SAFETY

DEBRA A. WHITEHEAD