

1
2 COUNCIL OF THE CITY OF PHILADELPHIA
3 COMMITTEE ON LABOR AND CIVIL SERVICE

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5 Room 400, City Hall
6 Philadelphia, Pennsylvania
7 Thursday, May 14, 2009, 2:22 p.m.

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9
10 Bill No. 090292 - An ordinance amending Section
11 17-107 of the Philadelphia Code, entitled
12 "Contractors: Labor-Management Relationships,"
13 by amending the definitions of "City Work" and
14 "Service Contracts" to include certain
15 subcontracts for nonprofessional services, all
16 under certain terms and conditions.

17 COMMITTEE MEMBERS PRESENT:

18 Bill Green, Chair, Chair
19 W. Wilson Goode, Jr., Vice Chair
20 Frank DiCicco
21 William K. Greenlee
22 Curtis Jones, Jr.
23 James F. Kenney
24 Maria D. Quiñones-Sanchez

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2 COUNCILMAN GREEN: Good

3 afternoon. The Committee on Labor and
4 Civil Service hearing on Bill No. 090292
5 is in session.

6 Present are Councilmembers:

7 Councilwoman Quiñones-Sanchez, Councilman
8 Bill Greenlee, Councilman Wilson Goode,
9 Councilman Frank DiCicco, and Councilman
10 Jim Kenney.

11 Will the clerk please read the
12 bill into the record.

13 THE CLERK: Bill No. 090202, an
14 ordinance amending Section 17-107 of the
15 Philadelphia Code, entitled "Contractors:
16 Labor-Management Relationships," by
17 amending the definitions of "City Work"
18 and "Service Contracts" to include certain
19 subcontracts for nonprofessional services,
20 all under certain terms and conditions.

21 COUNCILMAN GREEN: Before we
22 begin, would Councilwoman Sanchez like to
23 say anything on the matter?

24 COUNCILWOMAN SANCHEZ: Thank
25 you, Chairman.

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2 I just briefly wanted to say
3 that our intent here is to address an
4 issue and, as a council, be consistent in
5 our goals of providing access on the
6 contracting side and also ensuring that we
7 are abiding by the laws that we've passed
8 around living wage and fairness to the
9 workers who directly or indirectly provide
10 service for city government.

11 And this is really to close that
12 loophole so that we, as a body, remain
13 consistent in what has been a historic
14 support for not only labor relations but
15 in our ability to ensure that we are using
16 our financial money and supporting
17 policies and practice that are consistent
18 with our goal of everybody's ability to
19 earn a living wage.

20 So thank you.

21 (Applause.)

22 COUNCILMAN GREEN: I'm going to
23 call our first witness, Natalia Salgado,
24 from SEIU. And I see that she's being
25 accompanied by Jeff Hornstein.

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2 (Witnesses come forward.)

3 MS. SALGADO: Good afternoon.

4 I'm going to be reading a statement on
5 behalf of Wayne MacManiman, who was unable
6 to be here today.

7 My name is Wayne MacManiman --

8 COUNCILMAN GREEN: Please --

9 MS. SALGADO: I'm sorry.

10 COUNCILMAN GREEN: -- state your
11 name for the record.

12 MS. SALGADO: My name is Natalia
13 Salgado, Political Director for 32BJ.

14 (Reading statement of Wayne
15 MacManiman.)

16 My name is William MacManiman,
17 and I am the District Leader for SEIU
18 Local 32BJ, the largest union of property
19 service workers in the United States. We
20 represent nearly 9,000 service employees
21 in the Philadelphia area, the majority of
22 whom live and work in the City of
23 Philadelphia.

24 I am here today to ask the Labor
25 and Civil Services Committee for a

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2 favorable recommendation on Bill No.

3 090202 -- 292, actually. This bill,

4 cosponsored by five members of this

5 committee, will close a loophole in

6 Philadelphia's living wage law that has

7 affected members of my union and has the

8 potential to affect many more.

9 The bill simply aims to restore

10 the intent of the prevailing-wage

11 legislation passed in 2007 to make sure

12 that City funds do not create poverty jobs

13 in our industry.

14 First, let me give you some

15 background.

16 For many years, since the 1950s,

17 the building and construction trades have

18 had wage and benefit protection for men

19 and women who do the demanding work for

20 their industries. The so-called

21 prevailing wage is set by federal

22 government under the Davis Bacon Act, and

23 our City Code stipulates that the same

24 rates apply to City-funded construction

25 work.

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2 In the spring of 2007, our union
3 worked with Philadelphia City Council to
4 expand Philadelphia's prevailing wage to
5 include building-service employees:
6 janitors, security officers, maintenance
7 people, window cleaners, desk clerks,
8 housekeepers, gardeners, groundskeepers,
9 et cetera.

10 Led in large part by Councilman
11 Kenney, that that bill passed on May 10,
12 2007, by a unanimous vote. Mayor Street
13 signed it into law two weeks later.

14 For the first time, the largely
15 African-American building-service
16 workforce gained wage and benefit
17 protections under the City's prevailing-
18 wage law. Hundreds of cleaners and
19 security officers have seen their living
20 standards rise as a result.

21 To make this concrete, security
22 officers in this building were earning
23 \$8.65 an hour and no meaningful benefits
24 in 2006. In 2007, after an organizing
25 campaign and changes to the law, they now

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2 earn over \$13 an hour and have
3 employer-based health benefits.

4 Security officers at the public
5 health centers (indiscernible), and until
6 recently, the City-funded emergency
7 shelters were also earning liveable wages
8 with meaningful benefits.

9 In March of 2009, we discovered
10 an unintended loophole in the prevailing-
11 wage law. The language on service
12 contracts failed to specify that
13 nonprofessional services performed under
14 the terms of professional service
15 contracts ought to be covered by
16 prevailing-wage provisions. Therefore,
17 the City government can legally avoid
18 paying prevailing wages by hiring a
19 professional services contractor and
20 asking them to subcontract for building
21 service work without paying the prevailing
22 wage.

23 For example, a security
24 contractor hired directly by the City,
25 under a nonprofessional service contract,

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2 would be required to pay prevailing
3 wage -- currently, \$13.48 in wages, plus
4 \$3.24 in benefits, for an unarmed security
5 officer.

6 If the same contractor were
7 hired as a subcontractor by a facilities
8 management company working under a City
9 professional services contracts, it could
10 pay as little as minimum wage, with no
11 benefits.

12 As you will hear, Officer
13 Tadlock say, this legalistic language has
14 really human consequences. He and his
15 coworkers were told on Friday afternoon
16 that the following Monday, they would see
17 their compensation cut from \$13.02, with
18 health coverage, to \$9 an hour, with no
19 benefits; take it or leave it. In these
20 tough economic times, who can blame them
21 for taking a 46 percent pay cut. Officer
22 Tadlock works at Ridge Shelter, which
23 Inquirer reporter Karen Heller called "one
24 of the toughest jobs in the City."

25 Needless to say, as the leader

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2 of our union, which has fought long and
3 hard to raise these jobs out of poverty, I
4 was outraged. I asked my staff, isn't
5 this work covered by prevailing wage? I
6 was shocked to discover that the City had
7 done an end run around its own law.

8 When many of you in this room
9 voted to amend the Philadelphia Code to
10 cover building-service workers, I doubt
11 any of you were thinking, Hmm, I wonder if
12 the City can figure out a way to not pay
13 prevailing wage.

14 No. You support prevailing wage
15 and you support minimum wage standards
16 because you believe in good public policy
17 for City funds to support decent jobs.
18 It's better to make sure that people whose
19 jobs are generated by public dollars earn
20 a livable wage so that they can support
21 their families and can be productive
22 members of this economy.

23 We approached the Administration
24 and we've asked them to fix the problems.
25 And without going into too many details, I

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2 am sorry to report that those efforts
3 reached a dead-end.

4 I know in this time of fiscal
5 crisis, some of you are thinking, What is
6 this going to cost the City? Well, if the
7 original intent of the law was to make
8 sure that City funds must go towards
9 prevailing-wage jobs, it will cost nothing
10 beyond what the City should already be
11 paying.

12 And we can look at this from
13 another perspective. What will it cost
14 these hardworking men and women who fall
15 back into poverty? Our researchers
16 crunched some numbers and they calculated
17 that it will cost the Commonwealth over
18 \$29,000 a year for income support, food
19 stamps, and health insurance for each
20 family. That information is in the chart,
21 which, I think, has been distributed to
22 you, or Lauren has, which has some of the
23 numbers detailing that.

24 It's far more rational and
25 cost-effective to have a decent wage at

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2 the front end than to pay the economic
3 cost of poverty. So we again come to this
4 body of justice.

5 Bill No. 009292 was introduced
6 on April 16, 2009, and it is designed to
7 close a loophole. Please vote yes on Bill
8 No. 090292. In these times of economic
9 uncertainty, it is critical to ensure that
10 City funds do not go towards creating
11 substandard jobs and that all contracted
12 building-service workers are paid the
13 prevailing rate.

14 Thank you.

15 COUNCILMAN GREEN: Thank you for
16 your testimony.

17 Mr. Hornstein, are you going to
18 testify?

19 MR. HORNSTEIN: I'm just here to
20 answer any questions that might come up.

21 COUNCILMAN GREEN: Does anyone
22 have any questions for these witnesses?

23 (No questions.)

24 COUNCILMAN GREEN: Seeing none,
25 thank you very much for your testimony.

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2 Next I'd like to call Richard
3 Feder, from the Law Department.

4 (Witness comes forward.)

5 DEP. SOLICITOR FEDER: Thank
6 you, Mr. Chairman.

7 Good afternoon, Chairman Green
8 and members of the Committee. I'm Richard
9 Feder, Chief Deputy City Solicitor for
10 Appeals and Legislation in the Law
11 Department, and I'm here to testify on
12 behalf of the Law Department on Bill No.
13 090292.

14 This bill would extend
15 prevailing-wage requirements to certain
16 subcontracts on City professional services
17 contracts. It has been the longstanding
18 view of the Law Department, however, that
19 Council does not have the power to impose
20 substantive terms on the provisions of
21 City professional contracts.

22 Council traditionally has
23 exercised power to impose qualifications
24 on bidders for sealed-bid contracts --
25 typically, public-works contracts, but

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2 also others services contracts that are
3 not professional-services contracts. This
4 is because the Charter requires that such
5 contracts be awarded to the lowest
6 responsible bidder, and the definition of
7 what "responsible" means has been viewed
8 by many as a traditional legislative
9 function.

10 The Law Department has never
11 expressed a view one way or the other on
12 this Council power, but it has been
13 exercised since the inception of the
14 Charter, and there's no reason to question
15 it today. That power, however, does not
16 extend to professional-services contracts.

17 The Charter on the
18 Administration's ability to contract for
19 professional services. That is because
20 the Charter's framers recognized that
21 decisions regarding the selection of
22 professional-services providers
23 necessarily entails elements of judgment
24 and discretion not susceptible to a
25 formalistic requirement like the lowest

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2 responsible bidder requirement.

3 By no means, however, did the
4 Charter leave Council out of the
5 contracting process entirely. No contract
6 can be let if there are not available
7 appropriations for the contract, and no
8 contract for more than one year can be let
9 without Council approval.

10 But by limiting Council's role
11 to authorizing appropriations and
12 approving contracts for more than one
13 year, the Charter framers necessarily were
14 saying that for contracts of less than one
15 year, the decision as to what the contract
16 should say and who should get the contract
17 is to be left to the discretion of the
18 Administration, without direct involvement
19 of Council.

20 The requirements of this
21 ordinance that certain professional-
22 services contracts must contain a
23 provision requiring that nonprofessional
24 contractors be paid a prevailing wage can
25 be looked at as either a substantive

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2 control over the content of the
3 professional-services contract itself or a
4 substantive direction as to who can and
5 cannot be selected as a professional-
6 services provider. Looked at either way,
7 in the Law Department's view, the
8 requirement would be outside the Council's
9 power.

10 I am fully aware that the
11 Charter was amended in 2005 to give
12 Council several additional powers over
13 professional-services contracts, including
14 the power to impose eligibility
15 requirements for City contracts based on
16 campaign contributions and the power to
17 regulate the process by which City
18 contracts are awarded.

19 Bill No. 090292, however,
20 effectively imposes a new eligibility
21 requirement for City professional-services
22 contracts: Namely, the contractor must
23 agree to pay its nonprofessional
24 subcontractors the prevailing wage. This
25 is not one of the identified eligibility

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2 requirements authorized by the Charter,
3 nor is it a regulation of the process by
4 which such contracts are awarded.

5 Council's authority to regulate
6 the process of contract awards is not so
7 broad as to give Council the substantive
8 authority to determine either what those
9 contracts should say or who should be
10 eligible to get those contracts.

11 Council's desire to see that
12 City funds are used in a manner consistent
13 with City policy to ensure that workers
14 are given a decent wage and decent
15 benefits is a laudable desire with which
16 few can quarrel. Moreover, Council has
17 numerous tools at its disposal to work
18 with the Administration to encourage the
19 best and most appropriate use of City
20 dollars.

21 The final decision as to who
22 gets City contracts and what those City
23 contracts provide, however, remains with
24 the Administration under the Home Rule
25 Charter.

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2 That conclude my testimony. I'd
3 be happy to take any questions from the
4 members of the committee.

5 COUNCILMAN GREEN: Councilman
6 Goode.

7 COUNCILMAN GOODE: Thank you,
8 Mr. Chairman.

9 Good afternoon, Mr. Feder.

10 DEP. SOLICITOR FEDER: Good
11 afternoon, Councilman.

12 COUNCILMAN GOODE: Mr. Feder, I
13 guess the first question is: Why is the
14 Law Department testifying rather than the
15 Office of Labor Standards?

16 DEP. SOLICITOR FEDER: I can
17 only speak to why the Law Department is
18 testifying, and that's because we thought
19 it's appropriate for the Council to be
20 aware of the legal impediments to
21 implementing this bill.

22 COUNCILMAN GOODE: To some
23 extent, that is usually done through the
24 forwarding of a legal opinion, not
25 necessarily through testimony. Don't you

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2 think it's appropriate that the Office of
3 Labor Standards testify?

4 DEP. SOLICITOR FEDER: I -- I
5 cannot possibly answer that question,
6 Councilman.

7 COUNCILMAN GOODE: Okay. Well,
8 the next question is: You don't believe
9 that it's legal for Council to offer this
10 type of legislation but it would be legal
11 for the Mayor to introduce this
12 legislation?

13 DEP. SOLICITOR FEDER: I --

14 COUNCILMAN GOODE: The Mayor
15 could send the same bill to Council and
16 have it enacted; is that not true?

17 DEP. SOLICITOR FEDER: No, the
18 Mayor could put these prevailing-wage
19 requirements into certain City contracts
20 if he felt it was appropriate, balancing
21 all factors.

22 But whether the Mayor proposes
23 the bill or a Councilmember proposes the
24 bill, Council, in our view, would not have
25 the power to enact and enforce the bill,

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2 regardless of who sent the bill to the
3 floor.

4 COUNCILMAN GOODE: So it's your
5 testimony that it would be illegal for the
6 Mayor to send this exact, same bill to
7 Council?

8 DEP. SOLICITOR FEDER: It is
9 never illegal for a mayor to send the
10 bill, nor is it illegal for a councilwoman
11 to sponsor a bill. It would only be
12 illegal -- it is not within Council's
13 power, if the bill were passed, to impose
14 the requirement.

15 COUNCILMAN GOODE: So what
16 you're saying is that the requirement
17 could be implemented by the Mayor, without
18 legislation.

19 DEP. SOLICITOR FEDER: Yes, sir.

20 COUNCILMAN GOODE: Okay. Are
21 you familiar with the Living Wage Advisory
22 Committee?

23 DEP. SOLICITOR FEDER: Not
24 directly, no.

25 COUNCILMAN GOODE: Well --

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2 DEP. SOLICITOR FEDER: No.

3 COUNCILMAN GOODE: Well, that's
4 interesting. You are familiar with the
5 Philadelphia Minimum Wage Ordinance.

6 DEP. SOLICITOR FEDER:
7 Certainly, yes.

8 COUNCILMAN GOODE: There was a
9 provision within it that a Living Wage
10 Advisory Committee be established through
11 resolution by Council, which it was, and
12 it was to be convened by the Office of
13 Labor Standards.

14 The Street Administration
15 refused to have that Living Wage Advisory
16 Committee convene. The Nutter
17 Administration has been silent in the
18 matter, although I have pushed and pushed
19 and pushed that that Living Wage Advisory
20 Committee be established.

21 If that Living Wage Advisory
22 Committee was established and made a
23 recommendation to the Office of Labor
24 Standards and to the Mayor's Office, then
25 perhaps something like this bill would not

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2 be necessary.

3 So I guess my last question is:

4 Is the Administration and the previous
5 administration actually violating the
6 Philadelphia Minimum Wage Standard
7 Ordinance by not convening the
8 Philadelphia Living Wage Advisory
9 Committee?

10 DEP. SOLICITOR FEDER: My
11 recollection is that the Law Department
12 advised Council and the Mayor on that bill
13 that Council doesn't have the power under
14 the Charter to establish committees.

15 Again, the Mayor would be
16 certainly within his power to convene his
17 own advisory commission, and the Council
18 would be free to develop and hire and
19 establish its own committee, but Council
20 can't tell the Administration to form its
21 own advisory commissions.

22 COUNCILMAN GOODE: So your
23 testimony is that the Street
24 Administration and the Nutter
25 Administration did not convene a Living

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2 Wage Advisory Committee simply because
3 they did not have to?

4 DEP. SOLICITOR FEDER: I know
5 nothing about the specifics as to whether
6 a committee was or wasn't or why it
7 wasn't.

8 I can only tell you, as a legal
9 matter, we would tell the administration
10 that they're not required to do so.
11 Council can't impose that requirement;
12 that would be a voluntary decision by the
13 Administration.

14 I was not involved in any of the
15 discussions about the decision.

16 COUNCILMAN GOODE: Thank you,
17 Mr. Chairman.

18 COUNCILMAN GREEN: Councilman
19 Greenlee.

20 COUNCILMAN GREENLEE: Thank you,
21 Mr. Chair.

22 And, Mr. Feder, good afternoon.
23 And I guess, first of all, I'm not an
24 attorney, so I'm not going to get into a
25 legal debate about Council's powers,

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2 although it seems like numerous times,
3 we've been told that Council doesn't have
4 the power; yet, in the end, through courts
5 or whatever, we have prevailed, so I'll
6 just leave it at that.

7 And I'll -- I know there's
8 some -- a legal opinion from City Council
9 that, I think, takes some issue with your
10 positions, and I'll let either the
11 Chairman or somebody else debate that.

12 I guess my feeling -- and maybe
13 you're not the right one to really address
14 this to, but you're here for the
15 Administration, and I don't know if
16 Dr. Schwarz is going to testify or not,
17 but --

18 DEP. SOLICITOR FEDER:

19 Dr. Schwarz is available for questions.

20 COUNCILMAN GREENLEE: Okay.

21 DEP. SOLICITOR FEDER: And has
22 prepared testimony.

23 COUNCILMAN GREENLEE:

24 (Addressing Chairman Green.) I don't know
25 if it's the time to bring him up or

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2 however you want to do it.

3 I -- but I'll quote your
4 position here -- or your statement, I'm
5 sorry.

6 "Council's desire to see the
7 City funds used in a manner consistent
8 with City policy to ensure that workers
9 are given a decent wage and decent
10 benefits is a laudable desire with which
11 few can quarrel."

12 We don't quarrel with that; why
13 are you quarreling with us?

14 DEP. SOLICITOR FEDER: I think,
15 fairly read, that statement suggests that
16 nobody could possibly object to the goal
17 in a world of unlimited resources.

18 I imagine the Administration --

19 COUNCILMAN GREENLEE: Okay.
20 Well, you didn't put "unlimited resources"
21 in there.

22 DEP. SOLICITOR FEDER: But --
23 okay.

24 COUNCILMAN GREENLEE: All right.
25 I guess what --

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2 (Addressing Chairman Green.)

3 Could we call Dr. Schwarz up now? Is that
4 appropriate, Mr. Chairman? Or how do you
5 want to do this?

6 COUNCILMAN GREEN: Sure.

7 Dr. Schwarz, please.

8 (Witness comes forward.)

9 COUNCILMAN GREEN: State your
10 name for the record.

11 DEP. MAYOR SCHWARZ: Donald
12 Schwartz. I am Deputy Mayor for Health
13 and Opportunity.

14 COUNCILMAN GREENLEE: Thank you,
15 Mr. Chairman.

16 Good afternoon, Dr. Schwarz.

17 DEP. MAYOR SCHWARZ: Good
18 afternoon.

19 COUNCILMAN GREENLEE: You know,
20 my problem with this is, I guess we can
21 always find legal reasons not to do
22 something, and that's why I didn't want to
23 get into a debate with Mr. Feder.

24 But my real problem with this
25 is, I think one thing government -- and

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2 I'm not trying to lecture you, but it --
3 one thing we're supposed to be doing is
4 looking for fairness.

5 Can you, in all honesty, argue
6 that what happened to these workers and
7 what could happen to other workers is
8 fair?

9 DEP. MAYOR SCHWARZ: I'm very
10 much aware of the City's financial
11 situation.

12 COUNCILMAN GREENLEE: Mm-hmm.

13 DEP. MAYOR SCHWARZ: And I don't
14 think that situation leads itself to fair
15 decisions for many people in Philadelphia
16 because the recession itself isn't fair.

17 So, if it's a question of
18 fairness, I'm not sure really what
19 standard we use.

20 COUNCILMAN GREENLEE: Well, it
21 seems to me when somebody gets knocked
22 down in pay and benefits that much, it
23 just seems something -- and the government
24 is involved, and we're involved. I mean,
25 there might be, again, a legal way to try

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2 to say we're one step removed, but we're
3 involved, okay? Those people worked, you
4 know, in a City facility.

5 That is a considerable -- you're
6 making a considerable -- or by not doing
7 something, you're allowing a considerable
8 negative impact on people. And,
9 obviously, we're all well aware of the
10 budget problems of the City. We just went
11 through a number of months dealing with
12 that.

13 But to put that kind of burden
14 on people and make 'em make the decision
15 whether they take -- I think Natalia said
16 a 46, you know, percent cut or something
17 like that. I don't think we could just
18 sit by, Doctor and just say, Ah, the
19 world's not a fair place. I think it's
20 government's job to make it fairer,
21 anyway.

22 And, again, I'm not trying to
23 lecture you, you know. I think probably,
24 deep down, I'm guessing you might agree
25 with me.

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2 But it's just -- I guess I have
3 a problem with the Administration coming
4 in here and taking a legal way of not
5 doing something, you know?

6 I guess I would almost rather
7 hear you say, "We just don't agree and
8 we're not going to do it" instead of
9 trying to tell us we don't have the legal
10 right to do it and that's the reason it's
11 not getting done. You know, if -- if you
12 could do it, then you guys do it, somebody
13 do it.

14 But, again, it just frustrates
15 me from the first day I heard this, and
16 that's why I was happy to cosponsor
17 Councilwoman Sanchez's bill. It just
18 seems like this was just totally wrong.
19 And when something's totally wrong, you
20 got to do something about it, however we
21 do it -- we do it through a bill, we do it
22 through Administration action.

23 But don't hide -- with all due
24 respect, Mr. Feder, don't hide behind some
25 legal technicality that could be quarreled

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2 anyway. Let's just say we're going to do
3 it or we're not going to do it. And then
4 we'll -- I guess we could argue about it.

5 And I --

6 (Applause.)

7 COUNCILMAN GREEN: Speaking not
8 as a legal matter but speaking for the
9 Administration, do you agree that we
10 should pay a living wage to everybody who
11 works in a City facility, Dr. Schwarz?

12 DEP. MAYOR SCHWARZ: I believe
13 that, under ideal circumstances,
14 absolutely.

15 COUNCILMAN GREEN: So your --
16 but it's your position that it's not an
17 ideal circumstance, and so, we can take
18 these people from an effective salary of
19 \$34,000 a year and pay them -- I don't
20 know what percentage this relates to the
21 poverty level, but it's probably right at
22 it, pay them \$18,000 a year, which is what
23 we're talking about, okay, to work 40-hour
24 weeks side-by-side with people who are
25 City employees.

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2 Do you think that that's
3 responsible?

4 DEP. MAYOR SCHWARZ: I know that
5 within the City of Philadelphia, we have
6 many people who are employed at minimum
7 wage. And if you're asking my personal
8 opinion of whether or not minimum wage is
9 fair --

10 COUNCILMAN GREEN: I'm not
11 asking about private employers; I'm asking
12 about the City of Philadelphia and the
13 Nutter Administration.

14 DEP. MAYOR SCHWARZ: Mm-hmm.

15 COUNCILMAN GREEN: Do you think
16 that we should be paying people \$9 an
17 hour, with no benefits?

18 DEP. MAYOR SCHWARZ: I believe
19 that we laid off a large number of City
20 workers, we have cut contracts across the
21 board, and we're trying to be responsible
22 and live within a budget which isn't fair.

23 COUNCILMAN GREEN: There was a
24 woman -- and I forget her name, I used to
25 know it -- who testified at Temple, when

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2 Councilwoman Quiñones-Sanchez and
3 Councilman Clarke brought Council out
4 there for public hearings, and her
5 testimony is maybe something the
6 Administration should keep in mind today.

7 She said, you know, the people
8 can contribute a lot. We can share the
9 pain, but don't balance your budget on the
10 little backs. That's what she said.

11 (Applause.)

12 COUNCILMAN GREEN: Councilman
13 Jones.

14 COUNCILMAN JONES: Thank you,
15 Mr. Chairman.

16 Mr. Feder, in the City Code,
17 what section of the City Code governs
18 prevailing wage?

19 DEP. SOLICITOR FEDER: Section
20 17-107, Councilman.

21 COUNCILMAN JONES: And when was
22 that section of the City Code introduced
23 and by whom?

24 MR. FEDER: In the 1950s, by
25 City Council.

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2 COUNCILMAN JONES: By City
3 Council.

4 DEP. SOLICITOR FEDER: Well, I
5 don't know whether it was proposed by
6 Council or the Mayor, but it was enacted
7 by the Council.

8 COUNCILMAN JONES: I'll try it
9 again. You said 1952, right round the
10 Charter?

11 MR. FEDER: It was in the 1950s.
12 It was enacted by City Council.

13 COUNCILMAN JONES: And it was
14 enacted by City Council.

15 And under that code, what are
16 the categories of purchase that we can
17 enter into as a city, categories of
18 purchase?

19 DEP. SOLICITOR FEDER: Under the
20 prevailing-wage ordinance --

21 COUNCILMAN JONES: No, under
22 contracting out for services, what are the
23 sections? Is there -- there's
24 construction, right?

25 DEP. SOLICITOR FEDER: There's

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2 public works contracts.

3 COUNCILMAN JONES: Public works.

4 MR. FEDER: And there's building
5 service contracts.

6 COUNCILMAN JONES: And supplies.
7 And then there's professional services.

8 DEP. SOLICITOR FEDER: Yes, yes,
9 sir.

10 COUNCILMAN JONES: And of those
11 categories, do all of them have prime and
12 subcontractors?

13 DEP. SOLICITOR FEDER: I'm sure
14 they do.

15 COUNCILMAN JONES: They do. Do
16 the laws that are governed by a prime
17 contractor, when it comes to the BOCA
18 Code, are they subject to the same
19 scrutiny by the subs -- as a municipality,
20 do we look at the subs to hold to the BOCA
21 Code?

22 DEP. SOLICITOR FEDER: I'm not
23 familiar with the BOCA Code, Councilman.
24 I'm sorry.

25 COUNCILMAN JONES: The BOCA Code

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2 is the construction guidelines by L&I by
3 which we're allowed to do construction and
4 other kinds of electrical, plumbing. So
5 there's a book of codes.

6 DEP. SOLICITOR FEDER: Well,
7 that certainly applies to all contractors
8 in the City -- contractors of the City,
9 private contractors, subs, primes, for
10 sure.

11 COUNCILMAN JONES: So can you
12 explain to me why that pass-through for
13 certain parts of our legal requirements do
14 not pass through to subs when it comes to
15 prevailing wage?

16 DEP. SOLICITOR FEDER: The
17 construction codes apply to all
18 contractors in the -- all workers -- all
19 construction activity in the City,
20 regardless whether it's City-funded or
21 private contract. It's an exercise of
22 Council's police power to regulate the
23 general public. We want to make sure that
24 nobody builds a building in the City that
25 is unsafe.

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2 The prevailing-wage rules
3 Council has chosen over the years are not
4 to apply to all City employers, but it is
5 limited to a very -- a narrow slice, only
6 contractors -- contracts funded by the
7 City, effectively.

8 COUNCILMAN JONES: Mm-hmm.

9 MR. FEDER: And when Council
10 operates in that narrow area of regulating
11 the City's own contracting processes, the
12 Charter, in our view, limits where Council
13 can draw the line.

14 If Council wished to impose a
15 prevailing-wage rule for all City
16 employees or all building-service people,
17 all security people in all private
18 contracts of the City, we believe that's
19 likely within Council's power, but that's
20 not what this bill does.

21 COUNCILMAN JONES: So let me ask
22 you a question. So it is within Council's
23 power to have prevailing wage apply to
24 professional services if it passes an
25 ordinance to do so?

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2 DEP. SOLICITOR FEDER: If
3 Council passed a prevailing-wage bill
4 applied to all contracts in the City --
5 not just City contracts, but private
6 contracts -- private employers, private
7 entities in the same way that --

8 COUNCILMAN JONES: So you're
9 saying that we could not limit it to City
10 contracts.

11 DEP. SOLICITOR FEDER: Correct.

12 COUNCILMAN JONES: Why is that?

13 DEP. SOLICITOR FEDER: Because
14 Council has police power over the general
15 public to protect the public's health,
16 safety, and welfare.

17 COUNCILMAN JONES: Mm-hmm.

18 MR. FEDER: But Council, in our
19 view, doesn't have the power to tell the
20 Administration how to go about doing its
21 business other than as part of the
22 regulation of the general public.

23 COUNCILMAN JONES: My question
24 is: How come, when we implemented 17-500,
25 which made requirements on affirmative

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2 action, we specifically held that to City
3 contracts, so in that regard, we were able
4 to use that particular instance to only
5 affect City contracts? Why is it
6 different for prevailing wage?

7 DEP. SOLICITOR FEDER: I think
8 my recollection is that there's a fair
9 amount of controversy as to whether
10 Council had the power to impose the
11 requirements of 17-500.

12 COUNCILMAN JONES: No -- well,
13 no, I was around. I actually, sir, was --
14 I ran the Minorities Business Enterprise
15 Council since -- from '87 to --

16 (Addressing Councilwoman
17 Sanchez.) When was your father at ...

18 COUNCILWOMAN SANCHEZ: '88.

19 COUNCILMAN JONES: '88? So I
20 had some experience with that.

21 And when we went to court, it
22 was not about whether we had the authority
23 to implement 17-500; it was whether or not
24 constitutionally in the U.S. did it
25 discriminate against other races or groups

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2 of people.

3 So the question of whether we
4 had the authority to implement it was not
5 a question.

6 MR. FEDER: Right.

7 COUNCILMAN JONES: So my
8 question becomes: If we had the authority
9 to implement a particular regulation on
10 contracting City contracting in that
11 regard, why is it different for prevailing
12 wage? Why do we not have the authority to
13 do it there?

14 DEP. SOLICITOR FEDER: I'm not
15 sure I can accept the premise of your
16 question, Councilman.

17 I believe 17-500 is an example
18 of what I alluded to earlier. The
19 Administration is free, if it wishes, if
20 it believes it has the resources and the
21 ability, balancing all of the factors to
22 implement prevailing wage, the
23 Administration chose, with respect to
24 MBEC, because it believed it was
25 appropriate, balancing all of the factors,

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2 to voluntarily implement MBEC, and MBEC
3 was implemented through an executive order
4 of the Mayor, which largely mirrored
5 17-500, but it was not as a result of an
6 imposition by Council.

7 COUNCILMAN JONES: Your
8 recollection of history is revisionist.
9 According to the law, it was passed under
10 the City code, and I would ask you to go
11 look up that, because it was passed.

12 And then, when it was stuck
13 down, there was an executive order that
14 replaced it. That's the history. And I
15 was there, so I do know.

16 So I'm questioning whether or
17 not we do actually have the authority to
18 do that. And I'm not an attorney, but I'm
19 a lawmaker, so I would question that.

20 (Applause.)

21 COUNCILMAN GREEN: I just want
22 to understand your testimony for the
23 record. You're testifying that if we
24 wanted to pass a prevailing-wage bill that
25 applied to every employer in the City,

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2 that we would be within our police powers
3 to do so.

4 DEP. SOLICITOR FEDER: I haven't
5 researched that question fully 'cause it
6 isn't before us, but I would think there's
7 a pretty good argument. I would want to
8 do a little more research on that.

9 COUNCILMAN GREEN: Okay.

10 DEP. SOLICITOR FEDER: But yes

11 --

12 COUNCILMAN GREEN: So let's just
13 say we pass that ordinance, and two years
14 from now, we want to exempt out private
15 employers.

16 DEP. SOLICITOR FEDER: Then it
17 would effectively be the ordinance that we
18 have today.

19 COUNCILMAN GREEN: Then it would
20 effectively be -- so what you're saying
21 is, with respect to ordinances that are
22 passed by this City Council, we can't hold
23 ourselves to a higher standard than we
24 would hold private employers under the
25 Charter, in your opinion. That's

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2 effectively your testimony.

3 DEP. SOLICITOR FEDER: With
4 respect to nonprofessional service
5 contracts, Council has exercised that
6 power for years, without quarrel, but the
7 Charter is, we believe, pretty clear that
8 Council does not have that power with
9 respect to professional-services
10 contracts; that's been left to the
11 administrations.

12 COUNCILMAN GREEN: Okay. Thank
13 you.

14 Any further questions for these
15 witnesses?

16 COUNCILMAN GOODE: Mr. Feder,
17 you say in your testimony that decisions
18 regarding selection of professional
19 services providers necessarily entails the
20 elements of judgment and discretion.

21 Can you explain that?

22 DEP. SOLICITOR FEDER: The
23 traditional reason why Section 8-200 of
24 the Charter, like many contracting
25 provisions throughout the country, impose

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2 lowest responsible bidder requirements on
3 nonprofessional service contracts but
4 exclude professional services because the
5 decision as to how you go about choosing a
6 professional-services provider is not
7 susceptible to a mathematical formula;
8 it's susceptible to judgment and
9 discretion and lots of factors in choosing
10 who that contractor would be and what the
11 terms of the contract should be.

12 COUNCILMAN GOODE: And so
13 clearly, we're not trying to give
14 ourselves the authority to choose the
15 contractor, and you're simply saying that
16 trying to impose contract terms is --
17 specifically is beyond our authority.

18 If we didn't put a dollar amount
19 in it but crafted other language along the
20 lines of a living wage requirement, would
21 that be legal?

22 DEP. SOLICITOR FEDER: I don't
23 believe so, Councilman. I know this is
24 going to perhaps be surprising to some
25 members of the committee, but we do try to

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2 come up with ways to make Council
3 legislation work. And if we thought there
4 was a way to make this work, I would
5 suggest it, and if I thought that idea
6 would work, I would immediately agree --

7 COUNCILMAN GOODE: No, I'm
8 asking because of --

9 DEP. SOLICITOR FEDER: I do not
10 believe that would be within Council's
11 power.

12 COUNCILMAN GOODE: I'm asking --
13 I want you to explain why because I have
14 actually a couple of questions beyond
15 that. There's a reason why I'm asking
16 that question, not just for that specific
17 answer, but can you explain why?

18 DEP. SOLICITOR FEDER: Sure.
19 For the same reasons that I've been
20 suggesting. Imposing a requirement that
21 all City -- or that any City professional-
22 services contract contain a substantive
23 provision such as certain workers must be
24 paid a prevailing wage, that's a
25 substantive rule, and that is not within

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2 Council's power; that's an administration
3 prerogative to determine what the
4 professional-services contracts look like.

5 Council doesn't make contracting
6 decisions for the City; the
7 Administration, does under the Home Rule
8 Charter. And that goes to both who gets
9 the contract and what the contract looks
10 like and what the contract says.

11 COUNCILMAN GOODE: Actually, the
12 question I was about to ask was related to
13 minimum wage laws on the state and federal
14 level, but actually, I'll just
15 (indiscernible) the question.

16 I think at the end of the day,
17 it is probably just a Charter issue in
18 your mind, and it's going to stay there,
19 rather than it being a Philadelphia Code
20 issue.

21 Thank you.

22 COUNCILMAN GREEN: One final
23 question. When you're reviewing
24 nonprofessional service contracts, do you
25 consider whether or not the bidder is

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2 responsible?

3 DEP. SOLICITOR FEDER: The
4 Charter requires that the Administration
5 do that, yes.

6 COUNCILMAN GREEN: And what does
7 "responsible" mean?

8 DEP. SOLICITOR FEDER:
9 Procurement is not my area.

10 COUNCILMAN GREEN: Okay.

11 MR. FEDER: But, generally, it
12 means, at a minimum, are they capable of
13 performing the work in a manner sufficient
14 to meet the quality standards that we
15 would expect of a City contractor.

16 And, in addition, Council has
17 traditionally added other elements of
18 responsibilities that don't necessarily
19 just go to the ability to perform the work
20 but also go to certain elements of social
21 responsibility, and Council has exercised
22 that power, and the cases have suggested
23 that that might well be acceptable too.

24 COUNCILMAN GREEN: Well, let me
25 suggest that we think it's socially

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2 irresponsible to pay people below the
3 prevailing wage who are working in the
4 City's facilities, and I think that word
5 "responsible" is where Council is going to
6 hang its hat on this matter.

7 Thank you.

8 (Applause.)

9 COUNCILMAN GREEN: I'd like to
10 briefly call Mr. Auerbach and Mr. Masters.

11 (Witnesses come forward.)

12 COUNCILMAN GREEN: I just want
13 to ask you -- I rarely get a yes, no
14 answer from the Administration, so I want
15 to see if we can limit your testimony to
16 one word.

17 So if you would please state
18 your name for the record.

19 MR. AUERBACH: Sure. It's Eric
20 Auerbach, Council Tech Staff.

21 COUNCILMAN GREEN: Thank you,
22 Mr. Auerbach.

23 Is the bill proposed by
24 Councilwoman Sanchez legal, in your view?

25 MR. AUERBACH: Yes, it is legal.

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2 COUNCILMAN GREEN: Thank you.

3 COUNCILMAN DiCICCO: I'm just
4 curious.

5 COUNCILMAN GREEN: Councilman
6 DiCicco.

7 COUNCILMAN DiCICCO: I'm not a
8 lawyer. Is it legal, meaning it's
9 enforceable?

10 MR. AUERBACH: I believe the
11 recent amendments to Section 8-200 of the
12 Charter that were adopted in 2005
13 eliminated any question at all about
14 Council's authority to enact this bill.
15 It expressly authorizes Council to
16 legislate a process for the award of
17 professional-services contracts, and
18 that's exactly what this bill does.

19 COUNCILMAN DiCICCO: I want to
20 do the responsible thing and vote for the
21 bill because I think it's the right thing
22 to do; I just don't want to go down a path
23 that it's an exercise in futility, meaning
24 we're not going to get this done, and it
25 sounds all good, but at the end of the

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2 day, we're going to lose the case.

3 But I'll accept your explanation
4 and opinion. Thank you.

5 Thank you.

6 COUNCILMAN GREEN: Thank you.
7 And I appreciate your testimony. Thank
8 you.

9 MR. AUERBACH: Thank you.

10 COUNCILMAN GREEN: I'm going to
11 submit for the record the memo from the
12 tech staff of City Council, which
13 basically says that we can determine pay
14 as a criteria for whether or not a bidder
15 is responsible.

16 Our next witnesses is a panel
17 of: Pam Johnson, Samuel Sessoms*, and
18 Matt Tadlock.

19 (Witness comes forward.)

20 (*Samuel Sessoms' written
21 testimony is attached hereto.)

22 COUNCILMAN GREEN: We have your
23 testimony for the record, and it will be
24 submitted. If you would like to
25 abbreviate it, that's fine, or you can

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2 read it for the record.

3 Thank you.

4 MR. TADLOCK: All right. Good
5 morning. My name is Mark Tadlock, and I
6 have been a (indiscernible) security
7 officer for three years and most recently
8 became a member of SEIU Local 32BJ.

9 I currently work at the Ridge
10 Shelter, making both staff visitors are
11 safe. You may have read about me in the
12 Inquirer last month. Columnist Karen
13 Heller said my job was one of the toughest
14 she's ever seen. Every day, 365 days a
15 year, this shelter is jammed to capacity.
16 Every day, my colleagues break up fights,
17 confiscate drugs and weapons and deal with
18 people our society has forgotten.

19 In 2007, we joined together with
20 SEIU 32BJ. We negotiated a contract with
21 Scotland Yard that increased my wages from
22 \$8.65 an hour, with benefits or paid time
23 off, to \$13.02, with employer-paid medical
24 coverage and ten paid vacation days. For
25 over a year, I earned living wages, and my

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2 family benefited. I have three children
3 and a wife to support.

4 In March 2009, my life was
5 changed when I was informed on Friday that
6 the following Monday, my pay would be cut
7 from \$13.02 to \$9 an hour, and that I
8 would no longer receive medical insurance.
9 I could not believe the City would do this
10 to me and my twenty coworkers. In these
11 tough times, I had no choice but to accept
12 the offer, that I could not afford to live
13 without a paycheck.

14 The union explained to us that
15 the City used a loophole in the
16 prevailing-wage law to cut payments to the
17 shelter, which, in turn, allowed Scotland
18 Yard to cut our pay.

19 We are fighting to maintain our
20 dignity. We have seen what can happen
21 when we join together with a strong union,
22 but we (indiscernible) what can happen
23 when public policy does not support
24 working people.

25 On behalf of my coworkers and

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2 building-service workers in the City, I
3 urge you to close this loophole so this
4 doesn't happen again.

5 Thank you.

6 COUNCILMAN GREEN: Thank you for
7 your testimony.

8 (Applause.)

9 COUNCILMAN GREEN: Please state
10 your name for the record.

11 MS. JOHNSON: Good afternoon.

12 My name is Pamela Johnson, and I have been
13 a Scotland Yard security guard for six
14 years. I currently work as a security
15 guard at the Municipal Services Building.
16 I am here today to ask for your support
17 for Bill No. 090292, the amendments to the
18 Philadelphia prevailing wage.

19 I have been a 32BJ SEIU member
20 for six months. Before the union came and
21 this City Council passed the prevailing-
22 wage law in 2007, I knew that there wasn't
23 a guarantee on my job or wages and that if
24 the City or my employer decided to change
25 the rules, I could be out of a job. The

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2 prevailing-wage law protects me, but
3 because of a loophole in the law, my
4 brothers and sisters, who also work in
5 Scotland Yard, do not have the same
6 protections.

7 I am here to support closing the
8 loophole in the prevailing-wage law
9 because I know what it feels like to have
10 the rug pulled from underneath you, to one
11 day wake up and not know how you are going
12 to make ends meet.

13 Security guards in this city do
14 not have an easy job, and every day, we
15 encounter a host of problems that most
16 people would not want to deal with.
17 Homeless-shelter security guards know this
18 better than anyone else, and yet, they
19 will now be paid less than their coworkers
20 at the Municipal Services Building, One
21 Parkway, and City Hall for doing the same,
22 if not tougher, work. How is this fair?

23 It troubles me that in these
24 difficult times, while those at the top
25 continue to live comfortably, workers such

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2 as those in the homeless shelters have to
3 go out and look for an additional job
4 because the one they have will no longer
5 be enough to pay the bills or provide
6 health care.

7 It troubles me that the
8 administration of this city did not
9 consider these workers important enough to
10 uphold the spirit of the law and maintain
11 their wages and health care.

12 It troubles me that decision-
13 makers don't take into consideration what
14 effects their actions will have on the
15 day-to-day lives of workers.

16 I know that for some, this is
17 just another piece of technical
18 legislation coming before the City
19 Council, but for many workers, it is the
20 difference between poverty wages and
21 living wages, health-care coverage for
22 their family, and joining the millions of
23 uninsured.

24 I ask the members of this
25 committee today to consider how important

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2 this bill is to the working people of
3 Philadelphia and vote in support.

4 Thank you. And have a good
5 afternoon.

6 (Applause.)

7 COUNCILMAN GREEN: Thank you for
8 your testimony.

9 Are there any questions for
10 these people?

11 (No questions or comments.)

12 COUNCILMAN GREEN: Okay. Then
13 we will move out of our public hearing and
14 into the public meeting.

15 I would ask the bill's sponsor
16 to move the bill.

17 COUNCILWOMAN SANCHEZ: Thank
18 you, Chairman Green.

19 I would ask that Bill 090292 be
20 moved out of committee with a favorable
21 recommendation and that the rules of
22 Council be suspended to allow for first
23 hearing at our next public session.

24 (Motion duly seconded.)

25 COUNCILMAN GREEN: All in favor?

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2 All opposed?

3 Seeing no opposition, the bill
4 passes.

5 I'd like to say that this bill
6 builds on the fine prevailing-wage work
7 done by Councilman Kenney, and I want to
8 thank him for his work in this area also.

9 This meeting is adjourned.

10 (Applause.)

11 (Proceedings end at 3:20 p.m.)

12 * * *

C E R T I F I C A T E

I HEREBY CERTIFY that the
proceedings of the City of Philadelphia
Council Committee on Labor and Civil Service
are contained fully and accurately in the
stenographic notes taken by me on Thursday,
May 14, 2009, and that this is a true and
correct statement of same.

JOSEPHINE CARDILLO

Registered Professional Reporter

(The foregoing certification of
this transcript does not apply to any
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