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NASSAU COUNTY LEGISLATURE

PETER SCHMITT,
Presiding Officer

FULL LEGISLATIVE COMMITTEE

PETER SCHMITT,
Chairman

1550 Franklin Avenue
Mineola, New York

Monday, April 16, 2012
3:54 p.m.

REGAL REPORTING SERVICE
(516) 747-7353

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A P P E A R A N C E S :

PETER SCHMITT, Presiding Officer

NORMA GONSALVES, Deputy Presiding Officer

HOWARD KOPEL, Alternate
Deputy Presiding Officer

DENISE FORD

JOSEPH SCANNELL

FRANCIS X. BECKER

VINCENT MUSCARELLA

RICHARD NICOLELLO

JUDI BOSWORTH (not present)

WAYNE WINK

ROBERT TROIANO (not present)

KEVAN ABRAHAMS, Minority Leader

ROSE MARIE WALKER

JOSEPH BELESI

DENNIS DUNNE (not present)

JUDITH JACOBS

DAVID DENENBERG

DELIA DERIGGI-WHITTON

CARRIE SOLAGES

MARYANNE WEISS
(Substituting for William J. Muller)
Clerk of the Legislature

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1 Full Legislature/4-16-12

2 CHAIRMAN SCHMITT: Full
3 Legislature right now. Would the clerk
4 please call the roll.

5 CLERK WEISS: Deputy Presiding
6 Officer Gonsalves?

7 LEGISLATOR GONSALVES: Present.

8 CLERK WEISS: Alternate Deputy
9 Presiding Officer Kopel?

10 LEGISLATOR KOPEL: Here.

11 CLERK WEISS: Legislator Troiano?

12 (No verbal response.)

13 LEGISLATOR TROIANO: Here.

14 CLERK WEISS: Legislator Solages?

15 LEGISLATOR SOLAGES: Here.

16 CLERK WEISS: Legislator Ford?

17 LEGISLATOR FORD: Here.

18 CLERK WEISS: Legislator

19 Scannell?

20 LEGISLATOR SCANNELL: Here.

21 CLERK WEISS: Legislator Becker?

22 LEGISLATOR BECKER: Present.

23 CLERK WEISS: Legislator

24 Muscarella?

25 LEGISLATOR MUSCARELLA: Here.

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2 CLERK WEISS: Legislator
3 Nicolello?
4 LEGISLATOR NICOLELLO: Here.
5 CLERK WEISS: Legislator
6 Bosworth?
7 (No verbal response.)
8 CLERK WEISS: Legislator Wink?
9 LEGISLATOR WINK: Here.
10 CLERK WEISS: Legislator Belesi?
11 LEGISLATOR BELESI: Here.
12 CLERK WEISS: Legislator Dunne?
13 (No verbal response.)
14 CLERK WEISS: Legislator Jacobs?
15 LEGISLATOR JACOBS: Here.
16 CLERK WEISS: Legislator Walker?
17 LEGISLATOR WALKER: Here.
18 CLERK WEISS: Legislator
19 DeRiggi-Whitton?
20 LEGISLATOR DERIGGI-WHITTON:
21 Here.
22 CLERK WEISS: Legislator
23 Denenberg?
24 LEGISLATOR DENENBERG: Here.
25 CLERK WEISS: Minority Leader

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2 Abrahams?

3 LEGISLATOR ABRAHAMS: Here.

4 CLERK WEISS: Presiding Officer
5 Peter Schmitt?

6 CHAIRMAN SCHMITT: Here.

7 CLERK WEISS: We have a quorum.

8 CHAIRMAN SCHMITT: We have a
9 quorum. We have a point of personal
10 privilege. The chair recognizes Legislator
11 David Denenberg.

12 LEGISLATOR DENENBERG: Thank you,
13 Mr. Presiding Officer. I would call up from
14 Mary Kay Cosmetics to the podium, Anna
15 Levine and Selanita Alasaya, and joining
16 them from the Bellmore Lions Club, Nina
17 Lancy. From March 8th to April 8th each
18 year, is Mary Kay Cosmetics month of global
19 service. Mary Kay Cosmetics has a presence
20 in over 35 countries worldwide. Their
21 employees volunteer their time to respective
22 communities each year. Here, in Nassau
23 County, Anna Levine's unit dedicates
24 themselves to public service throughout the
25 year but particularly from March 8th to

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2 April 8th.

3 This year they typically
4 concentrate on helping young adults and
5 children, whether it's funding cancer, or
6 cancer research, and fighting against
7 domestic violence, or helping those who are
8 the victims of domestic violence. Anna
9 Levine and Selanita Alasaya have really
10 dedicated not just a month but their lives
11 to helping others.

12 In the past month alone, they
13 were concentrating on certain toy drives.
14 They raised money for domestic violence
15 prevention and outreach. They also raised I
16 believe it's thousands of dollars for cancer
17 research. They also initiated various
18 corporate recycling programs. Nina Lancy,
19 for the Bellmore Lions Club, has a network
20 of giving. That's the best way I can say it
21 for Nina. You name it, you name the project
22 throughout Nassau County, particularly on
23 the south shore, Nina and the Bellmore Lions
24 are involved, donating their time, donating
25 money, and giving to others. They truly

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2 each exemplify the saying, "you make a
3 living by what you make, you make a life by
4 what you give." These are three women that
5 never stopped giving.

6 So I have proclamations for each
7 of you. And for May Kay Cosmetics, truly a
8 company that other corporations should
9 emulate with their month of giving. Thank
10 you.

11 CHAIRMAN SCHMITT: The first
12 thing I'm going to do is read the consent
13 calendar which are items that the minority
14 and the majority have agreed upon, and we're
15 going to have that at the end. We are going
16 to finish public comment. We started it in
17 Rules and we're going to finish it at the
18 end because I have people who have got to
19 get out of here.

20 So, on the consent calendar, we
21 have Item Number 11, Items 13, 14 and 15,
22 Item 17, Item 19, 20, 22, 23, 24, Items 25,
23 26, 27, Items 28, 29. May I have a motion,
24 please?

25 LEGISLATOR GONSALVES: So moved.

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2 LEGISLATOR BELESI: Second.

3 CHAIRMAN SCHMITT: Moved by
4 Legislator Gonsalves, seconded by Legislator
5 Belesi. Any public comment on any of those
6 items?

7 (No verbal response.)

8 All those in favor signify by
9 saying aye.

10 (Aye.)

11 Any opposed?

12 (No verbal response.)

13 The items carry unanimously.

14 Want to call the emergency?

15 CLERK WEISS: We have an
16 emergency. It comes by way of a
17 recommendation from the administration for
18 the adoption of a resolution setting forth
19 that an emergency exists for consideration
20 of immediate action upon Clerk Items 97-12,
21 138-12, 151-12, 152-12, 153-12, 163-12, and
22 165-12. No vote is needed on the
23 recommendation.

24 The emergency resolution number
25 7-2012 is as follows: A resolution

1 Full Legislature/4-16-12
2 declaring an emergency for immediate action
3 upon seven resolutions to appoint
4 individuals to the Sewer and Storm Water
5 Finance Authority.

6 Please entertain a motion to
7 place this matter before the legislature and
8 vote on the emergency resolution.

9 CHAIRMAN SCHMITT: On the
10 emergency?

11 LEGISLATOR GONSALVES: So moved.

12 LEGISLATOR MUSCARELLA: Second.

13 CHAIRMAN SCHMITT: By Legislator
14 Gonsalves, seconded by Legislator
15 Muscarella. All those in favor of creating
16 an emergency on the underlying resolution,
17 please say aye.

18 (Aye.)

19 Any opposed?

20 (No verbal response.)

21 The ayes have it. Now this is
22 going to be a vote on the actual items
23 themselves?

24 CLERK WEISS: Yes.

25 CHAIRMAN SCHMITT: And those

1 Full Legislature/4-16-12
2 items are all appointments to the Sewer and
3 Storm Water Authority?

4 CLERK WEISS: Correct.

5 CHAIRMAN SCHMITT: So all those
6 in favor of the items as listed?

7 CLERK WEISS: We need a motion.

8 CHAIRMAN SCHMITT: That's right.
9 We need a motion on the item. May I have a
10 motion, please?

11 LEGISLATOR GONSALVES: So moved.

12 LEGISLATOR MUSCARELLA: Second.

13 CHAIRMAN SCHMITT: Moved by
14 Legislator Gonsalves, seconded by Legislator
15 Muscarella. These are all the appointments
16 to the Sewer and Storm Water Authority.

17 Does anybody have any public
18 comment on any of the appointments? You
19 have to turn the microphone on, Claudia.

20 MS. BORECKY: Okay. The Sewer
21 Authority, who are they and who appointed
22 them?

23 CHAIRMAN SCHMITT: There are
24 appointments made by the minority leader,
25 the majority leader and the county

1 Full Legislature/4-16-12
2 executive.

3 MS. BORECKY: There also needs to
4 be one made by the controller.

5 CHAIRMAN SCHMITT: And there's
6 one by the controller, yes. It is Allen
7 Catchadorian (phonetic), who is the
8 appointment of the minority. Sheila Shah,
9 who is an appointment by the county
10 executive. Peter Kleins who is a minority
11 appointment. Christopher Triosi who is a
12 controller's appointment. Christina
13 Brennan, that's my appointment. And Bill
14 Muller, and that's my appointment.

15 MS. BORECKY: Do you know the
16 party affiliations of those individuals?

17 CHAIRMAN SCHMITT: Yes, we do.

18 MS. BORECKY: Can you tell me
19 what the party makeup is?

20 CHAIRMAN SCHMITT: Yes, we can.
21 Four Republicans, two Democrats.

22 MS. BORECKY: What is the other
23 party affiliation, do we know it?

24 CHAIRMAN SCHMITT: We don't. We
25 have to get our hands on it.

1 Full Legislature/4-16-12

2 MS. BORECKY: The reason is --

3 CHAIRMAN SCHMITT: I know what
4 the reason is.

5 MS. BORECKY: Okay. You cannot
6 have more than four of one party on that
7 board. I just want to make sure there
8 isn't.

9 CHAIRMAN SCHMITT: No smoking gun
10 here. Triosi is an independent. Four
11 Republicans, two Democrats and an
12 independent.

13 MS. BORECKY: Okay.

14 CHAIRMAN SCHMITT: So all those
15 in favor of the appointments signify by
16 saying aye.

17 (Aye.)

18 Any opposed?

19 (No verbal response.)

20 The items carry unanimously.
21 Congratulations to all the appointees and
22 good luck.

23 The next item on the calendar is
24 a hearing on the local law to amend the
25 administrative code in relation to

1 Full Legislature/4-16-12
2 disciplinary procedures regarding the Police
3 Benevolent Association members (106-12).

4 LEGISLATOR GONSALVES: So moved.

5 LEGISLATOR MUSCARELLA: Second.

6 CHAIRMAN SCHMITT: Moved by
7 Legislator Gonsalves, seconded by Legislator
8 Muscarella. All those in favor of opening
9 the hearing, signify by saying aye.

10 (Aye.)

11 Any opposed?

12 (No verbal response.)

13 The hearing is open. Who is
14 going to speak from the administration?
15 Commissioner Dale, are you going to
16 introduce the witnesses?

17 COMMISSIONER DALE: Good
18 afternoon. With me today is going to be
19 Assistant Commissioner Bob Hart, and
20 Detective Sergeant Izzie Santiago.

21 CHAIRMAN SCHMITT: I'm sorry, is
22 that Deputy Commissioner Hart?

23 MR. HART: Assistant
24 Commissioner.

25 CHAIRMAN SCHMITT: Could you just

1 Full Legislature/4-16-12
2 wait one second? We need to get
3 housekeeping. We need to call a procedural
4 resolution for this hearing. Madam Clerk.

5 CLERK WEISS: Item one on the
6 calendar is procedural resolution 2-2012, a
7 resolution ratifying the actions of the
8 Clerk of the Legislature to cause to be
9 published --

10 CHAIRMAN SCHMITT: Our regular
11 clerk, he had surgery, he is absent today.
12 It's Item Number 5.

13 CLERK WEISS: Item Number 5, the
14 hearing on the proposed local law to amend
15 Title D15 of Chapter 21 of Chapter 272 of
16 the laws of -- Item Number 5 on the calendar
17 is Procedural Resolution 6-2012, a
18 resolution ratifying the actions of the
19 Clerk of the Legislature to cause to be
20 published a notice of hearing on a proposed
21 local law to amend the administrative code
22 in relation to disciplinary procedures
23 regarding Police Benevolent Association
24 members.

25 Please entertain a motion to

1 Full Legislature/4-16-12
2 place this matter before the legislature and
3 vote on the procedural resolution.

4 LEGISLATOR GONSALVES: So moved.

5 LEGISLATOR MUSCARELLA: Second.

6 CHAIRMAN SCHMITT: Moved by
7 Legislator Gonsalves, seconded by Legislator
8 Muscarella. All those in favor of the
9 procedural resolution please say aye.

10 (Aye.)

11 Any opposed?

12 (No verbal response.)

13 The procedural resolution passes
14 unanimously. Now, Commissioner Dale.

15 COMMISSIONER DALE: We are here
16 today to talk about the section I believe
17 that we just spoke about. What we need to
18 do, in my opinion, in the police department
19 is hold people accountable for what they do.
20 That's the whole purpose of this that we
21 brought forward to the legislature today.
22 We're looking forward to you listening to us
23 and hearing our point of view so that I can
24 get -- we can get, the county can get the
25 department in good shape. That's one of the

1 Full Legislature/4-16-12
2 things that is on my calendar that I deal
3 with, one of the numerous items since I've
4 been here. Discipline is a very serious
5 issue. There's been some things, and I have
6 some cases going back quite a ways that I
7 really want to get out and this is going to
8 give me that opportunity.

9 The bottom line to me is that you
10 put me in as the police commissioner. Let
11 me do my job. If you don't like it, at
12 least you can come to me. You're not going
13 to an arbitrator, you're coming to me, and I
14 will answer to you. I have in the past and
15 I will in future.

16 This will help us keep everybody
17 in the police department equal. Right now
18 there's only one union that does this.
19 Detectives don't have this. Sergeants don't
20 have this. Lieutenants don't have this.
21 Inspectors, deputy inspectors, they don't
22 have this ability to go before an
23 arbitrator. Only one particular union.

24 So I ask you to try to help me
25 get everything back in line the way it once

1 Full Legislature/4-16-12
2 was. Let me hold people accountable because
3 I'm accountable to you and the people of
4 Nassau County, not an arbitrator.

5 With me today to discuss some of
6 the legal issues and things along those
7 lines is Detective Santiago and Assistant
8 Commissioner Hart.

9 CHAIRMAN SCHMITT: Assistant
10 Commissioner Hart, or whoever is next.
11 Thank you, commissioner.

12 MR. SANTIAGO: Good afternoon.
13 Detective Sergeant Israel Santiago,
14 commanding officer of the legal bureau.

15 CHAIRMAN SCHMITT: Tell us about
16 this proposal and why would this legislature
17 want to approve it.

18 MR. SANTIAGO: Let me start with
19 a historical analysis of what occurred and
20 how we got to this point. In 2004, the
21 collective bargaining arbitration
22 proceedings, it was argued by the PBA that
23 we should be going to disciplinary
24 arbitration for police officers, members of
25 the PBA.

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2 During the proceedings, back in
3 2004, the arbitrator agreed with the PBA in
4 the decision that if the police department
5 is contemplating a penalty of ten days or
6 more for a member of PBA, that that member
7 would have the option to demand binding
8 disciplinary arbitration.

9 But one of the reasons I believe
10 the arbitrator decided to make this decision
11 is because he indicated in the record that
12 this arbitration is common among other
13 civilian unions, per se, CSEA, and that it
14 would be a mechanism to further the goals of
15 the police department. That was back in
16 2004. Back in 2004, before a decision which
17 we are going to be talking about soon, the
18 court of appeals, it was allowed under the
19 Taylor Law team to negotiate, collectively
20 bargain these type of proceedings.

21 What happened though, in 2006, in
22 a decision by the Court of Appeals, it's a
23 decision where the PBA of New York and of
24 Watertown went forward, appealed the
25 decision by PERB which indicated that New

1 Full Legislature/4-16-12
2 York City, it's administrative code, and
3 Watertown's charter predated the Taylor Law
4 and the Court of Appeals indicated where you
5 have the legislative scheme, like Nassau
6 County, which I think its charter was
7 enacted in 1936 giving the powers and also
8 further in the administrative code to the
9 commissioner with regarding disciplining
10 matters of police officers. If you have
11 that legislative scheme which predates the
12 Taylor Law, that scheme should stay in
13 place. You cannot arbitrate that right
14 away. Disciplinary matters should be heard
15 by the commissioner of police given his or
16 her expertise and that scheme should not be
17 changed by arbitration, collective
18 bargaining or arbitration.

19 When that occurred in 2006, I
20 think the legislature of Nassau County well
21 intentioned decided that, well, let's pass a
22 local law if we cannot arbitrate this right,
23 let's pass a local law, which would give
24 police officers the right to binding
25 disciplinary arbitration. Although well

1 Full Legislature/4-16-12
2 intentioned, I think it was not vetted
3 properly because behind this legislative
4 scheme, historically, police departments,
5 and how we operate, we are a paramilitary
6 organization, doing my work in the civilian
7 unions, there are certain issues that we
8 cannot deal with adequately through
9 disciplinary arbitration or a private
10 arbitrator.

11 That's why we are here today.
12 Saying that you give back the power to the
13 commissioner in his office to hear these
14 issues, we will be able to address concerns
15 within our policemen quicker, and in a more
16 efficient manner.

17 CHAIRMAN SCHMITT: When you say
18 "penalties of ten days or more," that's ten
19 days without pay, ten days suspension, or
20 what --

21 MR. SANTIAGO: Well, it would be
22 ten days pay.

23 CHAIRMAN SCHMITT: Is that it,
24 you don't get into suspensions, or anything
25 of that nature?

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2 MR. SANTIAGO: We have a
3 statutory mechanism to Civil Service Law 75,
4 which is what you might be thinking of,
5 which allows us without a hearing to suspend
6 a member summarily for 30 days. You hear
7 about that commonly in the newspapers.
8 That's a state provision. Because normally
9 before you can deprive any tenured employee
10 of any property right, you have to have a
11 hearing or post-deprivation process. Those
12 30 days of statutory would not be unaffected
13 by repeal of this local law.

14 CHAIRMAN SCHMITT: My question
15 is, let's use the 30 days suspension. If an
16 employee knows he's facing a 30-day
17 suspension, he can go to arbitration?

18 MR. SANTIAGO: No. The 30-day
19 suspension is a summary remedy that's in the
20 state law. What the local law does, 18.13E,
21 it gives the, under the administrative code,
22 it allows a PBA member, if we are
23 contemplating penalties of ten days or more,
24 that triggers their right. The ability to
25 suspend someone summarily in an emergency,

1 Full Legislature/4-16-12
2 it was not negotiated away, and would not be
3 negotiated away.

4 CHAIRMAN SCHMITT: So explain to
5 me then, you make up a case, a hypothetical
6 case of a police officer who finds himself
7 in a disciplinary situation. What happens?
8 What happens now under the current law, and
9 what would happen if this law was repealed
10 that you are requesting?

11 MR. SANTIAGO: Well, what
12 happened, what's recognized under the Civil
13 Service Law and the Taylor Law are
14 incorporated by Section 76 of the Civil
15 Service Law, is a tenured employee, before
16 we can punish someone for misconduct, they
17 have a right to a hearing under state law.

18 CHAIRMAN SCHMITT: So a tenured
19 employee --

20 MR. SANTIAGO: All tenured public
21 employees have a right to a hearing before
22 we can impose a sanction. Of course, the
23 CSEA has a different mechanism. They have a
24 disciplinary arbitration process where you
25 can punish first and then conduct your

1 Full Legislature/4-16-12
2 hearing after the fact.

3 CHAIRMAN SCHMITT: So a tenured
4 employee is somebody who is a police officer
5 not on probation; is that correct?

6 MR. SANTIAGO: Correct. You
7 don't have to have a hearing on recruits or
8 probationary officers on patrol for 18
9 months. All we have to do is establish a
10 record and we could terminate on that basis.
11 If you are a tenured employ outside of that
12 summary 30 day suspension, which is a
13 cooling off period, may I say, where it is
14 egregious conduct, usually criminal, that's
15 still in play, but, normally, for -- let's
16 call it misconduct, let's say someone who,
17 excessive force, unlawful arrest charges,
18 that's egregious, they would have to be
19 served what we call charges and
20 specifications.

21 Once they get these charges and
22 specifications, in the case of a police
23 officer would be told, hey, your punishment
24 is going to be more than ten days. Once
25 they receive those charges and

1 Full Legislature/4-16-12
2 specifications putting them on notice of
3 what we're citing as a violation of certain
4 rules and regulations, they have the ability
5 within ten days, I think, to redemand
6 arbitration, binding arbitration, not a
7 recommendation.

8 In the old days, if they plead
9 not guilty, it would become a departmental
10 process. We would then appoint a
11 departmental hearing officer, and that's
12 what the process was in-house for many years
13 and that's how we would conduct ourselves,
14 just like New York City does.

15 CHAIRMAN SCHMITT: So the
16 employee, the employee goes to binding
17 arbitration?

18 MR. SANTIAGO: The employee goes
19 to binding arbitration.

20 CHAIRMAN SCHMITT: That takes it
21 out of the police department, out of the
22 commissioner's office?

23 MR. SANTIAGO: Yes, the only role
24 we would play in that process would be that
25 of prosecuting the matter before a private

1 Full Legislature/4-16-12
2 arbitrator.

3 CHAIRMAN SCHMITT: And who
4 selects the arbitrator?

5 MR. SANTIAGO: Well, it's an
6 arbitration panel that's comprised of --
7 which is made up by a suggestion from the
8 PBA and the police department. They
9 establish these -- they are already
10 established in the county, and it's a
11 rotation system. So the way it should work,
12 whoever's up next will get the next hearing,
13 the next arbitration. And schedule hearings
14 for the Office of Labor Relations. Because
15 the arbitration demand goes to the county.

16 CHAIRMAN SCHMITT: So under what
17 you're proposing, an employee facing more
18 than ten days who wants to contest the
19 charges would plead not guilty and there
20 would be a departmental hearing?

21 MR. SANTIAGO: Yes. It would be
22 reverting back to what we've done for years
23 which is a departmental hearing where the
24 commissioner would appoint through his
25 departmental hearing coordinator a hearing

1 Full Legislature/4-16-12
2 officer which, under the administrative
3 code, could be someone of the rank of
4 captain or above, that sworn member would
5 then conduct a quasi judicial proceeding and
6 hear the merits of the disciplinary case.
7 But that hearing officer is only allowed to
8 produce, make a recommendation to the
9 commissioner. The commissioner would then
10 take that recommendation -- review the
11 administrative record and determine whether
12 to go with the recommendation or to -- well,
13 the recommendation, normally the
14 commissioner will follow that
15 recommendation, but he doesn't have to. He
16 can look at the record, look at other
17 issues, and then render his final
18 determination in regard to punishment.

19 CHAIRMAN SCHMITT: So at this
20 hearing within the department, the police
21 officer would be represented by the PBA, I
22 assume?

23 MR. SANTIAGO: Yes, PBA or an
24 attorney of his liking. It's usually an
25 attorney, but it's an attorney that he's

1 Full Legislature/4-16-12

2 worked with through the PBA.

3 CHAIRMAN SCHMITT: And who
4 presents on the other side?

5 MR. SANTIAGO: It would be my
6 office. We have attorneys that work as
7 departmental attorneys for the purpose of
8 prosecuting the discipline.

9 CHAIRMAN SCHMITT: So then the
10 hearing officer at the conclusion of hearing
11 from both sides then makes a recommendation
12 to the commissioner?

13 MR. SANTIAGO: Correct.

14 CHAIRMAN SCHMITT: Not a
15 decision, a recommendation?

16 MR. SANTIAGO: A recommendation.
17 See, that's the element that kind of was
18 lost and it wasn't vetted the first time
19 around. The arbitrator though will be
20 issued a binding arbitration award. The
21 only way to get relief from an award that we
22 believe is unconscionable is to initiate an
23 Article 75 proceeding which is very costly
24 and it's very time consuming.

25 CHAIRMAN SCHMITT: Does anybody

1 Full Legislature/4-16-12

2 have any questions?

3 LEGISLATOR BECKER: Yes, I have
4 questions.

5 CHAIRMAN SCHMITT: Legislator
6 Becker.

7 LEGISLATOR BECKER: This whole
8 disciplinary procedure was -- is this
9 currently part of the contract though? Was
10 this contractually arranged?

11 MR. SANTIAGO: In 2004 it was
12 part of an arbitration award. It became
13 part of the collective bargaining agreement.
14 That was in 2004. Leading up to the point
15 that we then were in the process of sending
16 out the notices in regard to punishments,
17 ten days or more, the decision came out in
18 the Court of Appeals in 2006 saying, by the
19 way, you cannot negotiate that process away.
20 That's what happened.

21 LEGISLATOR BECKER: So, in other
22 words, this negotiation within the current
23 contract is null and void, apparently, so
24 now we are free to change it by legislative
25 vote, by a local law, back to what it used

1 Full Legislature/4-16-12
2 to be?

3 MR. SANTIAGO: Well, no. In
4 2007, the Nassau County legislators got
5 together at the urging of the PBA, I think
6 the police department also presented
7 arguments, and in order for us to go forward
8 with this arbitration, we need a local law.
9 It can only be done by statute.

10 LEGISLATOR BECKER: So we are
11 reversing that statute, is that what you're
12 saying?

13 MR. SANTIAGO: Well, today, we
14 are asking for a repeal of that statute.
15 This is what we're doing.

16 LEGISLATOR BECKER: So this is
17 not a part of a current agreement that we
18 are unable to change?

19 MR. SANTIAGO: That's right.
20 What you have is a local law. What you do
21 have is an implementation order or MOU which
22 was enacted or entered into in 2008 which
23 basically set up the mechanics to implement
24 disciplinary arbitration.

25 But, correct, this is not a

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2 collective bargaining agreement that cannot
3 be nullified by the leg.

4 LEGISLATOR BECKER: I want to be
5 sure it's not part of a contract that we are
6 not really allowed to touch because of a
7 decision that was made that it should have
8 been part of a contract, so a law is in
9 place, we pass a law, and now we are
10 reversing that law.

11 MR. SANTIAGO: Correct.

12 LEGISLATOR BECKER: One other
13 thing now. After this disciplining
14 procedure, which, by the way, just makes a
15 recommendation to the commissioner, is that
16 correct?

17 MR. SANTIAGO: The departmental
18 hearing --

19 LEGISLATOR BECKER: Just saying,
20 they make a recommendation of discipline to
21 the commissioner; is that correct?

22 MR. SANTIAGO: Are we talking
23 about the arbitrator or the departmental
24 hearing officer? Because the arbitrator's
25 decision is binding.

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2 LEGISLATOR BECKER: I'm assuming
3 that if we pass this law there is no
4 arbitrator anymore.

5 MR. SANTIAGO: That's right. So
6 it would be a recommendation to the
7 commissioner.

8 LEGISLATOR BECKER: That's what
9 I'm saying. So you had to be arbitrated
10 before, we are going to supposedly stop that
11 and now we are going to have -- let me ask
12 you something, once the commissioner has the
13 right to accept the recommendation or
14 dismiss the recommendation or do something
15 entirely different; is that correct?

16 MR. SANTIAGO: Based on the
17 record.

18 LEGISLATOR BECKER: So he has the
19 freedom to do that?

20 MR. SANTIAGO: Correct.

21 LEGISLATOR BECKER: What happens
22 if the officer is unhappy with the decision
23 made, is there an appeal?

24 MR. SANTIAGO: Yes, well, that
25 appeal, we have a post deprivation process

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2 in New York State recognizing the Federal
3 Court, Second Circuit recognizes it,
4 satisfies a Loudermill decision back in the
5 1980s where we call it the Article 78
6 process, gives it a second review, judicial
7 review.

8 LEGISLATOR BECKER: Judicial
9 review. So it comes outside the county and
10 it goes, not to an arbitrator now but to an
11 actual --

12 MR. SANTIAGO: Supreme court
13 judge.

14 LEGISLATOR BECKER: Goes to the
15 supreme court?

16 MR. SANTIAGO: It's a special
17 proceeding.

18 LEGISLATOR BECKER: But there is
19 an opportunity for an appeal?

20 MR. SANTIAGO: Yes. There is
21 always built into this mechanism this
22 Article 78 process.

23 LEGISLATOR BECKER: I think you
24 have answered my question. Thank you.

25 CHAIRMAN SCHMITT: Legislator

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2 Ford.

3 LEGISLATOR FORD: Over here, sir.
4 I don't want to be redundant on this, but it
5 is understanding then that currently ten
6 days or more an officer has the right to go
7 to arbitration for any disciplinary actions;
8 is that correct?

9 MR. SANTIAGO: As we speak, yes.

10 LEGISLATOR FORD: Nine days and
11 under, it would then be up to the
12 commissioner?

13 MR. SANTIAGO: Correct. If the
14 penalty is less than ten days, it would go
15 the traditional route of the departmental
16 hearing. Two other unions still go that
17 route, the detectives and the sergeants and
18 above go through that route, we have those
19 hearings we are scheduling also.

20 LEGISLATOR FORD: But do they
21 have the right to go to arbitration then for
22 ten days or more?

23 MR. SANTIAGO: Who?

24 LEGISLATOR FORD: The detectives.

25 MR. SANTIAGO: No, they do not.

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2 LEGISLATOR FORD: If, as it's
3 indicated, from what I understand from you,
4 that if there is a hearing and the
5 commissioner comes up with a decision that
6 is not acceptable to the officer, correct?

7 MR. SANTIAGO: Correct.

8 LEGISLATOR FORD: They can appeal
9 it but they have to appeal it through an
10 Article 78.

11 MR. SANTIAGO: Special proceeding
12 in the Nassau County Supreme Court.

13 LEGISLATOR FORD: My dealings
14 with Article 78 complaints or whatever tends
15 to cost money. Is this something that the
16 PBA would have to pay for?

17 MR. SANTIAGO: I can't speak to
18 that. I assumed it would.

19 LEGISLATOR FORD: But, currently,
20 if they go to arbitration right now, is
21 there a cost associated with that?

22 MR. SANTIAGO: They are provided
23 an attorney normally through the PBA.

24 LEGISLATOR FORD: Which usually
25 works for the PBA, correct?

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2 MR. SANTIAGO: Yes. And I would
3 think if it went to an Article 78 it would
4 be handled by the union attorneys also.

5 LEGISLATOR FORD: But currently
6 under arbitration it doesn't go to Article
7 78.

8 MR. SANTIAGO: As you know, if
9 there had to be an appeal, would be
10 basically by the county if they believed the
11 decision was egregious. That standard under
12 75, in terms of confirming or vacating an
13 arbitration award, much tougher standard to
14 litigate to be honest with you.

15 LEGISLATOR FORD: Thank you.

16 CHAIRMAN SCHMITT: Legislator
17 Abrahams.

18 LEGISLATOR ABRAHAMS: I'll ask my
19 questions. Detective Santiago, am I getting
20 your rank right?

21 MR. SANTIAGO: Detective
22 Sergeant.

23 LEGISLATOR ABRAHAMS: Detective
24 Sergeant. I have some quick questions and
25 I'm not too sure if you can answer them or

1 Full Legislature/4-16-12
2 if we have to bring the commissioner back,
3 but it's my understanding, if it's correct,
4 the current process in regards to the
5 arbitration, how many times has the
6 administration, and this goes back to the
7 previous administration, sought an actual
8 penalty in excess of ten days? Sought, I
9 should say.

10 MR. SANTIAGO: I think it went
11 back I'll say to the prior administration,
12 we're talking normally 80 percent of the
13 cases would be ten days or more, are being
14 sent for charges and specifications. You've
15 got to remember, this process starts
16 informally. What I'm here to discuss and
17 what I deal with, my office is far more,
18 charges of specifications.

19 The other disciplinary processes
20 available to our members at the command
21 level right through to the point of the
22 disciplinary review board, when it gets to
23 my level, which are formal charges, where
24 we're contemplating a property right, a
25 significant property right, I'm talking

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2 about ten days or more, I think 80 percent
3 of the times they're going to request that
4 type of penalty, ten days or more, eight
5 hour days.

6 LEGISLATOR ABRAHAMS: Really?

7 MR. SANTIAGO: Yes.

8 LEGISLATOR ABRAHAMS: When the
9 current --

10 COMMISSIONER DALE: Excuse me,
11 sir. If I can just expand on that. Maybe I
12 took the question a little bit different.

13 It's my understanding we've only
14 been to arbitration one time. I thought
15 that might have been your question. Since
16 this law has been put in place, the
17 department has only went forward once.
18 That's one of my concerns. When I came in,
19 I looked at, why have we only gone once? It
20 was, in my opinion, was, like, number one,
21 there was no rules and regulations in the
22 department to deal with this new law. There
23 was never change in any of our policies or
24 procedures to deal with this arbitration.
25 And, number two, it was like,

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2 again, only in my opinion, it's like, let's
3 make a deal. The next part of the
4 arbitration is that when an officer is told
5 he can go more than ten or more days, he has
6 a right to go to arbitration according to
7 this law. There is no time limit that he
8 has to get back to the department and tell
9 us that he has to go to arbitration.

10 So when I found that out, I found
11 that some of our cases that are going to be
12 ten or more days go back to 2007 because the
13 officer has never gone to arbitration. I
14 don't know if that's what you mean.

15 LEGISLATOR ABRAHAMS: It is. I
16 appreciate that clarification. But what I'm
17 trying to get to the heart of is the process
18 itself and, by changing to what you're
19 recommending, are we making it better,
20 worse, or is it indifferent? And there was
21 obviously a move in this legislature in 2007
22 to pass the current process unanimously at
23 that time, including the county executive
24 who was part of this legislature at that
25 time.

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2 So to do a total 180 and go back
3 to the older process I just want to make
4 sure that we have everything in place to
5 make sure we're going forward with trying to
6 insure fair and equitable process for the
7 officers that we're seeking fines beyond ten
8 days.

9 But my next question, and then I
10 will defer to Legislator Denenberg and
11 Legislator Wink, but my next question really
12 ties into the fact of the 80 percent of the
13 cases, Detective Sergeant Santiago, that you
14 had mentioned, how do you -- and I know you
15 don't have the information in front of you
16 so it might be hard for you to say, how
17 would you characterize those cases where the
18 fines were seeking greater than ten days,
19 were there more in the case of detectives,
20 sergeants, lieutenants, higher ranking
21 officers, or were they typically lower
22 ranking officers?

23 MR. SANTIAGO: Can I speak to
24 that? In terms of formal charges,
25 specifications, most of the charges and

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2 specifications are served on PBA membered
3 police officers just for the reason that
4 it's the largest contingency of our police
5 department. So ten days or more would be
6 mostly police officers. We don't have to
7 make that notice in regard to, let's say two
8 sergeants, we don't have to make that notice
9 requirement. Only for police officers.

10 So this requirement only pertains
11 to police officers where we must contemplate
12 and decide from the inception that we are
13 going to be punishing them ten days or more.
14 I don't know if that answers your question.

15 LEGISLATOR ABRAHAMS: What I'm
16 driving at is, are there cases where there
17 are superior officers or officers behind the
18 rank of a normal police officer where the
19 administration did not seek any particular
20 charges?

21 MR. SANTIAGO: If our
22 disciplinary review board recommends charges
23 and specifications against a SOA member or
24 DAI member, there have been cases where the
25 contemplated penalty has been ten days or

1 Full Legislature/4-16-12
2 more. Sometimes I'm talking much more than
3 ten days. That's happened, correct.

4 LEGISLATOR ABRAHAMS: I mean, I
5 don't want to get into specifics of any
6 particular case because obviously every
7 single case is different. But obviously we
8 have read about and we have seen cases in
9 the recent past, in the recent time frame of
10 the county in the last few weeks, and I
11 don't know if the administration is seeking
12 anything on those, and maybe we need to go
13 into executive session so I can get a better
14 understanding because, from what I read in
15 the papers, and I'm not too sure if you are
16 on the same wave length that I'm on and what
17 I'm talking about, but what I read, it
18 sounded to me that that would be something
19 that would warrant some type of punishment.
20 Maybe we need to go into executive session
21 so we can be a little more clear.

22 MR. HART: I'm Assistant
23 Commissioner Bob Hart, and I don't know if
24 this is exactly responsive to your inquiry,
25 but there had been cases where members of

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2 the SOA, the DAI, who are not subject to
3 this binding arbitration procedure, have
4 been subjected to the disciplinary process
5 where the penalty sought has been in excess
6 of ten days.

7 LEGISLATOR ABRAHAMS: Okay.
8 Again, I don't discount that, but maybe -- I
9 know this is the hearing today, and I assume
10 we're not going to do the vote today.

11 CHAIRMAN SCHMITT: There will be
12 no vote today.

13 LEGISLATOR ABRAHAMS: Maybe we
14 can have a conversation where maybe we can
15 talk because obviously what I'm talking
16 about is very sensitive and I do not want to
17 jeopardize the county in any way by saying
18 anything publicly, so maybe we can have an
19 off-line conversation about getting a little
20 more clarity. But thank you.

21 CHAIRMAN SCHMITT: Just before I
22 recognize other legislators, did you
23 identify yourself for the record?

24 MR. HART: Yes, sir.

25 CHAIRMAN SCHMITT: Could you tell

1 Full Legislature/4-16-12
2 me -- finish this sentence, you want to see
3 this law changed because --

4 COMMISSIONER HART: Because I
5 want to hold officers accountable for what
6 they do. I don't want an arbitrator to hold
7 one of our men or women responsible for what
8 they do. Pay me. I make the decision.

9 CHAIRMAN SCHMITT: You can't hold
10 an officer accountable today because --

11 COMMISSIONER HART: Because if
12 the decision, if I decide it should be more
13 than ten days, he can go to an arbitrator.
14 If I decide that I want to fire that
15 officer, I want to terminate him, I think
16 the charges are very serious, I can't fire
17 him. He's got to go to an arb -- if he
18 wants, I say, Officer, I'm going to fire
19 you. Going to get more than ten days. I'm
20 going to terminate you. He can say, go
21 ahead, I'm going to an arbitrator. He goes
22 to an arbitrator. The arbitrator does what
23 he wants to do.

24 CHAIRMAN SCHMITT: Okay.

25 LEGISLATOR ABRAHAMS: If I can,

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2 Commissioner Dale, if you allow me, and I'm
3 not saying I believe this to be the case but
4 there is a perception obviously many of us
5 possibly here in our districts, just to play
6 devil's advocate, you're saying that you
7 would be tougher than the arbitrator because
8 you will be able to provide the necessary
9 punishment to these officers, but looking at
10 it from the outside, for the average Nassau
11 County resident, from their perspective,
12 they probably think the police punishing
13 their own wouldn't warrant the same level of
14 penalties as an independent arbitrator.
15 That the independent arbitrator not only
16 would probably be not only more fair, but
17 can also at times be even more critical
18 because he's not tied into what people would
19 say "the police establishment." What would
20 you say to that argument?

21 COMMISSIONER DALE: There are two
22 points I would like to comment on. The
23 first point is, I don't think that I would
24 be any tougher than an arbitrator. I don't
25 see that my decision would be any tougher

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2 than theirs. I agree with you. But I
3 believe, and, Izzie, you can help me out
4 with this, there is a different standard
5 that exists, a legal standard that exists in
6 the arbitration process that is totally, is
7 not what you said. It's totally -- it's a
8 standard that they go by.

9 MR. SANTIAGO: I think the local
10 law, when it was enacted, was well
11 intentioned. But built within that
12 legislation is the premise that arbitrators
13 can only punish or decide on the just cause
14 basis. It's a standard where we have
15 incremental progressive punishment. It
16 works for other professions, the public work
17 sector, it does not work within the police
18 departments. We are a paramilitary
19 organization. The chain of command is very
20 important. We have to be able to be aware
21 that, if you do something wrong, that you
22 will be dealt with accordingly. Fairly, but
23 accordingly, and also in a more efficient
24 manner.

25 What they look at is the bigger

1 Full Legislature/4-16-12
2 picture here. The CSEA has this type of
3 process for its civilian employees of the
4 county. What they have though built into
5 their collective bargaining agreement is
6 that you can punish first, then put the
7 onerous on the employee to seek an
8 arbitration process and move it along.

9 We have a profession that has to
10 be -- our members have to be dealt with
11 quickly and in an efficient manner. These
12 decisions, unlike other professions -- and
13 the only other profession I can indicate,
14 this process, in relation to arbitration,
15 doesn't work, within the education field, we
16 see this with teachers. Because what's at
17 stake is really important.

18 When we become police officers,
19 we understand that. We're not like other
20 employees and we do give up certain rights
21 and other privileges to someone else in the
22 public sector would be entitled to. So I
23 hope that would answer your question.

24 LEGISLATOR ABRAHAMS: It did.
25 Thank you.

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2 CHAIRMAN SCHMITT: Legislator
3 Denenberg.

4 LEGISLATOR DENENBERG: Thank you.
5 Maybe this is for the detective sergeant,
6 but if the commissioner can answer, that's
7 fine as well.

8 How many cases went to department
9 trial prior to binding arbitration?

10 MR. HART: I have been in the
11 legal field for six years. We have not seen
12 one go to a department hearing.

13 LEGISLATOR DENENBERG: Prior to
14 binding arbitration?

15 MR. HART: Prior to binding
16 arbitration.

17 LEGISLATOR DENENBERG: And since?

18 MR. HART: And since we have had
19 only one arbitration proceeding. That's
20 been adjourned -- went out for discovery for
21 further issues that we examined in the case.
22 Every case is unique.

23 LEGISLATOR DENENBERG: I'm just
24 trying to figure out what the quantity, how
25 many cases we're talking about. So prior to

1 Full Legislature/4-16-12
2 binding arbitration, no cases went to
3 department trial in the last six years?

4 MR. HART: May I give you some
5 figures?

6 LEGISLATOR DENENBERG: Sure.

7 MR. HART: Dating back to 2004,
8 up until the present, I'm told by our
9 internal --

10 LEGISLATOR DENENBERG: So that's
11 about eight years?

12 MR. HART: Eight and a half
13 years. I'm told by our internal affairs
14 unit that we have had roughly 600 internal
15 affairs investigations. Those internal
16 affairs investigations, the 600, don't
17 always involve just one sworn member. There
18 could be multiple members per case. So
19 there may be as many as 1,000 sworn members
20 who have been involved if IAU cases.

21 I think it's important to note
22 that not just this commissioner, but past
23 commissioners dating back to 2004 have been
24 able to adjudicate, dispose of well over 95
25 percent of these IAU cases of sworn members

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2 without one single case ever going through
3 the appeal process. That would be SOA, DAI
4 members of the PBA who have not reached that
5 threshold where they were able to ask for
6 arbitration. Past commissioners and
7 recently this commissioner have been able to
8 adjudicate well over 95 percent of those
9 cases.

10 LEGISLATOR DENENBERG: I'm trying
11 to understand what you're saying. Prior to
12 binding arbitration, most cases were dealt
13 with as well, they didn't go to department
14 trials, but now you're saying that -- but
15 wasn't it also normal to negotiate fines
16 prior to binding arbitration? I know the
17 answer to that is yes.

18 MR. HART: Yes.

19 LEGISLATOR DENENBERG: So what
20 you're saying is, prior to binding
21 arbitration, rather than department trials,
22 most of the cases were handled one way or
23 another with a fine or something that was
24 settled, both sides agreed?

25 MR. HART: Correct.

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2 LEGISLATOR DENENBERG: Did it
3 change since binding arbitration?

4 MR. HART: Not that I'm aware of.

5 LEGISLATOR DENENBERG: So why are
6 we trying to change it?

7 MR. HART: What has changed is
8 the fact that the most egregious of cases
9 involving PBA members, those cases where the
10 commissioner has opted to seek more than ten
11 days have not been able to have been
12 negotiated or resolved and, because of that,
13 we feel that the commissioner should have
14 that authority vested in him as well and it
15 shouldn't go to arbitration.

16 LEGISLATOR DENENBERG: How many
17 cases are --

18 CHAIRMAN SCHMITT: Ask him why
19 not.

20 LEGISLATOR DENENBERG: Why not?

21 MR. HART: Why not what?

22 CHAIRMAN SCHMITT: You say cases
23 can't be settled, why not?

24 LEGISLATOR DENENBERG: Just to
25 step back. You just said that there are

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2 some cases involving PBA members, egregious
3 cases, where it's going to be more than --
4 the commissioner wants more than ten days
5 and it can't be negotiated, or a fine agreed
6 upon, and we're asking why not?

7 MR. HART: Obviously because
8 there wasn't a meeting of the minds in these
9 particular cases. There are over 20 of
10 them. They are on line since 2007.

11 LEGISLATOR DENENBERG: Why didn't
12 though cases go to binding arbitration then?

13 COMMISSIONER DALE: Because that
14 is the right of the police officer. If the
15 police officer doesn't get back to us, the
16 case sits.

17 LEGISLATOR DENENBERG: I'm trying
18 to understand this. Prior to binding
19 arbitration, there were no department trials
20 so apparently you were able to meet -- there
21 was a meeting of the minds and you were able
22 to negotiate.

23 Now, after binding arbitration,
24 right, there is no department trials so
25 you've been able to reach a meeting of the

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2 minds and you're saying in certain cases you
3 haven't been able to, so unless I'm missing
4 something, it should have went to binding
5 arbitration.

6 COMMISSIONER DALE: Maybe I'm not
7 explaining this correctly to you. Before
8 arbitration, as you said, if there was no
9 meeting of the minds, right, before
10 arbitration, we had a department trial.

11 LEGISLATOR DENENBERG: And the
12 testimony is we haven't had any department
13 trials, no meeting of the minds. So we're
14 on the same page on that.

15 COMMISSIONER DALE: Same page.

16 LEGISLATOR DENENBERG: Now it's
17 after binding arbitration and the presiding
18 officer and I just asked why not, where you
19 said that you couldn't negotiate something,
20 we said why not. You said maybe it was an
21 egregious case, or the PBA, then it should
22 have went to binding arbitration, right?

23 COMMISSIONER DALE: It's not up
24 to the department to send it to binding
25 arbitration. It's up to the officer. If he

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2 doesn't want to go, there's nothing that I
3 can do to tell him to go to binding
4 arbitration. That's one of our major
5 points.

6 LEGISLATOR DENENBERG: But if
7 there is no agreement, then it would still
8 end up being -- wouldn't there be the
9 department discipline then?

10 COMMISSIONER DALE: No. Yes,
11 there have been problems with the
12 department. There is no doubt about it --

13 LEGISLATOR DENENBERG: There is
14 still something you can do.

15 COMMISSIONER DALE: Yes.

16 LEGISLATOR DENENBERG: It can't
17 be that the person subject to disciplinary
18 proceedings after binding arbitration, if he
19 or she doesn't agree to a fine or whatever
20 the discipline is, only gets binding
21 arbitration if they elect to, and, if they
22 don't, then you can't do anything, that's
23 not what the law is.

24 COMMISSIONER DALE: There have
25 been, not only the union, but also the

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2 department, has failed in several areas
3 specifically with the discipline. This, in
4 my opinion, is one of the errors where there
5 was no meeting of the minds.

6 Since 2007, in some of these
7 cases, there are no procedures, no policies
8 in effect to deal with it. So these cases
9 sat there. It wasn't only the union's
10 problem, it was a department problem. It's
11 not only the union that wasn't looking to go
12 forward, it was the department that wasn't
13 looking to go forward. There was a
14 combination of failures that exist here, and
15 that's what we are trying to correct.

16 LEGISLATOR DENENBERG: It seems
17 to me fines were negotiated prior to binding
18 arbitration. I'm sure things are negotiated
19 afterwards. I'm not sure I follow why then
20 we're going back.

21 Let me ask you this. It was
22 either Presiding Officer Schmitt or
23 Legislator Abrahams that pointed out that
24 one of the issues might be, the general
25 perception would often be that the

1 Full Legislature/4-16-12
2 commissioner himself or the department
3 itself would be less severe or more lenient
4 on the disciplinary action than an outside
5 arbitrator would be.

6 But I would question whether
7 there is, and I don't see in this
8 legislation any kind of carve-out where it
9 would seem to me that it might not be better
10 for a commissioner, any commissioner, not
11 just yourself, to discipline people, staff
12 members or people within the force who were
13 subject to that commissioner's appointment
14 within the department, or assignment within
15 the department, because then it's like
16 you're -- you as a commissioner or any
17 commissioner would be in charge of
18 discipline over someone they may have put in
19 their particular area, their particular
20 command.

21 COMMISSIONER DALE: I don't
22 understand your question.

23 LEGISLATOR DENENBERG: My
24 question then is, why would I want a
25 commissioner disciplining someone who is

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2 serving at his behest in that particular
3 command? I don't know if you can be as
4 objective as an outside person would be
5 because you, as a commissioner, have some
6 interest in the job someone did when it
7 reflected your own appointment, or your own
8 assignment would come into question a little
9 bit if it didn't work out well.

10 COMMISSIONER DALE: If I had to
11 discipline, say I got my friend a job and I
12 had to discipline my friend, right, if I
13 didn't do it, is that what you're saying,
14 that if I didn't discipline my friend
15 because he's my friend? That's what I'm
16 getting out of what you're asking me.

17 LEGISLATOR DENENBERG: What I'm
18 getting is even more than just the fact that
19 you might have appointed a friend someplace
20 and you're being asked to discipline someone
21 who is your friend.

22 I'm saying that the commissioner
23 exercises his right as a commissioner and
24 makes assignments, puts people in posts,
25 puts people in commands, and if one of those

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2 people are subject to discipline, I don't
3 know that a commissioner would be as
4 objective, not just because the person might
5 be his or her friend, but because the
6 discipline itself might reflect the
7 propriety of the appointment or the
8 assignment or the command.

9 So I have always felt that part
10 of the reason for binding arbitration was to
11 have someone who would be completely
12 objective. How do you answer that?

13 COMMISSIONER DALE: Well, I'm
14 accountable. I'm accountable to you and I'm
15 accountable to the people of Nassau County.

16 LEGISLATOR DENENBERG: I didn't
17 mean you personally. Any commissioner.
18 It's the idea that a binding arbitrator
19 would be more objective than a commissioner
20 over his force, his appointments. You said
21 his friends, but I don't even mean just a
22 friend, I mean -- in a way, some of the
23 people might have been someone you appointed
24 so it could be a reflection on your own
25 judgment, not you personally, but any

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2 commissioner.

3 COMMISSIONER DALE: I just think
4 that, in my opinion, I don't know any other
5 place, and you guys can correct me if I'm
6 wrong, in the state that has this
7 arbitration law built into their charter.

8 Number two, just being -- not
9 being the commissioner, being a normal human
10 being, right, you go to an arbitrator,
11 you're going there because you don't like
12 something, you want this and I want to give
13 you that. We have to get to a meeting of
14 the minds. We let somebody in the middle.
15 The decision that I make, I'm accountable
16 for what I do. The arbitrator is looking to
17 make a deal.

18 LEGISLATOR DENENBERG: I
19 appreciate that you're here speaking about
20 this and you're proposing something, and
21 when this was put in, the more I look back
22 on it, you know, we looked at that time,
23 prior to binding arbitration, most were
24 fines, very little department hearings.
25 It's still the same way. But something you

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2 just said, I know that Suffolk police unions
3 have binding arbitrations for discipline as
4 do many of our villages as well. So to say
5 that this is the only place in the state
6 that has binding arbitration, I would just
7 disagree with you about that.

8 COMMISSIONER DALE: Well, I'm
9 wrong because I said I thought. But you're
10 right, if I'm wrong, I'm wrong.

11 LEGISLATOR DENENBERG: Maybe I'm
12 wrong, but near as I can tell, Suffolk
13 police and many villages do have binding
14 arbitration.

15 Please answer this, the bottom
16 line was, binding arbitration, the intent
17 wasn't to put someone who doesn't know what
18 they're doing in charge of the judgment, but
19 someone who could be objective because they
20 are not part of the police department and
21 they wouldn't know the people. You said
22 friends. I really don't think the issue is
23 that the commissioner couldn't be objective
24 because they're friends with everyone in the
25 department. That could be the situation

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2 here and there, but I always felt someone
3 within the department who is making some of
4 the appointments, some of the assignments,
5 some of the commands wouldn't be as
6 objective as an outsider, not that an
7 outsider doesn't know what he's doing. So
8 if you can just explain that to me. That's
9 all I'm really asking.

10 COMMISSIONER DALE: I'm the
11 police commissioner. I'm accountable for
12 the actions of the police department. I'm
13 also, according to the charter, responsible
14 for discipline. I'm asking you to let me be
15 in charge of discipline. I'm not in charge
16 of discipline in this case and I'm asking
17 you to do that. Think about it. And put me
18 where I should be, in charge of the
19 discipline.

20 LEGISLATOR DENENBERG: But there
21 are many aspects of discipline without
22 getting into what goes to binding
23 arbitration on some of these investigations.
24 There's many parts of the rules, procedures
25 and even department regulations that the

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2 commissioner is in charge of despite this
3 one aspect.

4 COMMISSIONER DALE: I'm sorry. I
5 thought I said that. This is the one part
6 that I don't have control over. I work for
7 you. I work for the people of Nassau County
8 and I want to be held accountable and I want
9 to hold the officers accountable, all
10 officers for what they do.

11 LEGISLATOR DENENBERG: Thank you.

12 CHAIRMAN SCHMITT: Legislator
13 Muscarella.

14 LEGISLATOR MUSCARELLA:
15 Commissioner, I'm trying to get, I
16 understand why you want control over that.
17 I just want to focus on the system as it is
18 now. I just have a couple of questions to
19 be answered. It's my understanding if I got
20 this right, if there is a discipline that's
21 happening or a disciplinary hearing, right
22 now either you have a meeting of the minds
23 and you work it out or, if you can't work it
24 out, the police officer has the right to
25 determine to go to arbitration; is that

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2 correct so far?

3 COMMISSIONER DALE: No. If it's
4 more than ten days, if I tell the officer
5 it's more than ten days, he has a right to
6 go to arbitration.

7 LEGISLATOR MUSCARELLA: Let's
8 assume that. It's more than ten days. The
9 officer has the right to go to arbitration.
10 Now, if the officer decides not to go to
11 arbitration, what happens currently?

12 MR. SANTIAGO: It triggers the
13 old mechanism where we have a departmental
14 hearing. You go to the departmental hearing
15 officer to hear the merits of your case.

16 So, you're right, the police
17 officers decides he wants to do it in house,
18 wants to stay within the department. It
19 triggers the old mechanism that we've had in
20 place for years.

21 LEGISLATOR MUSCARELLA: The old
22 mechanism is what? Doesn't the commissioner
23 then make the determination?

24 MR. SANTIAGO: Only after a
25 hearing because you must give the police

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2 officer the ability to -- he has due process
3 rights in his employment. So you have to
4 conduct a quasi judicial hearing and
5 arguments be heard from his attorney, the
6 department attorney, and then that hearing
7 officer is going to be the rank above
8 captain in the administrative code who
9 presents a recommendation to the
10 commissioner, and the commissioner will then
11 decide what type of punishment will be
12 imposed or whether he's going to adopt a
13 recommendation or not or modify it.

14 LEGISLATOR MUSCARELLA: How is
15 that -- let's just take that process,
16 putting aside the meeting of the minds,
17 putting aside the arbitration. How would
18 that third procedure differ under this new
19 law?

20 MR. SANTIAGO: Would then not
21 have a hearing.

22 LEGISLATOR MUSCARELLA: Or it
23 would just go to the commissioner?

24 MR. SANTIAGO: If you repeal the
25 law, the police officer, the affected police

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2 officers will go through, if they want a
3 hearing, they would plead not guilty, and
4 the case would be heard by the departmental
5 hearing officer appointed off our list of
6 inspectors and captains above, but,
7 normally, inspectors and above. So if you
8 repeal the law, what we have is in-house
9 process. We don't have an arbitrator
10 interjecting himself in the process.

11 LEGISLATOR MUSCARELLA: But you
12 don't have an arbitrator unless --

13 MR. SANTIAGO: It's ten days or
14 more.

15 LEGISLATOR MUSCARELLA: Ten days
16 or more and unless the officer demands
17 arbitration. But, normally, as I indicated
18 earlier, the vast majority cite a penalty of
19 ten days or more, they demand arbitration.

20 LEGISLATOR MUSCARELLA: So let's
21 go back to that. They demand arbitration.
22 Then what's the problem that's currently
23 happening with that arbitration? Is it not
24 going forward, is it being adjourned in
25 perpetuity, is it happening and the

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2 arbitrator being too lenient according to
3 what you believe, what's the problem with
4 that process?

5 MR. SANTIAGO: We have had one
6 case, we have had opening remarks. It's
7 been adjourned. Some issues on particulars
8 I can't discuss here. What is happening is
9 that after the police officer -- under MOA
10 that emanated from the law, they are the
11 ones demanding arbitration. There is no
12 incentive I believe to move it along.

13 So, what happens, that police
14 officer, within that memorandum of agreement
15 makes a determination that negotiations have
16 broken down and then he could ask that his
17 arbitration be put on the calendar.

18 LEGISLATOR MUSCARELLA: So the
19 problem that you're having is currently with
20 the arbitration process, that you're having
21 these disciplinary procedures getting to the
22 point of a demanding of arbitration, and
23 then those arbitrations not going forward or
24 being delayed indefinitely.

25 MR. SANTIAGO: Delayed or the

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2 negotiation process basically breaking --
3 I'm not pointing fingers. I think the
4 commissioner indicated that it's both
5 parties at fault here. Moving along the
6 traditional negotiation process, that's
7 really come to a standstill for the last
8 year.

9 LEGISLATOR MUSCARELLA: So you
10 have a number of backlog cases theoretically
11 that have had arbitration demanded and have
12 not gone forward?

13 MR. SANTIAGO: Not gone forward.
14 But I have a policy argument here.

15 LEGISLATOR MUSCARELLA: No. I
16 understand.

17 MR. SANTIAGO: I think that if
18 you look at, the indication was made what's
19 happening with the villages and the town
20 police departments, well, the second
21 department, which is the department that
22 controls the intermediate appeals court has
23 adapted the Court of Appeals decision from
24 2006 and it said that the villages and towns
25 who have administrative codes and charters

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2 that predate the Taylor Law, they also
3 cannot negotiate the right. That they have
4 to allow their town police, commissioners
5 and village police chiefs to -- or village
6 commissioners, to hear those. Cannot have
7 an arbitrator. So they are encountering
8 that problem now. That was a recent
9 decision.

10 LEGISLATOR MUSCARELLA: So, in
11 other words, in addition to wanting this
12 repeal, you believe that because of the way
13 our charter is written, that really if we go
14 forward with the current process, that's
15 really not in accordance with the Court of
16 Appeals decision?

17 MR. SANTIAGO: Well, it's against
18 public policy. But if you make it into --
19 if you codify the arbitration right, you can
20 do it as a statute and that's why we are
21 here because, when the decision was rendered
22 by the Court of Appeals in 2006, the
23 reaction to that decision, the county
24 legislature got together and said, and the
25 county executive, listen, let's create a

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2 statutory right within our administrative
3 code since we cannot enforce the arbitration
4 award to the collective bargaining agreement
5 under that award. That's why we are here.

6 But what we are missing is
7 historically the acknowledgment by our
8 courts that the police departments are
9 different. We are paramilitary
10 organizations. Discipline is crucial within
11 the police department and they felt that the
12 best person to decide how to discipline, or
13 conduct discipline within the department is
14 the commissioner with his expertise. I
15 agree with you, arbitrators are objective.
16 They operate on a different standard. I
17 believe the commissioner will be objective,
18 his standard is not only being objective and
19 being fair, but to make sure the police
20 department functions and addresses problems
21 within the police department.

22 LEGISLATOR MUSCARELLA: And you
23 believe under this law it would -- under the
24 proposed law, the procedure would happen
25 much more quickly and more efficiently?

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2 MR. SANTIAGO: I think it will be
3 more responsive, and I think the
4 commissioner speaks to that. It will be
5 more efficient, be quicker and more
6 responsive because I think ultimately these
7 decisions -- we've seen what's happening
8 over the years within police departments. I
9 can see in the future, our police department
10 is going to get younger, younger police
11 officers, and it's more important then.
12 They are going to come in under stresses of
13 day to day functioning. As police officers
14 we should always acknowledge that. I don't
15 know if the commissioner is going to be
16 tougher on them or not. I think he's going
17 to formulate some type of remedial effort in
18 his disciplinary process that can address
19 those issues.

20 LEGISLATOR MUSCARELLA: But at
21 least you think it will be quicker?

22 MR. SANTIAGO: I think, yes, it
23 will be quicker because we don't lose
24 control, and there's -- the both parties
25 would move it along, let's put it that way.

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2 CHAIRMAN SCHMITT: Legislator
3 Nicolello.

4 LEGISLATOR NICOLELLO: I just
5 want to follow-up on Legislator Muscarella's
6 comments. You mentioned one case, but how
7 many cases are there now in this limbo, sort
8 of, where arbitration has been demanded but
9 hasn't been resolved yet, approximately?

10 COMMISSIONER DALE: I believe
11 it's 14.

12 LEGISLATOR NICOLELLO: Now, is it
13 possible that the officers are choosing
14 arbitration because they think that they'll
15 get a better deal that way, or that it will
16 be delayed --

17 COMMISSIONER DALE: I don't want
18 to speak for what is in the officer's mind,
19 but --

20 LEGISLATOR NICOLELLO: Isn't that
21 sort of common sense?

22 COMMISSIONER DALE: Common sense,
23 yes, sir.

24 LEGISLATOR NICOLELLO: If you are
25 facing discipline, you have the option of

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2 arbitration or a hearing, and you choose
3 arbitration, I think it's pretty common
4 sense that what you're doing is you're
5 picking an option that you think is going to
6 be better for you.

7 COMMISSIONER DALE: Absolutely.

8 LEGISLATOR NICOLELLO: Or it
9 could be better for you in terms of the
10 result, or could be better for you in terms
11 of how long it's dragged on.

12 COMMISSIONER DALE: Right.

13 MR. HART: Just one thing on
14 that. In addition to that point, there's
15 also a different standard applied by the
16 arbitrator. The arbitrator is required to
17 go by this just cause standard which was
18 mentioned earlier. The just cause standard
19 requires progressive discipline. So the
20 arbitrator -- and, again, the police
21 department being a paramilitary
22 organization, where there might be egregious
23 conduct, and the commissioner may look at
24 that egregious conduct and see that it tears
25 at the fabric of the police department, and

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2 it impedes our confidence and trust that the
3 public may have in us, the arbitrator would
4 be looking at a standard where he or she
5 looks whether the officer has ever been
6 disciplined before. Is this a first time
7 occurrence? Rather than the egregious
8 conduct itself.

9 LEGISLATOR NICOLELLO: So just to
10 sum up for my own sake, what you are saying,
11 it is a paramilitary organization and the
12 commissioner, as the appointed officer,
13 should be in charge of determining
14 discipline, is that what you're telling me?

15 COMMISSIONER DALE: Yes, sir.

16 LEGISLATOR NICOLELLO: Thank you.

17 CHAIRMAN SCHMITT: Legislator
18 Ford.

19 LEGISLATOR FORD: I just have two
20 quick questions. The arbitrators that are
21 used now to handle the police discipline
22 cases, are they required to have a
23 background in police work at all, or to be
24 knowledgeable about police departments?

25 MR. SANTIAGO: No, they're not.

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2 LEGISLATOR FORD: So they could
3 be just typical civilians that would then --

4 MR. SANTIAGO: Yes, normally
5 labor arbitrators that not only conduct
6 arbitrations, but collective bargaining
7 agreements. They're basically labor
8 arbitrators.

9 LEGISLATOR FORD: So no law
10 enforcement background?

11 MR. SANTIAGO: There's no need
12 for that.

13 LEGISLATOR FORD: Okay. Second
14 of all. I guess Legislator Denenberg did
15 bring up one important point. In the case
16 of, if you have the -- commissioner, if you
17 have the ability then to listen to the cases
18 and discipline the police officers as you
19 see fit, what happens if, yes, there is
20 somebody that may have broken the rules or
21 something like that, and that individual was
22 not called in to be disciplined, but yet
23 other officers may have been disciplined
24 basically for almost like the same type of
25 events? What is the recourse for the other

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2 officers or for the unions if they feel that
3 favoritism is being played?

4 COMMISSIONER DALE: Well, they
5 can go to the newspapers, they can come to
6 the legislature. They can do a million
7 different things to get the word out that
8 the police commissioner is being prejudiced
9 towards certain people. I think that would
10 be very easy to get that word out if I was
11 being unfair to certain people, then I'm
12 sure it would get out pretty quick.

13 LEGISLATOR FORD: Okay. Thank
14 you very much.

15 CHAIRMAN SCHMITT: Legislator
16 Wink.

17 LEGISLATOR WINK: Yes.
18 Commissioner, I've heard now at least a half
19 a dozen times from all three of you that
20 this is a paramilitary organization, and
21 that the chain of command is important. Now
22 you're telling me they should ignore the
23 chain of command if they're being treated
24 unfairly and go to the newspapers or come to
25 us, really?

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2 COMMISSIONER DALE: I don't think
3 that was the intent of my answer.

4 LEGISLATOR WINK: That's how it
5 came across.

6 COMMISSIONER DALE: She said to
7 me, was there any recourse to somebody if
8 they didn't go through, if they felt I
9 didn't treat somebody fairly, not within the
10 department. She didn't specifically say
11 that they had to go through the department.
12 She said to me, how would somebody answer
13 that if I was being unfair to somebody. I
14 said that there are plenty of places where
15 people can go and tell about my behavior.
16 That's how I answered the question.

17 LEGISLATOR WINK: It certainly
18 made it sound like law enforcement is the
19 paramilitary organization except when they
20 are being treated unfairly and then the
21 rules don't apply. That's the problem I
22 have with the answer. It doesn't make sense
23 given what you have been saying all along.

24 COMMISSIONER DALE: Okay. Thank
25 you.

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2 LEGISLATOR WINK: Let me ask
3 Detective Sergeant Santiago, if I could.
4 You laid out a timeline, 2004, under the
5 collective bargaining agreement -- in the
6 interest of arbitration, excuse me, the
7 arbitration, the disciplinary arbitration
8 was established. In '06, the Court of
9 Appeals said, based upon our system of
10 government, we are not obligated to provide
11 disciplinary arbitration.

12 MR. SANTIAGO: No, no.
13 Obligated, but it would be unlawful -- you
14 cannot negotiate or cut the bargaining
15 process. Basically saying, although Taylor
16 Law envisions that almost every issue could
17 be negotiated or collectively bargained,
18 issue cannot. It's against public policy.
19 That's the 2006 Court of Appeals decision.

20 LEGISLATOR WINK: Yet,
21 nevertheless, in 2007, there was an
22 arbitration award in which the county agreed
23 that they would advocate for a change in law
24 to provide --

25 MR. SANTIAGO: Well, in 2007 in

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2 reaction to the Court of Appeals decision, I
3 believe the county executive and the
4 legislature, listen, since we cannot give
5 this arbitration right to a collective
6 bargaining process, let's make it into a
7 local law. If you enact a provision like we
8 have here, in the administrative code, has a
9 way to state law as you know under our
10 charter system.

11 So the Court of Appeals, even
12 though indicates against public policy to
13 allow disciplinary arbitration in the police
14 department, it did not say that you could
15 not create a local law in terms of codifying
16 that right. But they said you cannot
17 negotiate it away.

18 LEGISLATOR WINK: But it was more
19 than just the local law as I understand it.
20 There was a memorandum of understanding that
21 was signed by both the administration, the
22 then administration, and the PBA, which
23 indicated that they would advocate for the
24 local law; is that correct?

25 MR. SANTIAGO: Well, there is --

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2 correct, when I started the discussion, I
3 made it clear that this drive to make it
4 into a local law was agreed -- well,
5 supported by not only the county, I think
6 the representative of the police department
7 back then and the county executive. I
8 believe that's why you don't see much of
9 legislative history go through local law. I
10 think it was passed unanimously pretty
11 quickly.

12 LEGISLATOR WINK: Including by
13 the current county executive who was a
14 legislator at the time.

15 MR. SANTIAGO: But I think the
16 process was not vetted properly. If you
17 read cases -- I can only argue on legality
18 in terms of the decisions we have in court,
19 even from the Second Circuit Beach Channel
20 (phonetic) case, it's an acknowledgment, and
21 it's been for years that the courts have
22 acknowledged that discipline shall remain in
23 the hands of commissioner or board of
24 commissioners. That reasoning has been
25 adopted by the second department and

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2 recently they adopted a holding in regard to
3 villages and towns. You had indicated what
4 are the villages and towns doing, but in the
5 second department, if they had agreed to
6 disciplinary arbitration, guess what, they
7 can't. They're going to have to take --
8 either go forward with the departmental
9 proceedings or, like we did here, create
10 their own local law. That was a recent
11 decision late last year.

12 So this view of police discipline
13 has been expanded by our appellate
14 divisions. I think we see the same thing
15 happening upstate New York. But it's an
16 acknowledgement that -- I'm not saying it's
17 a perfect system. I think the commissioner
18 has worked out, within our rules and
19 regulations, he has made amendments where my
20 office would be the ones who would take that
21 process in terms of negotiating some type of
22 settlement. Dealing directly with the
23 attorneys in my office who are experienced
24 litigators, I think he has removed a layer
25 of, I would say, bureaucracy, and put it

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2 within our administrative office.

3 It would be misconstrued to
4 believe that -- because under our
5 administrative code, the way it is, and the
6 way it would revert back for everyone, he
7 doesn't hear the disciplinary hearing, he
8 basically appoints under the administrative
9 code a hearing officer.

10 So there is an avenue for
11 distance, because ideally you want your
12 commissioner to have a de novo review of
13 what's going on. There are situations you
14 correct where he might know one of the
15 respondents or one of the police officers or
16 appointees being disciplined. That's going
17 to happen with a small police department.
18 But it's not a perfect system.

19 I do agree that arbitrators are
20 objective and it works for other aspects --
21 for other unions not dealing with public
22 safety, it doesn't work for decisions like
23 ours. It runs the gamut from firefighters
24 to teachers, social workers. You know,
25 that's really happening, that when the

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2 arbitration process is triggered there, it
3 causes a certain inertia or decisions to
4 hurt the public. It's not going to happen
5 here.

6 LEGISLATOR WINK: You are
7 assuming though that efficiency is the best
8 approach, that making a quick decision is
9 better than making the right decision or the
10 wrong one.

11 MR. SANTIAGO: That's one of the
12 aspects. I think that it's a person that
13 ultimately knows how a police department has
14 the institutional knowledge to know what is
15 better for the police department, what is
16 better for the residents of Nassau County.

17 I defer to the commissioner of
18 police. Myself, I've been on the police
19 department for 20 years. I'm not going to
20 be perfect, but I think I'm going to be fair
21 and I'm going to try to rule in matters that
22 benefit all parties concerned, be it the
23 police department, its members and the
24 public. Public safety is what's utmost
25 important here.

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2 I'm not disparaging any
3 arbitrator. I'm sure those are common sense
4 decisions they could make, but we have this
5 institutional knowledge, so we should
6 utilize it. That's what the policy is.

7 LEGISLATOR WINK: With all due
8 respect, detective sergeant, I'm not
9 disparaging the commissioner or the process
10 that you are advocating for, my question is,
11 we have a process here that has not been
12 utilized for the most part, and we are being
13 asked to go to a different process that, as
14 I understand it, the departmental process is
15 subject to the Civil Service Law.

16 MR. SANTIAGO: Correct. It's
17 actually -- once you have exhausted your
18 administrative remedies, be it the final
19 determinator, your avenue would be an
20 Article 78. There are certain instances
21 where you can challenge it within the Civil
22 Service Commission. Not all of them, but if
23 you -- substantive arguments will be heard
24 in a special proceeding in the Nassau County
25 Supreme Court. They would apply their

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2 standards and review the determination.
3 There is certain statutory protection and
4 constitutional protection that a member has
5 that no one can negotiate away or decide
6 away.

7 LEGISLATOR WINK: I understand
8 that, but my question is something
9 different. Does the departmental process
10 have certain limits on what punishment can
11 be issued or how that punishment can be
12 issued that an arbitrator might not?

13 MR. SANTIAGO: No. I think the
14 arbitrator, even though his standard is just
15 cause or incremental discipline, he can
16 recommend termination and render judgement
17 for termination. Then that would be
18 reviewed in a different process.

19 But, no, basically the power to
20 either give a penalty of days or time or
21 even the ultimate penalty of termination,
22 arbitrator has that power now, what the
23 commissioner would have in the past. It
24 would have gone to the PBA.

25 LEGISLATOR WINK: You're saying

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2 that the arbitrator have that power?

3 MR. SANTIAGO: They do have that
4 power.

5 LEGISLATOR WINK: They do have
6 that power?

7 MR. SANTIAGO: The arbitrator can
8 recommend or issue a judgement of
9 termination and then if you're going to
10 challenge, it would be the Article 75
11 process. It's a different process all
12 together.

13 LEGISLATOR WINK: It's a
14 different process, and, as I understand it,
15 it's a much higher threshold for a police
16 officer or anyone being disciplined to
17 surmount in order to overturn an arbitration
18 that recommends dismissal.

19 MR. SANTIAGO: The Article 78
20 standard is an unconscionable standard in
21 terms of penalty. I believe you're right,
22 if it's an arbitration decision, in order to
23 overrule an arbitration decision, it's a
24 more procedural mechanism. Meaning that the
25 decision was flawed by malfeasance, not

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2 reviewing the record, or by violation of
3 someone's constitutional rights, statutory
4 rights, let's say based on gender, race,
5 it's a higher standard, correct.

6 The Article 78 standard for
7 disciplinary matters is the unconscionable
8 standard that the punishment would be so bad
9 it's unconscionable to allow someone to be,
10 say, terminated, different from the
11 arbitration standard.

12 LEGISLATOR WINK: But it sounds
13 like if you can make your case to an
14 arbitrator, the department has a much better
15 chance of maintaining and defending their
16 decision in front of a court after an
17 arbitration than then do after a
18 departmental matter.

19 MR. SANTIAGO: I think reaction,
20 in terms of defending, that's the lawyers,
21 that's a process that we deal with
22 judicially. But in terms of getting a
23 decision that's going to address the problem
24 or fashion a remedy for the problem
25 appropriately, I think that the arbitrator

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2 is going to be looking at that just cause of
3 getting the person, let's say, oh, this is
4 the first offense or look at these other
5 variables that we can consider, and you'll
6 find that, and this has happened in other
7 jurisdictions throughout the country where
8 you would have police officers that have
9 been put back in service or back on patrol
10 that should not be there.

11 There are other avenues available
12 to the commissioner, be it assignments that
13 are away from the public, and he can speak
14 to these other avenues and remedies that he
15 can formulate. The arbitrator cannot
16 formulate that remedy because he or she will
17 come in here and render the decision but,
18 guess what, they back away. They are not in
19 the police department. They cannot follow
20 up. You would agree with that.

21 LEGISLATOR WINK: Yes,
22 absolutely.

23 MR. SANTIAGO: But that I think
24 the commissioner can speak more to what he
25 can form in terms of a remedy because you

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2 have got to look at the bigger picture and I
3 think you indicated, commissioner, that
4 that's what you really want to do here.
5 Because you've got to look at the bigger
6 picture, and the bigger picture is public
7 safety and helping those residents that need
8 our help properly. So they believe we are
9 doing the job properly. And that if someone
10 does something wrong, they're accountable to
11 the commissioner. That's basically what I
12 think the commissioner is saying.

13 LEGISLATOR WINK: Look, I'm going
14 to end on this. Having heard everything
15 you've had to say here and the questions
16 have come from both sides of the aisle here,
17 I'm concerned that you haven't made a case
18 for getting rid of what is really an
19 untested procedure through arbitration in
20 favor of a procedure that, granted, may have
21 existed a long time ago but actually has a
22 better chance of being overturned in court
23 ultimately, and I just don't understand why
24 we're looking to scrap the system rather
25 than -- I agree with you, by the way, that

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2 there needs to be certain time limits for
3 police officers to make demand for
4 arbitration. If it can be strung out for an
5 extended period of time, that's a problem
6 that needs to be addressed. But other than
7 that, I'm not hearing anything that makes a
8 compelling case for getting rid of an
9 arbitration procedure that hasn't been
10 utilized. That's just my opinion. Thank
11 you very much though, gentlemen.

12 CHAIRMAN SCHMITT: Legislator
13 DeRiggi-Whitton.

14 LEGISLATOR DeRIGGI-WHITTON: For
15 Commissioner Dale, I would like to question
16 you. It's our understanding that most of
17 these situations you do come to a meeting of
18 the minds; is that correct?

19 COMMISSIONER DALE: Yes.

20 LEGISLATOR DeRIGGI-WHITTON: So
21 what would you say, I think you said about
22 600 cases, you still have about 14 that are
23 awaiting arbitration; is that correct?

24 COMMISSIONER DALE: I think we
25 said we have 600 cases from 2004 that IAD

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2 has investigated.

3 LEGISLATOR DeRIGGI-WHITTON:
4 Right. And most of them have come to
5 settlement which is the meeting of the mind.
6 So you're talking about a very small
7 percentage that might opt for an option of
8 arbitration; is that correct?

9 COMMISSIONER DALE: Yes.

10 LEGISLATOR DeRIGGI-WHITTON: Now
11 why was this only given, this option in this
12 law only given to the PBA, do you have any
13 idea?

14 COMMISSIONER DALE: I have no
15 idea.

16 LEGISLATOR DeRIGGI-WHITTON: Do
17 you feel that possibly it's because they
18 felt they needed the protection of this
19 option not having any rank?

20 COMMISSIONER DALE: I have no
21 idea. I really don't know. I wasn't around
22 then and I don't understand it to be
23 perfectly honest with you. I don't know why
24 it was put in the law.

25 LEGISLATOR DeRIGGI-WHITTON: I

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2 want to make a statement, and there's no,
3 with all due respect, what you are asking us
4 to do is give you full credibility and full,
5 the last decision on this. The only
6 dealings I had with you was when we had the
7 hearings regarding the closing of the police
8 precincts. I have to tell you that I really
9 questioned your line of thinking at
10 different times. I really do think that to
11 give that decision to one person is a big
12 risk.

13 I do think when you can meet,
14 when you have the meeting of the minds,
15 you're definitely a big part of that,
16 however, I do feel that it is -- some people
17 should be entitled to have another option
18 should they feel that they don't have that
19 right of having a fair hearing. I also
20 agree with Wayne that having it removed a
21 little bit in certain situations by an
22 arbitrator, would seem more objective to
23 just the average person, the layperson.

24 Having the commissioner of the
25 same police department maintain all the

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2 disciplinary decisions, it just looks
3 improper in a sense that there could be some
4 type of favoritism of certain groups and not
5 others. It just seems to be much more
6 objective with the arbitration. And, also,
7 like Wayne just said, would probably hold up
8 in court better.

9 You know, there was a reason why
10 they put this in for the PBA because it is
11 people that are newer on the job. They
12 don't have as much clout. They might be
13 entitled on this very small percentage to
14 where we cannot come to the meeting of the
15 minds to have this option.

16 I also agree that there is a
17 glitch in the system that this is delays
18 there and I really think we have to work on
19 fixing that glitch rather than getting rid
20 of this option for a very small percentage
21 of the cases.

22 So I want you to know why I'm
23 having a problem also with reversing this
24 law that we put in.

25 COMMISSIONER DALE: I understand.

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2 I just -- I don't like to treat PBA
3 different than I treat -- you are giving me
4 the same powers to deal with the sergeants,
5 the lieutenants, the captains. I still have
6 that authority that you just said over
7 those. The only ones that I don't have that
8 authority over are the police officers. The
9 civilians, I that same authority you just
10 described. I understand that.

11 That's what the police
12 commissioners do. We are in charge of
13 responsibility. We are in charge of
14 accountability. The next issue is, yes, I
15 could make a mistake. I could screw up.
16 There is a remedy. I'm not the final end
17 all. The remedy is to go to court after I
18 make a decision. There is always a final
19 remedy.

20 So I understand where you're
21 coming from. I respect it. But there is
22 another side to it and that's the side that
23 I'm trying to give to you that I want to
24 treat everybody the same and I want to be
25 able to, if I do something wrong, the

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2 officers, of course, have a right to go to
3 court and take me to task. That's always
4 been there and that will be there if you do
5 change this law.

6 That's my side of it and I
7 respect what you said.

8 CHAIRMAN SCHMITT: Legislator
9 Walker.

10 LEGISLATOR WALKER: Thank you,
11 commissioner. I think that Legislator Wink
12 said it's untested having the binding
13 arbitration, and we feel that's been
14 untested. But it seems to me from
15 everything you've said today that partially
16 it's untested because it can be put off and
17 put off and put off. It scares me more to
18 think that you have an officer that has
19 whatever the issue was in 2007, say, and
20 that officer is still out on the street
21 doing whatever job they did, and they may be
22 a wonderful officer. I don't know what the
23 issue was. But, bottom line, it's never
24 been dealt with. If it's an issue that is
25 something that should have been dealt with,

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2 and perhaps that officer should be off the
3 street, or whatever the case is, we let that
4 go from 2007. This is 2012. I mean, that
5 officer can just go on and retire and be
6 done, and we never ever dealt with an issue
7 that could have been very serious.

8 It seems to me that if this is
9 something that's been untested it's because
10 they know they can sort of put it off and,
11 like I said, I think our officers, they're
12 the best, and I don't believe that there's
13 that many problems with those that are out
14 there on the street. But I don't care, if
15 there is one person that shouldn't be out
16 there because of an issue, we need to deal
17 with that issue right away. I don't mean
18 hurrying through something, rushing through
19 something, dealing with it in the proper
20 procedure, but I guess I feel like, like you
21 said, you deal with all the other areas of
22 the police department, you're the person who
23 has to deal with it, for whatever reason it
24 was decided that you wouldn't have to deal
25 with it with our police officers here.

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2 I guess I kind of feel like this
3 is -- you're in charge of this house and it
4 should come back to you.

5 CHAIRMAN SCHMITT: Legislator
6 Jacobs.

7 LEGISLATOR JACOBS: A lot of what
8 I was thinking has been said, but I just
9 want to say to you that I've been thinking
10 about this a lot. Certainly since our
11 committee meeting on this and trying to come
12 to some conclusion in my mind that makes
13 sense.

14 Essentially, to me, and I can't
15 put myself in anyone's shoes in 2004, except
16 I was the presiding officer, but I wasn't
17 there for the actual decision on this. It
18 seems to me it creates a level playing
19 field. I would assume that that's not a bad
20 thing in the minds of officers. The newer
21 officers versus the top brass, or whatever.
22 To me, giving them the option of arbitration
23 makes it seem to them to be, and perhaps it
24 is, a more level playing field. So that's
25 what I'm leaning towards but I just wanted

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2 to express that to you.

3 It seems to be in light of what
4 Ms. Walker just said, if somebody
5 unfortunately did something that was so
6 questionable, they can always be put on
7 administrative duty; am I correct?

8 COMMISSIONER DALE: Yes.

9 LEGISLATOR JACOBS: Rather than
10 out in the street. So the truth of the
11 matter is, there is a mechanism in place
12 already that could limit what their duties
13 are. I just wanted to tell you that because
14 I want you to know that I'm taking it very
15 seriously. I'm listening to you. I
16 listened to you in the last meeting too. I
17 just want to make a good, intelligent
18 decision on this. Thank you.

19 COMMISSIONER DALE: Thank you.

20 CHAIRMAN SCHMITT: We have one
21 speaker for public comment. That's James
22 Carver, president of the PBA.

23 MR. CARVER: Good afternoon.
24 Well, good evening now probably by this
25 time. James Carver, president of Nassau

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2 PBA. I have my attorney Seth Greenberg with
3 me and my second vice president who deals
4 with our disciplines, Kevin Tobin.

5 I think a lot of the history has
6 already been told to everybody here about
7 how binding arbitration was arbitrated and
8 negotiated throughout the past years through
9 2004.

10 I was listening to the
11 commissioner and Izzie present this, and
12 talking about the fairness of discipline.
13 What was happening here is that, through the
14 years, police officers for infractions were
15 disciplined more severely than bosses or
16 detectives for the same infraction.

17 We made this argument back in
18 2003 during the arbitration process and we
19 presented cases and comparisons and the
20 arbitrators agreed that discipline was not
21 being given out, or discipline, if an even
22 basis throughout the ranks. That's how
23 binding arbitration, this one, started.
24 Suffolk County has it, many of the villages
25 have it. It's something that's very rarely

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2 utilized but, I think you said it before,
3 Judy, it levels the playing field. I think
4 that's what everybody would want.

5 If I pull you over and I give you
6 a traffic ticket, you don't want to go to
7 the court and I'm the judge that decides
8 whether you're guilty or not guilty. That's
9 the bottom line here. If I lock you up for
10 DWI, I shouldn't be the guy that judges
11 whether you're guilty or not guilty. So on
12 and so forth. That's the bottom line here.
13 That's the bottom line.

14 Binding arbitration is good for
15 both sides. An outside arbitrator, I have
16 been to many seminars, and they talk about
17 the behavior and the standard of police
18 officers held very high. Hence, we are also
19 disciplined very high by arbitrators also.
20 But, again, it levels the playing field.

21 Some of the things that we talk
22 about, and I've sat down with the
23 commissioner a couple of times in private
24 and talk about why are all these cases
25 sitting out here. Well, there is a

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2 procedure that has been in place since 2008
3 which outlines what to do and what steps to
4 take.

5 The department, not the PBA, it's
6 not incumbent upon us to sit there and try
7 the case. The department administration,
8 the prior administration, have failed to
9 aggressively follow the rules. They have
10 failed to do that. So what they are here
11 today saying, we messed up over the years
12 and now we want to go back to the old way.

13 The bottom line is this, and I'll
14 have my second vice president speak more
15 about the discipline in general, and my
16 attorney speak about the agreements. The
17 bottom line here is, once they give charges
18 and specifications, and it's deemed to be
19 ten days or more, there is a time period,
20 which my attorney will get into, which we
21 have to respond back to the county.

22 For a long time, we didn't have a
23 director of labor relations which is part of
24 the thing. So there were a lot of things.
25 You have a change of administration not only

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2 on the police side, but you also have a
3 change of administration also on the county
4 side which slowed up some processes here.

5 We understand that discipline is
6 important. We are a paramilitary
7 organization. I came on the job and I was
8 20 years old. We all understand about
9 having a police department that's corruption
10 free, that should be disciplined and should
11 be out there doing the job every day. We
12 are all for that. But at the same time, we
13 have to protect our members not to be
14 unevenly disciplined, which was the case and
15 that's how we finally got here.

16 To go back to the old way would
17 give free reign to the commissioner to
18 decide, and maybe it's not this
19 commissioner, could be the next commissioner
20 or the commissioner after that, to decide
21 who he likes and who he doesn't like, and
22 how they're going to be fined.

23 I know there's been a lot of
24 cases that have been discussed. We will not
25 discuss any single case here. We will do

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2 that behind closed doors. And I think a lot
3 of this should be discussed behind closed
4 doors and you can get a truer feeling about
5 what is really going on.

6 But right now I will send this
7 over to my second vice president, Kevin
8 Tobin, right now and he will talk about the
9 disciplines.

10 MR. TOBIN: Kevin Tobin, for the
11 record, second vice president of Nassau
12 County PBA. Just a short history lesson. I
13 have been a police officer since 1979. I
14 have been a PBA union representative since
15 1984. I became the second vice president in
16 2005 handling disciplines, grievances and
17 several other issues.

18 This matter of discipline, that's
19 recently come up, I think one of the things
20 that we find disturbing to the union is that
21 no one has reached out to us and said, sit
22 down with us and give us the history of how
23 we got from point out to where we are now.
24 The only position or opinion that you've
25 gotten is from those people, from the

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2 administration, who has just arrived here.
3 That's point one.

4 Point two, with all due respect,
5 to the commissioner, the assistant
6 commissioner, and Sergeant Santiago, there
7 are a few inaccuracies in what they stated.

8 Sergeant Santiago could attest
9 that the legal bureau had a very minimal
10 role in discipline up until this
11 commissioner arrived.

12 Secondly, up until recently, I am
13 the person that called, what was done in the
14 past, we dealt with discipline with the
15 first deputy commissioner. That was done
16 since I was on the job. That stopped when
17 we failed to have a first deputy
18 commissioner. That was handed off to the
19 acting commissioner who was Thomas Krumpter
20 at the time who, amongst all the other
21 responsibilities he had, he now had to do
22 disciplines.

23 During that course of time, under
24 the arbitration for discipline, we settled
25 numerous cases under his administration as

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2 the acting commissioner, there was not a
3 problem in negotiating any of these
4 disciplines. Some disciplines, even prior
5 to him, did result in terminations. So for
6 the commissioner to say that he cannot
7 terminate anyone is totally inaccurate.

8 All we're saying is, when you get
9 to ten days or more, as Judy said, keep the
10 playing field level. And, Peter, if you
11 remember when we did this and you may or may
12 not remember, we had a discussion, yourself
13 and myself, about this issue and you brought
14 up an excellent point which we hadn't
15 thought about. You liked the idea because
16 the perception was, you didn't have the old,
17 good ole boy network of the commissioner
18 taking care of the cops. It should be an
19 outsider that looks at this and says,
20 listen, we want to see both sides of the
21 story.

22 I can tell you this, no one in
23 this police administration has reached out
24 to me or to Jimmy Carver other than when
25 this issue came up on the floor, all of a

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2 sudden now, things start to move.

3 I made several attempts, and
4 Sergeant Santiago can attest to this, to
5 negotiate some of the disciplines that are
6 pending under the arbitration for discipline
7 rule to no avail. No one responded back.
8 No one asked us if we were willing to sit
9 down and negotiate. That process only
10 stopped when this administration got here.

11 Currently, there is only one case
12 that has gone to arbitration for discipline
13 and that is still pending. It is incumbent
14 upon the county and the department, and
15 there are time restraints on every step of
16 the agreement to call us and say, here's the
17 offer, and to correct them. If the offer is
18 not satisfactory, then the process goes to
19 the next step. Its very simple.

20 To say that the cop is holding up
21 the process is totally inaccurate. We have
22 had several director of labor relations in
23 the past couple of years as you all know.
24 There's been no consistency. When we lost
25 the first deputy commissioner of police, no

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2 one, and, to this day, as I stand before you
3 today, has been designated up until the
4 other day I was told legal bureau will now
5 handle them. No one mentioned that to us.
6 No one told us that was going to be the
7 procedure.

8 As a matter of fact, as of last
9 week, they changed the rules and regulations
10 which includes arbitration for discipline.
11 So if this was an issue, why would you
12 change the rules? So now we resurrect this
13 again to discuss it.

14 I urge you to think very
15 seriously about departmental trials.
16 Departmental trials are run by an inspector
17 who is beholding to the commissioner of
18 police. Now we are all smart people here.
19 Do you really think that you get a fair
20 shake? Think about it. That's all we're
21 asking is for the cop to get a fair shake
22 when it comes time for serious discipline.
23 The commissioner still holds his right to
24 terminate. There were no rights lost. It
25 was just to continue a better process for

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2 everyone involved. Thank you.

3 CHAIRMAN SCHMITT: Just a couple
4 of questions. No one has addressed the
5 testimony about the Court of Appeals
6 decision. I mean, it seems to me, what
7 they're saying is that the Court of Appeals
8 says we can't do this even if we wanted to
9 do this.

10 MR. CARVER: Mr. Schmitt, I would
11 like my counsel to answer that question.

12 CHAIRMAN SCHMITT: And before you
13 leave, I'm taking from the testimony that I
14 heard, is it the position of the PBA that
15 discipline for a police officer, is that
16 something to be negotiated or is that
17 something to be imposed?

18 MR. TOBIN: I believe it should
19 be negotiated, if you're asking my opinion.

20 CHAIRMAN SCHMITT: You do? Mr.
21 Carver, do you agree with that?

22 MR. CARVER: That's correct. And
23 it was negotiated, and to make that right,
24 like I said, my attorney will get into it,
25 that's why the administrative code was

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2 changed and it was voted on unanimously.
3 That was the bottom line. This was
4 negotiated and subsequently it was -- the
5 arbitration awards were confirmed in court.
6 We have a contract that runs through 2015.

7 Right now, in our opinion, NIFA,
8 and we don't agree with it, and they've
9 frozen our wages, but they can't touch any
10 other part of the contract, so, again,
11 without going into it too much, I think I
12 should let my attorney speak on the legalese
13 of it.

14 But we feel that this is a
15 contractual obligation that was awarded and
16 then you're right with the 2006 decision,
17 and then was corrected here by the
18 legislature, and given us a change in the
19 administrative code and, subsequent to that,
20 there was in 2008, we negotiated -- and
21 everyone was talking about MOU's, they're
22 MOAs, memorandum of agreement, which every
23 MOA becomes part of your contract negotiated
24 to procedures on binding arbitration for
25 discipline which we have in our contract.

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2 So it's our view that changing
3 the administrative code violates that
4 contract. And unless there's not another
5 question, I will give you Seth Greenberg,
6 our esteemed attorney.

7 MR. GREENBERG: Good afternoon.
8 If I can just address that last question
9 first, and there's a couple of factual new
10 inaccuracies that I wanted to point out.
11 One is, the county and the police department
12 shares the view that to negotiate or work
13 out a settlement on a disciplinary matter is
14 the preferred method. They enter into
15 agreement that the first step in the process
16 would be to discuss to see if there is a
17 settle that can be reached.

18 In the absence of reaching a
19 settlement, there's a procedure in place to
20 give the officer an opportunity to choose
21 either the Section 75 departmental path, or
22 arbitration route.

23 Let's be clear. Arbitration for
24 discipline, as an option, as an alternative
25 forum, in which an officer who is being

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2 charged with discipline and the penalty
3 being sought is ten or more days, is an
4 alternative due process hearing and it is a
5 contractual right that -- there was a
6 question earlier on whether it's by
7 contract. It is by contract.

8 Interest arbitration award was
9 issued in 2004. In January 2007, this
10 county legislature unanimously passed a
11 memorandum of agreement and approved a
12 memorandum of agreement ratified by both
13 parties. Legislation was passed that
14 reflected that contractual change, and a
15 subsequent 2008 memorandum of agreement
16 outlines the procedures of how arbitration
17 for discipline should work. The procedures
18 outline time frames.

19 So, to the extent that the
20 department is concerned that there is a
21 delay because there isn't any time frames,
22 that is a factual fallacy. There are time
23 frames contained within it. After charges
24 are served upon an officer, and after the
25 department notifies the officer that he or

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2 she, that the department is seeking a
3 penalty of ten or more days, that officer
4 has ten days to notify the department
5 whether or not he or she wants to go the
6 arbitration route or the Section 75 hearing
7 route. Actually it's 30 days from that time
8 frame.

9 Then, within 60 days an
10 arbitration hearing is to be scheduled. It
11 is incumbent upon the department to schedule
12 that arbitration. Just like it would be
13 incumbent upon the union to schedule a
14 grievance arbitration. The panel of
15 arbitrators that are used are national
16 academy, American Arbitration Association
17 neutrals, that are experts in labor
18 arbitration and employment arbitration in
19 their field. They have been mutually
20 selected and agreed upon by the county and
21 the PBA. It isn't that one side is picking
22 it. It's a mutual selection by agreement
23 between the county and the PBA.

24 The standard of just cause is a
25 common standard that is used by arbitrators

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2 throughout the country. It is a standard of
3 reasonableness and quite frankly it is a
4 standard used in departmental hearings too.

5 CHAIRMAN SCHMITT: Mr. Greenberg,
6 one question. Your comments on the
7 memorandum of agreement and the legislature
8 enacting the binding arbitration provisions
9 that the Court of Appeals struck down.

10 I have a county attorney's
11 opinion. I don't know if you have seen it.

12 MR. GREENBERG: I have not.

13 CHAIRMAN SCHMITT: I will be
14 happy to send you a copy. I have a county
15 attorney's opinion. I asked him to look at
16 this law and give us an opinion. He says at
17 one point, even assuming that the memorandum
18 of agreement carried with it an implied
19 agreement to support the legislation in
20 perpetuity, such an agreement cannot bind
21 the current legislature. A municipal
22 government may not contractually bind its
23 successes in areas relating to governance
24 unless specifically authorized by statute or
25 charter provisions to do so.

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2 So, on that reading, it is within
3 the right of the administration, the police
4 commissioner and so forth, to come and ask
5 for this repeal of the law.

6 MR. GREENBERG: Look, I'm not
7 here to get into an argument or a legal
8 debate. I have not seen the county
9 attorney's opinion. I'm not going -- that's
10 a mouthful of words and a lot of things in
11 there without seeing it and I'm not going to
12 comment on it, nor am I going to debate it.
13 At the appropriate time, I'm sure the PBA
14 will share what its legal opinion is.

15 CHAIRMAN SCHMITT: Okay.

16 MR. GREENBERG: There is a
17 contractual right. That is clear as could
18 be. There is a contractual right that under
19 those circumstances, where there is a severe
20 penalty being sought, that there is an
21 alternative due process forum. That's all
22 we're talking about, is giving the officer
23 the opportunity. The department still has
24 to prosecute the case. The department still
25 has to prove, has the burden of proof, and,

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2 in terms of what can be or cannot be
3 considered, one of the other factual and
4 legal inaccuracies, is that there are other
5 things in the personnel file that are to be
6 considered.

7 Under both the departmental
8 hearing and in arbitration, either the
9 hearing officer or the arbitrator cannot
10 consider those things until after a
11 determination has been made on guilt or not
12 guilt.

13 A lot of the premises that are
14 being relied upon by the department, they're
15 relying on facts that just don't exist. To
16 the extent that they have their policy
17 decision, their position is their position.
18 But the facts that they are relying on are
19 simply not true.

20 CHAIRMAN SCHMITT: Anybody have
21 any questions for Mr. Greenberg? Legislator
22 Ford.

23 LEGISLATOR FORD: Good afternoon.
24 How many -- and I know this was discussed
25 before, but how many cases since 2004 have

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2 actually been heard by arbitrators for
3 discipline in the PBA?

4 MR. GREENBERG: I specifically
5 don't know the number, but I've heard the
6 department personnel hear say that there was
7 just one, but I don't have direct knowledge.

8 MR. TOBIN: Under arbitration of
9 a discipline, there's currently only one
10 case that's been brought to an arbitrator
11 which is still ongoing right now.

12 LEGISLATOR FORD: That's since
13 2004 since we enacted --

14 MR. CARVER: Actually it would be
15 2007, then 2008 is when the procedures were
16 negotiated. So you're only talking about
17 the last four years, not going back to 2004.

18 LEGISLATOR FORD: You probably
19 don't know off the top of your head, but how
20 many cases actually went to departmental
21 hearings?

22 MR. CARVER: None. I don't
23 there's been a PBA member that's gone to a
24 departmental trial probably since 1995 or
25 1996. It's very rare that any member being

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2 SOA, DAI or PBA would opt to go to a trial.
3 99 percent of the time the fines are always
4 negotiated with the department. That's been
5 the history.

6 Now there are times when, just
7 like if you go into court, and you look at
8 what your odds are of winning, there are
9 often times when a member will decide to
10 resign instead of face the charges. There
11 are numerous cases of that over the past ten
12 years. I don't have them off the top of my
13 head, but there's numerous cases.

14 LEGISLATOR FORD: So then,
15 actually, even though we have the one case
16 that has gone to an arbitration, it doesn't
17 mean that even if the officers are faced
18 with ten days or more suspension, by working
19 with the union and the commissioner's
20 office, or the administration, that there
21 are times when officers may have taken and
22 agreed to like a 30 day or 20 day suspension
23 without --

24 MR. CARVER: There have been
25 members that have been suspended for 30 days

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2 and also been fined on top of the suspension
3 or suspension has become part of their
4 discipline. So, yes, there have been
5 multiple times when discipline has been
6 agreed upon.

7 LEGISLATOR FORD: And this is
8 something that you say that's negotiated
9 prior to going to any type of hearing or
10 going to arbitration, correct?

11 MR. CARVER: That's correct. No
12 matter what you have, and it's in every
13 single department it's negotiated.

14 As a matter of fact, right now
15 the commissioner has said that there are 14
16 outstanding cases right now. Kevin handles
17 this a little bit more than I do, but if
18 there's 14 cases, talk to us about them and,
19 you never know, maybe all 15 are negotiated
20 in some form or another, discipline, and
21 maybe there's nothing left after all this.
22 That's the bottom line.

23 MR. TOBIN: Let me just clear
24 something up for everyone. The same risk
25 that the county claims or the department

1 Full Legislature/4-16-12
2 claims is a problem for them, when our
3 offices file for arbitration of a
4 discipline, we explain to them the risks are
5 very high. The commission recommends 75
6 days penalty. The police officer decides,
7 he feels or she feels it's too severe.

8 When you go into the arbitration
9 or discipline, settlement talks are not
10 admissible. The arbitrator may hear the
11 case and say, you know what, you're fired.
12 So it works both ways where that police
13 officer takes an inherent risk of not taking
14 the 75 days hypothetically. You could be
15 terminated. That's why, it's all except for
16 one so far.

17 CHAIRMAN SCHMITT: In just your
18 experience, I'm only meaning limiting it to
19 Nassau County, have you ever heard of an
20 incident where an arbitrator turned around
21 and upped the ante and said, you know what,
22 you're fired.

23 MR. TOBIN: Yes.

24 CHAIRMAN SCHMITT: Where?

25 MR. TOBIN: Florida.

1 Full Legislature/4-16-12

2 CHAIRMAN SCHMITT: No, I mean
3 have you ever heard of an incident --

4 MR. TOBIN: Not in Nassau County,
5 we've only had one.

6 CHAIRMAN SCHMITT: In New York
7 State?

8 MR. TOBIN: I don't know in New
9 York State. It's possible. I don't know.
10 The reason I'm explaining that is to show
11 you that there's a risk on both sides. The
12 cop doesn't just walk in there because he
13 asked for an arbitration for discipline and
14 thinks he's going to walk in there and
15 nothing is going to happen. The risk is,
16 you roll the dice, you may lose your job.

17 LEGISLATOR FORD: One last
18 question then. In regard to cases and an
19 action that is going to be taken against a
20 police officer. What actually is, if there
21 are cases that are outstanding, are there
22 any requirements that, like you said, the
23 police officer has, if they're told within
24 ten days of an infraction that they're going
25 to be brought up on departmental charges and

1 Full Legislature/4-16-12
2 they have 30 days to respond to say whether
3 or not they want a hearing or if they want
4 to go to arbitration, correct?

5 MR. GREENBERG: Yes. The
6 procedures says that within, I believe it's
7 30 days, upon receipt of that notice, that
8 the department is seeking ten or more days,
9 they would notify whether they want to opt
10 in, or he or she would notify whether he or
11 she wants to opt in to arbitration. At that
12 point it shifts to the department to make
13 the determination of whether or not it wants
14 to schedule the arbitration and, according
15 to the procedure, it has to be done within
16 60 days.

17 LEGISLATOR FORD: So then the
18 administration then has to say that this is
19 what's going to happen within 60 days. But
20 if they don't reply within 60 days, then do
21 the charges automatically get dropped?

22 MR. GREENBERG: No. The charges
23 are there, which is why you have charges
24 pending against I guess some 14 officers. I
25 mean, you can contact an arbitrator and it

1 Full Legislature/4-16-12
2 may take 45 days or longer or less to get a
3 date that works for the arbitrator and works
4 for the attorneys that are prosecuting and
5 defending the case. That process is
6 supposed to be, the scheduling of it is
7 supposed to be done within the first 60 days
8 after that.

9 If the department chooses not to
10 move that process along, I don't know what
11 word you want to use, but it's their
12 decision not to do that.

13 LEGISLATOR FORD: Thank you.

14 MR. CARVER: Thank you.

15 CHAIRMAN SCHMITT: I'll take a
16 motion to close the hearing.

17 LEGISLATOR GONSALVES: So moved.

18 MS. MAHER: Excuse me. I have
19 public comment.

20 CHAIRMAN SCHMITT: Pardon me. I
21 didn't see. You just came in. Pat Maher.

22 MS. MAHER: Thank you very much.
23 I'm Pat Maher from East Meadow. I was at
24 home watching this hearing and it really
25 prompted me to come over here. I had no

1 Full Legislature/4-16-12
2 intention of speaking about this subject.
3 But I'm here to oppose it and I would just
4 like to tell you briefly why.

5 It has no reflection on
6 Commissioner Dale. I think he came here to
7 do a good job. I think he's an honest man.
8 The reason I'm opposing this, I clearly
9 think this is politics. What you're asking
10 is for a body, and, believe me, you're
11 asking for a body, whether it be a
12 Democratic, a Republican controlled majority
13 legislature, a Republican or Democratic
14 county executive who appoints and votes on
15 one man to ask him to make the only
16 decision. Quite frankly, that scares me.

17 It wouldn't matter if there was a
18 Democratic majority, and it wouldn't matter
19 if there was a Democratic county executive.
20 I would still oppose this and I think this
21 is wrong. Because you have politics, too
22 much influx into controlling the PBA and the
23 police department, and I oppose that.

24 I would really ask you to look
25 further into that Court of Appeals decision

1 Full Legislature/4-16-12
2 to question the county attorney to whether
3 this preempts you from doing so. It's not
4 my reason for opposing this, but I think it
5 would be a very good reason for you to
6 oppose it. I would not want to see politics
7 controlling the police department or the
8 PBA. Thank you.

9 CHAIRMAN SCHMITT: Thank you.
10 I'll now take a motion to close the hearing.

11 LEGISLATOR GONSALVES: So moved.

12 LEGISLATOR MUSCARELLA: Second.

13 CHAIRMAN SCHMITT: Moved by
14 Legislator Gonsalves, seconded by Legislator
15 Muscarella. All those in favor of closing
16 the hearing please say aye.

17 (Aye.)

18 The hearing is closed. The next
19 item is a hearing on the proposed local law
20 in relation to change, to amending the
21 county charter in relation to the department
22 of human services. Do we have to do
23 procedurals? Can we do a procedural for all
24 the hearings? Let's do one procedural.

25 CLERK WEISS: Item 1 on the

1 Full Legislature/4-16-12
2 calendar is procedural resolution 2-2012, a
3 resolution ratifying the actions of the
4 Clerk of the Legislature to cause to be
5 published a notice of hearing on a proposed
6 local law to amend the county charter in
7 relation to the Department of Human
8 Services.

9 Please entertain a motion to
10 place this matter before the legislature on
11 the procedural resolution.

12 LEGISLATOR GONSALVES: So moved.

13 LEGISLATOR MUSCARELLA: Second.

14 CHAIRMAN SCHMITT: Motion by
15 Legislator Gonsalves, seconded by Legislator
16 Muscarella. All those in favor of the
17 underlying item, please say aye.

18 (Aye.)

19 Any opposed?

20 (No verbal response.)

21 LEGISLATOR GONSALVES: So moved.

22 LEGISLATOR MUSCARELLA: Second.

23 CHAIRMAN SCHMITT: I'll take a
24 motion by Legislator Gonsalves, and seconded
25 by Legislator Muscarella to open the

1 Full Legislature/4-16-12
2 hearing. All those in favor of opening the
3 hearing, please say aye.

4 (Aye.)

5 The hearing is open. Any
6 testimony?

7 (No verbal response.)

8 Any debate or discussion?

9 (No verbal response.)

10 I'll take a motion to close the
11 hearing.

12 LEGISLATOR GONSALVES: So moved.

13 LEGISLATOR MUSCARELLA: Second.

14 CHAIRMAN SCHMITT: Moved by
15 Legislator Gonsalves, seconded by Legislator
16 Muscarella. All those in favor of closing
17 the hearing please say aye.

18 (Aye.)

19 Any opposed?

20 (No verbal response.)

21 The hearing is closed. Hearing
22 on a proposed local law to prohibit the
23 acceptance of wastewater produced by
24 hydraulic fracturing by sewer treatment
25 facilities located in, owned and/or operated

1 Full Legislature/4-16-12
2 in or by Nassau County.

3 CLERK WEISS: Item 2 on the
4 calendar is Procedural Resolution 3-2012, a
5 resolution ratifying the actions of the
6 Clerk of the Legislature to cause to be
7 published a notice of hearing on a local law
8 prohibiting the acceptance of wastewater
9 produced by hydraulic fracturing by sewage
10 treatment facilities located in, owned
11 and/or operated in or by Nassau County.

12 Please entertain a motion to
13 place this matter before the legislature and
14 vote.

15 LEGISLATOR GONSALVES: So moved.

16 LEGISLATOR MUSCARELLA: Second.

17 CHAIRMAN SCHMITT: Moved by
18 Legislator Gonsalves, seconded by Legislator
19 Muscarella. All those in favor, please say
20 aye.

21 (Aye.)

22 Any opposed?

23 (No verbal response.)

24 LEGISLATOR GONSALVES: So moved.

25 LEGISLATOR MUSCARELLA: Second.

1 Full Legislature/4-16-12

2 CHAIRMAN SCHMITT: I'll take a
3 motion by Legislator Gonsalves to open the
4 hearing, and seconded by Legislator
5 Muscarella. All those in favor of opening
6 the hearing, please say aye.

7 (Aye.)

8 Any opposed?

9 (No verbal response.)

10 The hearing is open. Anybody
11 have anything they want to say? If not, I
12 have two speakers.

13 LEGISLATOR DeRIGGI-WHITTON: Can
14 I just say thank you for doing this and I'm
15 very supportive of this. Coming from Glen
16 Cove, it's a major concern. So thank you
17 for having it.

18 CHAIRMAN SCHMITT: Legislator
19 Ford.

20 LEGISLATOR FORD: I, too, want to
21 thank everyone for their support in this
22 measure. I think this is showing the
23 continued that we're making to protect and
24 clean up our western bays. The fact is that
25 our sewage treatment plants cannot sustain

1 Full Legislature/4-16-12
2 on treating chemical waste. More like human
3 and biological waste, rather than chemical
4 waste. So I think that we will be
5 protecting our sewage treatment plants, but
6 more importantly we are going to be
7 protecting our environment. I thank
8 everybody for their support on this.

9 CHAIRMAN SCHMITT: Legislator
10 Denenberg.

11 LEGISLATOR DENENBERG: I just
12 wanted to say that this is something that
13 all of us are in favor and I think that
14 there's an agreement that we are all
15 sponsoring this or cosponsoring. But it is
16 important given what has taken place around
17 the country right now for us to make a
18 statement that not in our plants. Thank
19 you.

20 CHAIRMAN SCHMITT: We have two
21 slips of public comment, unless other
22 candidates wants to talk. We have Thomas
23 Asher of Island Park.

24 MR. ASHER: Now it's good
25 evening.

1 Full Legislature/4-16-12

2 CHAIRMAN SCHMITT: Good evening.

3 MR. ASHER: I wanted to
4 personally thank all of you for this. This
5 was very, very important. When I came here
6 a couple of weeks ago, being a retired city
7 fireman up in the Bronx. I have been to
8 some pretty bad hazardous spills and stuff,
9 and I still have a brother on the job.

10 When this first started coming
11 around, and of course this is important to
12 you too, Ms. Ford, that's when my concerns
13 began was with the first responders
14 responding to accidents.

15 I brought it up to Mr. Nicoletto
16 in going to Floral Park and the Laurias and
17 everybody. Then I also live on the water
18 and that of course really started to concern
19 me. I really wanted to thank for the
20 bipartisanship on this. It was really --
21 Island Parkers really thank you very much.
22 Especially Ms. Ford, Mr. Kopel, and
23 Mr. Denenberg, I really appreciate your time
24 on this.

25 On another note, with going

1 Full Legislature/4-16-12
2 through this proposal for the possible
3 privatization, I'm very skeptical. I'm
4 actually looking forward to seeing what
5 comes out of Mr. Walker and Mr. Mangano. I
6 think we do have to move and do something
7 with moving forward.

8 One of the things that I would
9 want to look into if they do decide to go
10 towards privatization is, I think one of our
11 major concerns is, as a coalition, is the
12 lack of oversight and maybe have our own
13 labs, do our own tests or something with the
14 water, because once we go private, we're
15 going to lose a lot of that.

16 That's it. I really wanted to
17 stay here tonight because I'm sure most of
18 the time you get a lot of abuse. So I just
19 wanted to make sure I came here and went out
20 of my way tonight to really thank you
21 because it was a very important issue to us.
22 So thank you.

23 CHAIRMAN SCHMITT: Thank you very
24 much for taking the time to come up and join
25 with us today. Rachel Krinsky of the League

1 Full Legislature/4-16-12
2 of Women Voters.

3 MS. KRINSKY: I was going to say
4 good afternoon, but I guess I better say
5 good evening.

6 CHAIRMAN SCHMITT: Good evening.

7 MS. KRINSKY: Presiding Officer
8 Peter Schmitt, members of the Nassau County
9 Legislature. I'm Rachel Krinsky, president
10 of the League of Women Voters of Nassau
11 County. The League is a non-partisan
12 organization which encourages informed and
13 active participation in government, and
14 influences public policy through education
15 and advocacy. We appreciate the opportunity
16 to address you today.

17 The League of Women Voters
18 maintains the national position on natural
19 resources which calls for the promotion of
20 an environment beneficial to life through
21 the protection and wise management of
22 natural resources in the public interest.

23 With specific regard to water
24 resources, this position supports measures
25 to reduce pollution in order to protect

1 Full Legislature/4-16-12
2 surface water, groundwater, and drinking
3 water, and the League is also concerned that
4 public health is protected.

5 As you know, the DEC's SGEIS, and
6 I had to look this up to see what it is, it
7 means Supplemental Generic Environmental
8 Impact Statement, lists wastewater treatment
9 plants here on Long Island as potential
10 sites for processing contaminated wastewater
11 from hydro fracturing activities in New York
12 State.

13 The League of Women Voters of
14 Nassau County is happy to add its thanks to
15 the Nassau County Legislature and is in
16 support of and urges passage of Local Law
17 146-12 prohibiting the acceptance of
18 wastewater produced by hydraulic fracturing
19 by sewage treatment facilities located in,
20 owned, and/or operated in or by Nassau
21 County.

22 We thank you for your attention
23 today and we thank you very much for your
24 positive position on this. Thank you.

25 CHAIRMAN SCHMITT: Thank you very

1 Full Legislature/4-16-12

2 much. Any other public comment?

3 (No verbal response.)

4 I'll take a motion to close the
5 hearing. Who is up now?

6 MR. KOLODNY: I just wanted to
7 say that I agree. My name is Joe Kolodny.
8 I just wanted to say that I think it's so
9 ironic that currently a lot of the stuff
10 that goes down our drains in our homes goes
11 straight through those plants and is not
12 treated. We're talking about hydro-fracking
13 water, where all of us, millions of us, are
14 putting stuff into our bays that shouldn't
15 be going. They should be treated in a
16 tertiary manner, and we have the means to do
17 that. We may not have the funds to do that,
18 but we should be doing it.

19 I think it's kind of ironic that
20 we're talking about hydrofracking water when
21 we are poisoning our bays, we are all
22 poisoning them because we are not following
23 through and doing tertiary treatment on the
24 stuff that's going down our drains,
25 including whatever, detergents, and --

1 Full Legislature/4-16-12

2 CHAIRMAN SCHMITT: Are you
3 opposed to this legislation?

4 MR. KOLODNY: No, not at all.
5 But I think it's ironic that we're slapping
6 ourselves on the back about this when we're
7 not following through on treating all the
8 stuff that we're flushing down our drains
9 added to the bays that don't get treated in
10 our sewage treatment plants currently.
11 That's all I wanted to say.

12 CHAIRMAN SCHMITT: Thank you very
13 much. Take a motion to close the hearing.

14 LEGISLATOR GONSALVES: So moved.

15 LEGISLATOR MUSCARELLA: Second.

16 CHAIRMAN SCHMITT: By Legislator
17 Gonsalves, seconded by Legislator
18 Muscarella. All those in favor of closing
19 the hearing please say aye.

20 (Aye.)

21 Any opposed?

22 (No verbal response.)

23 The hearing is closed. Next is a
24 hearing on a proposed local law to authorize
25 the passing through of state Marchiselli

1 Full Legislature/4-16-12
2 funds from Nassau County to the Nassau
3 County Bridge Authority for purposes of
4 paying principal debt of authority bonds.
5 May I have a motion to open the hearing,
6 please? We need a procedural.

7 CLERK WEISS: The third item is a
8 procedural resolution.

9 CHAIRMAN SCHMITT: We can waive
10 the reading.

11 CLERK WEISS: It's Procedural
12 Resolution 4-2012.

13 LEGISLATOR GONSALVES: So moved.

14 LEGISLATOR MUSCARELLA: Second.

15 CHAIRMAN SCHMITT: Moved by
16 Legislator Gonsalves, seconded by Legislator
17 Muscarella. All those in favor please say
18 aye.

19 (Aye.)

20 Motion to open the hearing.

21 LEGISLATOR GONSALVES: So moved.

22 LEGISLATOR MUSCARELLA: Second.

23 CHAIRMAN SCHMITT: Motion by
24 Legislator Gonsalves, and seconded by
25 Legislator Muscarella. All those in favor

1 Full Legislature/4-16-12
2 of opening the hearing, please say aye.

3 (Aye.)

4 The hearing is open. Any public
5 comment, testimony, debate or discussion?

6 (No verbal response.)

7 I'll take a motion to close the
8 hearing.

9 LEGISLATOR GONSALVES: So moved.

10 LEGISLATOR MUSCARELLA: Second.

11 CHAIRMAN SCHMITT: Moved by
12 Legislator Gonsalves, seconded by Legislator
13 Muscarella. All those in favor of closing
14 the hearing please say aye.

15 (Aye.)

16 Any opposed?

17 (No verbal response.)

18 The hearing is closed.

19 CLERK WEISS: The next is
20 procedural resolution 5-2012.

21 CHAIRMAN SCHMITT: Motion,
22 please.

23 LEGISLATOR GONSALVES: So moved.

24 LEGISLATOR MUSCARELLA: Second.

25 CHAIRMAN SCHMITT: Motion by

1 Full Legislature/4-16-12
2 Legislator Gonsalves, seconded by Legislator
3 Muscarella. All those in favor please say
4 aye.

5 (Aye.)

6 Any opposed?

7 (No verbal response.)

8 LEGISLATOR GONSALVES: So moved.

9 LEGISLATOR MUSCARELLA: Second.

10 CHAIRMAN SCHMITT: I'll take a
11 motion to open the hearing by Legislator
12 Gonsalves, and seconded by Legislator
13 Muscarella. All those in favor of opening
14 the hearing, please say aye.

15 (Aye.)

16 The hearing on invasive species
17 is open. Any public comment?

18 (No verbal response.)

19 All those in favor of closing the
20 hearing please say aye.

21 (Aye.)

22 I'll take a motion to close the
23 hearing.

24 LEGISLATOR GONSALVES: So moved.

25 LEGISLATOR MUSCARELLA: Second.

1 Full Legislature/4-16-12

2 CHAIRMAN SCHMITT: Motion by
3 Legislator Gonsalves, seconded by Legislator
4 Muscarella. All those in favor please say
5 aye.

6 (Aye.)

7 The hearing is closed. Now we
8 will do a vote on the proposal to amend the
9 county charter in relation to the department
10 of human services. May I have a motion,
11 please?

12 LEGISLATOR GONSALVES: So moved.

13 LEGISLATOR MUSCARELLA: Second.

14 CHAIRMAN SCHMITT: Moved by
15 Legislator Gonsalves, seconded by Legislator
16 Muscarella. All those in favor of the local
17 law please say aye.

18 (Aye.)

19 Any opposed?

20 (No verbal response.)

21 The item carries unanimously.

22 Number 7 is a local law prohibiting the
23 acceptance of wastewater produced by
24 hydraulic fracturing. May I have a motion,
25 please?

1 Full Legislature/4-16-12
2 LEGISLATOR GONSALVES: So moved.
3 LEGISLATOR MUSCARELLA: Second.
4 CHAIRMAN SCHMITT: Moved by
5 Legislator Gonsalves, seconded by Legislator
6 Muscarella. All those in favor please say
7 aye.

8 (Aye.)

9 Any opposed?

10 (No verbal response.)

11 The item carries unanimously. A
12 vote on a proposed local law granting the
13 legislature to authorize the passing through
14 of the state Marchiselli funds. May I have
15 a motion, please?

16 LEGISLATOR GONSALVES: So moved.

17 LEGISLATOR MUSCARELLA: Second.

18 CHAIRMAN SCHMITT: Moved by
19 Legislator Gonsalves, seconded by Legislator
20 Muscarella. All those in favor please say
21 aye.

22 (Aye.)

23 The item carries unanimously.
24 Finally is a vote on the local law relative
25 to invasive species. May I have a motion,

1 Full Legislature/4-16-12

2 please?

3 LEGISLATOR GONSALVES: So moved.

4 LEGISLATOR MUSCARELLA: Second.

5 CHAIRMAN SCHMITT: Moved by
6 Legislator Gonsalves, seconded by Legislator
7 Muscarella. All those in favor please say
8 aye.

9 (Aye.)

10 Any opposed?

11 (No verbal response.)

12 The item carries unanimously. I
13 believe that's it. Staff, yes? That's it.
14 We have some public comment slips.

15 First we have to adjourn the
16 meeting of the legislature.

17 LEGISLATOR GONSALVES: So moved.

18 LEGISLATOR MUSCARELLA: Second.

19 CHAIRMAN SCHMITT: Moved by
20 Legislator Gonsalves, seconded by Legislator
21 Muscarella. All those in favor of
22 adjourning please say aye.

23 (Aye.)

24 The legislature is adjourned.

25 Now we have some public comment slips. Adam

1 Full Legislature/4-16-12
2 Haber? No. Diane Eckel of Oyster Bay, New
3 York? She left. Joanne Borden?

4 MS. BORDEN: I request that the
5 clerk enter my address into the record.

6 CHAIRMAN SCHMITT: Just for the
7 record, your address is always entered into
8 the record.

9 MS. BORDEN: I some questions
10 that I don't personally want an answer to.
11 But I request that you answer them and
12 account for your answer to your own
13 conscience. Suppose I'm asked to head up a
14 charity with a budget of \$25,000 to
15 rehabilitate homeless people? I build it
16 into an organization with a \$15 million
17 budget and unmatched successes. Someone
18 reports me dressed as a woman in another
19 town and the board of directors who know me
20 as a man fires me on that basis. Do you
21 think that is fair, equitable?

22 Suppose I'm an honest, reliable,
23 hard working and an effective employee. I
24 tell my employer I want to transition to a
25 man. He fires me on the spot. Do you think

1 Full Legislature/4-16-12

2 that is equitable, fair?

3 Suppose the police get a
4 complaint from a vindictive former wife and
5 use that as an excuse to torment, harass,
6 and literally torture me, simply because I'm
7 a transgender person. I did nothing wrong.
8 After I complained, the authorities pretend
9 that they are taking corrective action.
10 After a year and a half, no apparent
11 corrective action was taken. Do you think
12 that is equitable, fair?

13 Suppose a couple of guys beat me
14 near unconsciousness, and the police look
15 away and flee the area. Do you think that
16 that is equitable, fair?

17 Your Human Rights Commission is
18 unwilling to even use the ambiguous wording,
19 the gender wording in the present law on the
20 complaint form. Do you think that
21 equitable, fair?

22 As if our gender variance, our
23 gender conflict is not enough for us to
24 bear. Those consequences, especially our
25 safety, and fear of losing our job that

1 Full Legislature/4-16-12
2 would prevent us from supporting our
3 families forces us to live in constant fear.
4 That's what's going on around you because
5 you failed to act to give us basic human
6 rights. You are causing inequitable, unfair
7 and even abusive treatment for refusing to
8 include us.

9 Our forefathers laid their down
10 their lives for our American principles.
11 Your reason for denying those principles
12 can't be more compelling. I don't care what
13 your motive is in denying transgender people
14 equal protection under the law.

15 CLERK WEISS: Your three minutes
16 are up.

17 MS. BORDEN: I just know it is
18 wrong. I just know it's wrong --

19 CHAIRMAN SCHMITT: Would you wrap
20 up, please?

21 MS. BORDEN: -- to deny human
22 rights equality to anyone. It is simply
23 wrong. Sir, you know I time my speeches and
24 I don't run over.

25 CHAIRMAN SCHMITT: She just said

1 Full Legislature/4-16-12
2 your three minutes are over. Legislator
3 Jacobs.

4 LEGISLATOR JACOBS: Ms. Borden, I
5 just want to let you that we refiled because
6 I told you that when a new session begins
7 for the two years, we refiled the bill with
8 a much clear explanation on the preceding
9 pages which I'm going to share with all 19
10 legislators.

11 I still believe, as some of the
12 attorneys do, that the present law does
13 protect, but you have brought so many good
14 points out that I definitely have redone it
15 in a way that I believe would be more
16 comprehensive. I just wanted you to know
17 that that was done.

18 MS. BORDEN: Thank you. I think
19 someone showed me that.

20 LEGISLATOR JACOBS: Okay, good.

21 MS. BORDEN: I appreciate it very
22 much. The major point is is that every
23 human being should be protected from
24 discrimination for any purpose. There's
25 only one group that I know of now and that's

1 Full Legislature/4-16-12
2 the ones I speak for.

3 LEGISLATOR JACOBS: And we
4 thought it did when we wrote it. We all
5 voted for it.

6 MS. BORDEN: I know that.

7 CHAIRMAN SCHMITT: Peter
8 Rosenthal.

9 MR. ROSENTHAL: Good evening.
10 I'm Peter Rosenthal. I'm with the League of
11 Women Voters. Yes, there are men in the
12 League of Women Voters.

13 As you know, we are a nonpartisan
14 organization which encourages informed
15 participation in government and influences
16 public policy through education and
17 advocacy.

18 I'm here to reiterate the
19 League's strong request for a fair
20 transparent redistricting in Nassau County.
21 The League is asking Nassau County to follow
22 the charter in appointing the Temporary
23 Advisory Commission and that the process be
24 transparent and that the public be allowed
25 to address process through hearings both

1 Full Legislature/4-16-12
2 during the mapping and after the commission
3 comes up with a proposal or proposals to the
4 legislature.

5 Additionally we have been trying
6 to schedule a meeting with you, Mr. Schmitt,
7 and we have been unable to do so. I guess
8 we haven't been able to. I wasn't the one
9 doing this. We haven't been able to --

10 CHAIRMAN SCHMITT: Who was?

11 MR. ROSENTHAL: That was Barbara
12 Epstein who has been speaking with a lady in
13 your office. I know she wasn't in today.
14 We are hoping that perhaps you can
15 facilitate this for us and we will contact
16 you again at your office.

17 CHAIRMAN SCHMITT: What exactly
18 are you looking to have facilitated?

19 MR. ROSENTHAL: Just so we can
20 set up a meeting with you and get a chance
21 to talk about some of our concerns in terms
22 of redistricting and to insure an equitable
23 process.

24 CHAIRMAN SCHMITT: You began your
25 remarks by saying we should follow the

1 Full Legislature/4-16-12
2 charter. I can assure you that that is
3 exactly what is going to happen. And that's
4 exactly what we're doing.

5 I can report to you that the
6 county executive has appointed Frank Moroney
7 to be the chairman of the Temporary
8 Commission, and I can report to you that I
9 have appointed the five Republican members
10 to that commission. When the minority
11 appoints the five Democratic members which I
12 just heard they plan to do, the commission
13 will be constituted and a lot of the
14 comments that the League has been brought up
15 has to be transmitted to Frank Moroney and I
16 will do so. He and the commission will
17 establish a website and I can assure you
18 that all of the things that you're
19 requesting will be done as far as public
20 hearings and transparency and all the rest
21 that goes with it.

22 MR. ROSENTHAL: Thank you. Is
23 that available through the county clerk's
24 office, who those individuals are?

25 CHAIRMAN SCHMITT: I think it is,

1 Full Legislature/4-16-12

2 yes.

3 MR. ROSENTHAL: Thank you.

4 Additionally --

5 CHAIRMAN SCHMITT: You said
6 county clerk's office or the clerk of the
7 legislature?

8 MR. ROSENTHAL: I'm sorry. The
9 clerk of the legislature.

10 CHAIRMAN SCHMITT: Right.

11 MR. ROSENTHAL: I misspoke.

12 CLERK WEISS: Your three minutes
13 are up.

14 CHAIRMAN SCHMITT: I used up part
15 of his three minutes. We'll still be out of
16 here by 7 o'clock.

17 MR. ROSENTHAL: Additionally,
18 numerous members of the League of Women
19 voters will also urge transparency in the
20 process of determining how we are going to
21 handle our wastewater treatment system and
22 that, in doing so, we look at the actual
23 total cost to the population, citizens of
24 this county in terms of both fees and the
25 tax situation. Thank you.

1 Full Legislature/4-16-12

2 CHAIRMAN SCHMITT: Claudia

3 Borecky? I believe I saw her leave, but her
4 name was called. That's all the slips we
5 have for public comment. The legislature
6 stands adjourned. Everything is finished.
7 So unless you want to sit and watch the ball
8 game, let's go.

9 (Whereupon, the Full Legislative
10 Committee adjourned at 6:13 p.m.)

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C E R T I F I C A T E

I, FRANK GRAY, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby stated:

THAT I attended at the time and place above mentioned and took stenographic record of the proceedings in the above-entitled matter;

THAT the foregoing transcript is a true and accurate transcript of the same and the whole thereof, according to the best of my ability and belief.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of April, 2012.

FRANK GRAY