

1
2 COUNCIL OF THE CITY OF PHILADELPHIA
3 COMMITTEE ON LABOR AND CIVIL SERVICE
4

5
6 Room 400, City Hall
Philadelphia, Pennsylvania
7 Wednesday, December 15, 2010
11:20 a.m.
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PRESENT:

10 COUNCILMAN BILL GREEN, CHAIR
COUNCILMAN W. WILSON GOODE, JR.
11 COUNCILMAN WILLIAM K. GREENLEE
COUNCILMAN CURTIS JONES, JR.
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BILL 100780 - An ordinance amending Title 22
14 of The Philadelphia Code, entitled "Public
Employees Retirement Code," by expanding the
15 scope of "Plan '10" and "DC Plan" to cover
additional employees, including Fire
16 Department employees; by revising the
definition of "Fire employee"; and by making
17 technical changes; all under certain terms and
conditions.
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2 COUNCILMAN GREEN: This hearing
3 of this Committee on Labor and Civil
4 Service is now in session.

5 Would the Clerk please read the
6 title of the bill.

7 THE CLERK: Bill No. 100780, an
8 ordinance amending Title 22 of The
9 Philadelphia Code, entitled "Public
10 Employees Retirement Code," by expanding
11 the scope of "Plan '10" and "DC Plan" to
12 cover additional employees, including
13 Fire Department employees; by revising
14 the definition of "Fire employee"; and by
15 making technical changes; all under
16 certain terms and conditions.

17 COUNCILMAN GREEN: Thank you.

18 I'm waiting for a quorum. If
19 someone could go to the hallway and
20 please get Councilman Greenlee.

21 (Pause.)

22 COUNCILMAN GREEN: Thank you.
23 Let the record reflect that Councilman
24 Greenlee, Councilman Jones, Councilman
25 Goode are here, and we'd like to begin

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2 testimony with Mr. Dubow.

3 (Witness approached witness
4 table.)

5 COUNCILMAN GREEN: Please
6 proceed.

7 MR. DUBOW: Good morning,
8 Chairman Green and members of the
9 Committee. My name is Rob Dubow. I'm
10 the City's Finance Director and I'm here
11 to testify in support of Bill No. 100780,
12 which was introduced on behalf of the
13 Administration. The Bill amends the
14 Public Employees Retirement Code to
15 include certain employees hired or
16 rehired on or after October 10, 2010 in
17 two new pension plans created under Bill
18 100286. The bill also ensures that fire
19 service paramedics, who were recently
20 removed from the firefighting bargaining
21 unit and placed in their own unit,
22 participate in the same pension as the
23 firefighters subject to the same new
24 plans for new hires.

25 Earlier this year, an

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2 arbitration panel was convened under Act
3 111 to issue an award regarding the
4 contract between the City and the
5 Firefighters. The panel's award provided
6 that new employees hired or rehired on or
7 after October 15th would have the option
8 to enroll in two new pension plans, Plan
9 '10 and the DC Plan. Those plans are
10 critical in ensuring the future stability
11 of the City's pension fund.

12 The plans begin to reduce the
13 City's pension costs at a time when the
14 fund's health is deteriorating and while
15 it's consuming ever-increasing portions
16 of the City's General Fund. In just five
17 years, our pension costs have doubled,
18 from about \$230 million to about 460
19 million. And while those costs rose, at
20 the same time health of the fund
21 deteriorated, as our funding percent
22 dropped from about 77 percent to 45
23 percent, and that 45 percent is one of
24 the weakest among major cities.

25 While the City has appealed the

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2 economic provisions of the award, neither
3 the City nor the Firefighters appealed
4 the award's pension provisions. As a
5 result, they are in effect.

6 Pension costs make up just over
7 12 and a half percent of the City's FY11
8 budget, and that's a number that's
9 projected to continue to increase
10 significantly in the upcoming years. The
11 steep rises in the pension costs are
12 projected to continue throughout our
13 Five-Year Plan. Those costs are
14 projected to be 562 million in FY12 and
15 over 600 million in FY15. That would be
16 about 15 percent of the budget. That
17 means our pension costs will have grown
18 by over \$140 million from FY09 to FY15.
19 In order to ensure the viability of the
20 system and to manage our ever-growing
21 costs, the Mayor has made pension reform
22 a priority and one of his goals in
23 contract negotiations.

24 As previously noted, earlier
25 this year an arbitration panel was

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convened under Act 111 and issued an award regarding the contract between the City and the Firefighters. The award provides that all IAFF employees hired or rehired after October 15th would make a one-time election between participating in the City's current defined benefit pension plan and increasing their contribution from five percent to six percent or participating in a hybrid plan that contained both a defined benefit portion and a voluntary defined contribution component.

This bill would codify the Act 111 award for IAFF members. These provisions are similar to the ones included in the Act 111 award for the FOP that were codified in Bill No. 100286. This bill would apply these provisions to new paramedic hires as well.

Increasing employee pension contributions and the creation of a hybrid pension plan will help reduce costs to the City in both the short and

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the long term, allowing the City to devote more resources to services. Moreover, these changes will help cushion the City against dramatic decreases in the stockmarket like those that decimated the pension fund over the last few years. At the same time, they will offer increased portability to members of the system who elect to participate in the defined contribution plan and will continue to provide a reasonable measure of retirement security for all City employees through pension benefits.

These reforms are in conjunction with other ongoing efforts to stabilize the City's pension fund. As part of last year's budget, the state granted the City the ability to re-amortize the pension fund's unfunded actuarial accrued liability over a 30-year period and to defer a portion of the FY10 and FY11 payment to FY13 and FY14.

At the same time those changes

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2 were being made at the state level, the
3 Pension Board voted to change the pension
4 fund's earnings assumption from eight and
5 three-quarters to eight and a quarter and
6 has since lowered the earnings assumption
7 again to 8.15 percent. Lowering that
8 assumption allows funds to moderate the
9 risks of their investments, which can
10 also help reduce the likelihood of
11 losses. Additionally, the Board
12 increased the smoothing period for
13 actuarial losses and gains from five
14 years to ten years, reducing the impact
15 that any particular year would have on
16 valuation of the funded status of the
17 fund and on the City's required payments.
18 That will help reduce the volatility of
19 pension payments.

20 The net impact of all these
21 changes is to moderate what would have
22 been even more devastating increases in
23 pension costs over the Five-Year Plan and
24 to increase the City's ability to fund
25 existing liabilities in the long term.

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2 The legislation before you codifies the
3 panel's recognition of this critical
4 component of the City's efforts to get
5 pension costs under control.

6 Thank you for the opportunity
7 to testify, and I'd be happy to answer
8 any questions you have.

9 COUNCILMAN GREEN: Thank you,
10 Mr. Dubow.

11 Councilman Jones.

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

14 Rob, Mr. Dubow, I always hear
15 increases in pension costs. Can you just
16 briefly educate us as to what those
17 increases actually are, and is there a
18 cost of living increase, COLA, that is a
19 part of that?

20 MR. DUBOW: So the costs that
21 we're talking about are the amounts that
22 the City pays into the pension fund and
23 the amount we pay for our pension
24 obligation bonds. Those costs are based
25 on what the actuary tells us we need to

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2 pay each year. So he looks at things
3 like our assumed earnings assumption, how
4 long people will live, when they'll
5 retire, and comes up with a payment.

6 Our payment has increased since
7 '04 from under \$200 million to well over
8 400 and then will be over 600 by the end
9 of our current Five-Year Plan.

10 COUNCILMAN JONES: I mean, just
11 out of course of business, do we ever
12 challenge those assumptions?

13 MR. DUBOW: We go through --
14 the Pension Board goes through these
15 assumptions with the actuary to make sure
16 that they make sense to us. Actually,
17 just yesterday there were some components
18 to the assumptions that we went over at a
19 Pension Board meeting and agreed were
20 reasonable.

21 So I don't think it's the
22 assumptions are unreasonable. I think
23 it's just that the costs are escalating.

24 COUNCILMAN JONES: Cost of
25 living increases?

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2 MR. DUBOW: When you say "cost
3 of living increases," do you mean do we
4 build in -- does he build in salary
5 increases or does he build in cost of
6 living increases for pensioners?

7 COUNCILMAN JONES: Pensioners.

8 MR. DUBOW: No, because we
9 don't have that -- they would only get
10 those through the pension adjustment
11 fund.

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

14 COUNCILMAN GREEN: Thank you.

15 Do we have a current fire
16 class?

17 MR. DUBOW: I do not think --
18 no, we do not.

19 COUNCILMAN GREEN: So as a
20 question of timing, I understand there's
21 some dispute between lawyers for the
22 union and lawyers for the City with
23 respect to whether or not the arbitrators
24 on remand, were that to happen from
25 Common Pleas, could come out with an

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2 award that does not -- that is different
3 even with respect to pensions. I have an
4 opinion from Ballard Spahr which --

5 MR. DUBOW: I have that with
6 me.

7 COUNCILMAN GREEN: -- which we
8 will make part of the record. I'm just
9 wondering what the impact would be of
10 that eventuality occurring if we've put
11 people into this plan.

12 MR. DUBOW: As you'll see in
13 the Ballard opinion, they said that that
14 can't happen.

15 COUNCILMAN GREEN: Okay. So
16 just for the record, the Administration's
17 position is, that provision could not be
18 changed --

19 MR. DUBOW: Right. I would use
20 the Ballard letter that you said you're
21 going to put into the record as our
22 position.

23 COUNCILMAN GREEN: Okay. Thank
24 you, Mr. Dubow.

25 MR. DUBOW: Thank you.

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2 COUNCILMAN GREEN: Any further
3 questions from the Committee?

4 (No response.)

5 COUNCILMAN GREEN: Mr. Gault.
6 (Witness approached witness
7 table.)

8 COUNCILMAN GREEN: Please
9 proceed.

10 MR. GAULT: Thank you, sir.

11 Good morning, Council. My name
12 is William Gault. I'm a Fire Lieutenant
13 and proud almost 27-year member of the
14 Philadelphia Fire Department. I'm also
15 honored to serve as President of the
16 International Association Local 22, the
17 union that represents the over 4,000
18 active and retired firefighters and
19 paramedics who risk their lives every day
20 in order to serve the citizens of
21 Philadelphia.

22 I appear today before this
23 Committee to comment on Bill No. 100780,
24 which is intended to revise the City's
25 pension ordinance in order to incorporate

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2 the pension provisions of the most recent
3 IAFF Local 22 Act 111 award. Our union
4 has adopted a neutral position on the
5 bill.

6 On the immediate question
7 whether Bill 100780 accurately picks up
8 the changes from the most recent award,
9 the answer is, yes, it does. Bill 100780
10 accurately amends the pension ordinance
11 to match the award.

12 I wish to remind the Committee
13 members that the award's pension
14 provisions represent a reduction in
15 benefits for my members. We are not
16 happy about the pension reduction. We
17 don't think it was necessary or deserved.
18 We opposed it before the arbitration
19 panel, but at the end of the day, we
20 accept the pension provision because it
21 was an award by an Act 111 panel as part
22 of what is supposed to be final and
23 binding arbitration.

24 I say "supposed to be" because
25 the Nutter Administration does not share

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2 our position. Despite the fact that our
3 most recent award contains significant
4 economic concessions, including a wage
5 freeze, medical benefit changes and the
6 pension reduction before you today, the
7 Administration has nonetheless chosen to
8 appeal the entire award under the PICA
9 law. Despite the fact that our award
10 requires deeper cuts than the police
11 award that Mayor Nutter did not appeal,
12 the Administration has chosen to appeal
13 our award.

14 Apparently, to this
15 Administration, final and binding doesn't
16 mean final and binding, at least when it
17 comes to the firefighters and medics.
18 I'll bet you that virtually every one of
19 your constituents would tell you that we
20 deserve better than that, much better.

21 While Local 22's position on
22 the bill is neutral, we do not think that
23 action on the bill may be premature at
24 this time. This is because the
25 Administration's appeal of the award

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2 threatens the very pension concessions
3 that it is seeking to implement with this
4 bill. In other words, if the City wins
5 its legal challenge, which was to the
6 economic provisions of the award, then
7 the award will be returned to the Act 111
8 panel with instructions to essentially go
9 back to the drawing board. At that
10 point, the panel could very well decide
11 to issue a completely different pension
12 provision. Nobody knows for sure.

13 In light of this, it makes more
14 sense for this Committee to defer
15 consideration of Bill 100780 until after
16 the Court of Common Pleas has issued a
17 decision on the Administration's appeal,
18 which we expect in a few months. But
19 because it is IAFF Local 22's
20 longstanding position that Act 111 awards
21 should be enforced, win or lose, I cannot
22 in good conscience come here today and
23 ask Council not to implement any aspect
24 of the award. That's why our position on
25 the bill is neutral. If the Committee

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2 chooses to defer consideration of the
3 bill, I think that makes more sense, but
4 Local 22 is not asking you to do so.

5 Finally, I would like to
6 highlight the inconsistency in the Nutter
7 Administration's position on whether the
8 award should be implemented. Today, the
9 Administration asks Council to implement
10 the award's pension provision. In fact,
11 calling it a mandate. But at the same
12 time, the Administration neglects to tell
13 Council that to date it has refused to
14 implement the award's salary increase or
15 its medical provisions, which will
16 actually save money. The Administration
17 has also refused to implement provisions
18 concerning staffing and promotions, among
19 other issues.

20 So when the Administration
21 argues that the award acts as a mandate,
22 what they really mean is that the award
23 is only a mandate to implement the
24 provisions they like. That's not honest
25 and it isn't fair to firefighters and

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2 medics. That's not compromise, that's
3 not leadership, and that's not what Act
4 111 requires or our City's firefighters
5 and medics deserve.

6 If City Council is to take a
7 position on implementation of any part of
8 our most recent award, including the
9 pension provision, I would respectfully
10 request that Council also advance the
11 position that the award should be
12 implemented in its entirety, as the law
13 requires.

14 Thank you for your time and
15 consideration and continued support, and
16 I have a few bullet points here.

17 The pension bill accurately
18 picks up the award's changes. The
19 changes are concessions, but we are
20 willing to live with them because Act 111
21 awards are final and binding. We are
22 walking the walk.

23 Because of the pending appeal,
24 Council should go slow on this bill. No
25 reason to hurry. We will get an answer

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2 on another appeal in a few months.

3 Probably March.

4 The Mayor's appeal of our award
5 is wrong. By appealing, he is risking
6 some of the reforms won by the City in
7 the award, including medical and pension
8 changes. He is risking residency, which
9 they won. It just doesn't make sense.

10 There was no reason to appeal
11 our award given that Nutter did not
12 appeal the police award. Basically, the
13 same economic terms.

14 Furloughs won't work in the
15 Fire Department. We're already cut to
16 the bone. Furloughs would mean more
17 company closures, brown-outs, and that's
18 why the Act 111 panel didn't award them.

19 We are currently understaffed.
20 Fire deaths are up from 25 to 31
21 currently. Firefighter injuries are up.
22 We're almost at 250 firefighter injuries,
23 and our injuries are not paper cuts.

24 We need to increase the
25 staffing and the brown-outs and look at

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2 reopening the companies.

3 Thank you.

4 COUNCILMAN GREEN: Thank you.

5 Any questions?

6 Councilman Greenlee.

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

9 Just so I'm clear here, as a
10 non-attorney -- Mr. Chairman, maybe you
11 could explain it. I'm reading the
12 Ballard Spahr opinion and it says in the
13 first paragraph, "As explained below, the
14 pension provisions of the award are not
15 likely to be impacted by the City's
16 appeal of other provisions of the award,"
17 and then in the end, "The pension
18 provisions of the award will not be
19 altered by the City's pending appeal."

20 Was the whole award appealed,
21 the entire thing?

22 COUNCILMAN GREEN: The City
23 appealed the entire award, excluding
24 Sections 5 and 6, which relate to the
25 pension award in their specific appeal.

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2 The Firefighters appealed that appeal,
3 did not specifically appeal the award
4 with respect to 5 and 6. But so the
5 question of law really is, can you appeal
6 a portion when you're appealing under the
7 PICA statute, or by virtue of the PICA
8 statute, do you have to appeal the entire
9 award, which will then be remanded.

10 There is no caselaw on the
11 topic. So what we have between the
12 lawyers for the City and the lawyers for
13 the Firefighters is a difference of
14 opinion. The Firefighters' position is
15 that a court would rule that the entire
16 award would be remanded and the
17 arbitrators will just start over, a clean
18 slate, and can do whatever they want to
19 make the award. The City's position will
20 be, in that circumstance, that they can
21 appeal specific provisions of the award.

22 And so if a different award
23 that were to affect these provisions
24 comes out, I imagine it will be years in
25 courts until the Supreme Court resolves

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2 that one legal issue, because it's never
3 been decided with respect to the PICA
4 statute.

5 COUNCILMAN GREENLEE: And in
6 the interim, we have to do something?

7 COUNCILMAN GREEN: In the
8 interim, since there's no fire class, I
9 guess we can move this out of Committee
10 and watch progress.

11 COUNCILMAN GREENLEE: Watch how
12 the appeal goes, okay. I guess I was
13 just taken aback by the first paragraph.
14 I know, with all due respect, that's
15 sometimes how lawyers talk, but the first
16 paragraph says "not likely to be
17 impacted." Then in the last paragraph it
18 says "will not be altered." So it seems
19 like that's kind of a contradiction.

20 MR. GAULT: They're trying to
21 get billable hours.

22 COUNCILMAN GREENLEE: I'll let
23 you say it. I wasn't going to say it.

24 MR. GAULT: No problem.

25 COUNCILMAN GREEN: Mr. Gault,

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2 have I fairly summarized the positions of
3 the --

4 MR. GAULT: You've done very
5 well, Councilman.

6 COUNCILMAN GREEN: Thank you.

7 Are there any other questions
8 on the part of this Committee?

9 Councilman Jones.

10 COUNCILMAN JONES: Thank you,
11 Mr. Chairman.

12 Councilwoman Sanchez is not
13 here, but I understand a few firefighters
14 were injured --

15 MR. GAULT: Yes.

16 COUNCILMAN JONES: -- recently,
17 December 5th?

18 MR. GAULT: Saturday.

19 COUNCILMAN JONES: Are they
20 okay, first of all?

21 MR. GAULT: Yes. They received
22 ear burns, face burns, shoulder burns.
23 They're healing well. They're in pain,
24 but they're okay.

25 COUNCILMAN JONES: It never

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2 ceases to concern me as we juggle with
3 all of the economic issues, at the end of
4 the day, they are our first responders.
5 They're responsible for fighting fires
6 and preserving life, and it's important
7 that we note while we haggle about these
8 things, that that process goes on.

9 And so our prayers are with
10 them during this holiday season that they
11 recover.

12 MR. GAULT: Currently, we have
13 a lot of injured off, sir, and what
14 happened there was the same thing that
15 happens the same -- they have a ladder
16 running by itself with no fire engine in
17 that building. The ladder arrives on
18 scene first. They're waiting for water.
19 These guys can't stand around. They're
20 going to try -- they're assuming somebody
21 is in there. They're running in there
22 without the aid of a hose line and
23 they're getting burnt.

24 We're still going to do what we
25 have to do. It's just you're taking away

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2 so many of our tools and you're putting
3 us in a bad, unsafe position. You can't
4 keep cutting us. Our own Commissioner
5 already said that we're cut to the bone.
6 And this whole fight, all over their
7 appeal, was because they didn't get
8 furloughs. They haven't furloughed a
9 cop, but they will furlough firemen and
10 47's and 33's they will furlough. And
11 that's basically what this fight is over,
12 because they didn't get the furloughs.

13 We didn't get everything we
14 wanted in that award, but we believe in
15 the process, Act 111. What we don't get
16 this time, we'll get in next time. Right
17 now they're just prolonging this, which
18 means they are not going to get the 33's,
19 they are not going to get the 47's, and
20 they're just going to keep playing around
21 until they try to get furloughs off of
22 firefighters.

23 COUNCILMAN JONES: Well --

24 MR. GAULT: Meanwhile, that's
25 why this is here, because they can't hire

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2 a class. We haven't hired a class in
3 over two and a half years. Over. And
4 right now I think we need 60 overtimes a
5 day to open the doors. And because of
6 what happened to the medics with them
7 trying to take them out and then us
8 getting them back in the union and then
9 forming the second bargaining unit, a
10 third of them are leaving. They're tired
11 of it.

12 What they're basically doing is
13 trying to destroy the Fire Department.
14 They have a grand vision that nobody
15 sees, but it's not working.

16 COUNCILMAN JONES: Well, again,
17 my prayers -- and I'm sure I'm speaking
18 for this body --

19 MR. GAULT: We appreciate it,
20 sir.

21 COUNCILMAN JONES: -- we
22 appreciate what you do.

23 MR. GAULT: So far, our
24 injuries are up to 250. I don't know of
25 any other bargaining unit in the City

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2 with that many injuries.

3 Thank you for your time.

4 COUNCILMAN JONES:

5 Mr. Chairman.

6 COUNCILMAN GREEN: Thank you.

7 I'm just curious, Mr. Gault, whether the
8 union has taken a position on the
9 investigation by PICA of the sort of Fire
10 Department --

11 MR. GAULT: Yes. We met with
12 PICA and we agreed, and PICA is working
13 with the International and with us and
14 we're all on the same page, and right now
15 they're currently trying to formulate the
16 RFP to send out to do the study. Yes,
17 we're working with them.

18 COUNCILMAN GREEN: So you're
19 supportive of this process?

20 MR. GAULT: We want a
21 professional study. I mean, for two
22 years they've been saying they did a
23 study, and now PICA is going to fund the
24 real study, a study that's going to be
25 done.

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2 COUNCILMAN GREEN: Yeah.

3 MR. GAULT: Which means they
4 didn't do a study.

5 COUNCILMAN GREEN: Well, to say
6 PICA is funding it is not exactly
7 accurate, just --

8 MR. GAULT: It's all our taxes.

9 COUNCILMAN GREEN: Anything
10 that PICA does not spend on their
11 operating expenses comes back to our
12 General Fund. So there's no -- it is our
13 money.

14 MR. GAULT: I'd also like to
15 remind this Committee that a year and a
16 half ago -- two years ago, actually,
17 you's gave -- you, this body, gave the
18 City \$200,000, which they refused to use,
19 for a study.

20 COUNCILMAN GREEN: Right.

21 MR. GAULT: But then they got
22 some bad press and decided, well, let's
23 do it a different way, and that's where
24 we're at today.

25 COUNCILMAN GREEN: Thank you

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2 very much for your testimony, Mr. Gault.

3 Any further questions from the
4 Committee?

5 (No response.)

6 COUNCILMAN GREEN: I recognize
7 Councilman Goode -- I'm sorry. That ends
8 this -- anybody else here to testify on
9 this matter?

10 (No response.)

11 COUNCILMAN GREEN: That ends
12 the hearing on Bill No. 100780. I now
13 move us into a meeting and recognize
14 Councilman Goode for a motion.

15 COUNCILMAN GOODE: Thank you,
16 Mr. Chairman. I move that Bill No.
17 100780 be reported out of the Committee
18 with a favorable recommendation.

19 (Duly seconded.)

20 COUNCILMAN GREEN: Bill No.
21 100780 has been moved and seconded.

22 All in favor?

23 (Aye.)

24 COUNCILMAN GREEN: All opposed?

25 (No response.)

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2 COUNCILMAN GREEN: The ayes

3 have it.

4 That ends this meeting on Bill

5 No. 100780. Thank you.

6 (Committee on Labor and Civil

7 Services concluded at 11:45 a.m.)

8 - - -

1
2 CERTIFICATE

3 I HEREBY CERTIFY that the
4 proceedings, evidence and objections are
5 contained fully and accurately in the
6 stenographic notes taken by me upon the
7 foregoing matter on December 15, 2010, and
8 that this is a true and correct transcript of
9 same.

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11
12
13
14 -----
15 MICHELE L. MURPHY
16 RPR-Notary Public
17
18
19

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