

NEW YORK STATE
DEPARTMENT OF HEALTH

NEW YORK STATE
EMERGENCY MEDICAL SERVICES COUNCIL
(SEMSCO)
SYSTEMS COMMITTEE MEETING

DATE: October 4, 2010
TIME: 6:17 p.m. to 7:37 p.m.
LOCATION: Crowne Plaza
Pearl Street Room
State & Lodge Streets
Albany, New York 12207

1 SEMSCO - 10-4-2010
 2 ATTENDEES:
 3 Richard Brandt, Chair
 4 Daniel Blum
 5 Paul Cousins
 6 Tim Czapranski, E.M.T.-P.
 7 Robert Delagi
 8 Vincent Faraone
 9 Lester Freemantle
 10 John Hassett
 11 Ronald Hasson
 12 Dana Jonas
 13 Andrew LaMarca
 14 Yedidyah Langsam, Ph.D., A.E.M.T.-P.
 15 Alan Lewis, Sr.
 16 Michael Mastrianni, Jr.
 17 Michael Murphy
 18 Michael T. Quinn
 19 Michael Reid
 20 Walter L. Reisner, II
 21 Raymond Serowik
 22 Michael Washington
 23 Mark Zeek

24 SPEAKERS:
 25 Hon. David R. Roefaro
 Patrick J. Fitzgerald, Esq.
 Karen Taddeo, Esq.
 Mary Roach, Esq.
 Russell Brooks

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 2 affirmative vote of the majority of its membership present to
 3 amend, modify, reverse or uphold determinations of public need
 4 that have been made by regional councils pursuant to Section
 5 3008 and 3003.5 of Public Health Law. All determinations of the
 6 State Council regarding applications for ambulance service
 7 certificates are subject to review as provided in Article 70 of
 8 the Civil Practice Law and Rules.

9 In other words, this decision rendered at the
 10 general session of the State Council this Wednesday, October
 11 6th, 2010, will be the final step in the appeals administrative
 12 process, but judicial redress is still available. The purpose
 13 of this public meeting right now is to allow the members of the
 14 Systems Committee to review and discuss the record. It will
 15 then prepare a recommendation in the form of a seconded motion
 16 that will be delivered to the full State Council this coming
 17 Wednesday.

18 Any concerned party or their designee my
 19 present in this public proceeding. If you're here to speak, as
 20 I mentioned before, as or on behalf of a concerned party, please
 21 sign in on the speaker registration sheet, which we now have up
 22 front.

23 Some guidelines for this evening's
 24 proceedings, this is not a de novo proceeding, which I think
 25 many of you know already. New information or material may not

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 2 (The meeting commenced at 6:17 p.m.)
 3 MR. BRANDT: Good evening. Welcome to the New
 4 York State E.M.S. Council Systems Committee meeting. My name is
 5 Richard Brandt, I'll be the chair tonight.

6 Anyone who is not signed in if you can please
 7 do so. There's a sign-in sheet for guests in the back of the
 8 room. There's also a sign-in sheet for those -- anyone who
 9 wishes to make a statement on the public record tonight. At
 10 this point we have four people who are signed in to do so.

11 Dr. Horn and Mr. Ambrose, do you intend to
 12 present tonight, or just be available for questions?

13 DR. HORN: Questions.

14 MR. AMBROSE: Questions.

15 MR. BRANDT: Questions. Okay, thank you very
 16 much.

17 Okay. As I said, this is a meeting of the New
 18 York State E.M.S. Council Systems Committee. There's a single
 19 agenda item for tonight's meeting, which is the City of Utica
 20 appeal. The Appellant, the City of Utica, seeks to overturn the
 21 Mid-State REMSCO's determination of public need, which denied
 22 the Appellant's application to provide ambulance service to the
 23 City of Utica, New York.

24 In accordance with Section 3002 of Public
 25 Health Law, the State E.M.S. Council has the power by an

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 2 be brought forth for consideration. If new information is
 3 introduced, I will ask you to stop speaking, instruct the
 4 Committee to disregard your improperly introduced information,
 5 and then advise the speaking party to adhere to the ground
 6 rules.

7 Initial presentations of issues salient to
 8 achieving consensus by this Committee will be limited to a
 9 period of time established by the Chair. Subsequent discussions
 10 by Committee members after the declaration of a seconded motion
 11 will also be time limited. Committee members will be permitted
 12 to ask questions of or request clarification of information
 13 contained in the record form from any party present after all
 14 registered speakers have presented their presentations. Mr.
 15 Jonas has kindly agreed to monitor the time of each speaker.

16 Only those Systems Committee members, who are
 17 also members of the State E.M.S. Council may vote on seconded --
 18 on the seconded motion this evening. Alternates may not vote.
 19 This is in accordance with section four of the SEMSCO's bylaws.

20 Any member of this Committee who has an
 21 apparent conflict of interest must declare the nature and extent
 22 of his or her interests prior to the discussion. And if so
 23 directed by the Committee, abstain from voting.

24 The acceptance of statements of conflicts of
 25 interest will be the first item of business. SEMSCO's members

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 2 must comply with applicable Sections of Article 73(a), 74 and 75
 3 of New York State Public Officer's Law.
 4 Any concerned parties who have not already
 5 signed in who wish to do so?
 6 Okay. With that being said, I'd like to
 7 proceed to the matters of conflict of interest. Is there any
 8 member of the Systems or SEMSCO Committee here who wishes to
 9 declare a conflict of interest?
 10 MR. REISNER: Can you read the -- our bylaws'
 11 definition of conflict of interest --
 12 MR. BRANDT: Uh-huh.
 13 MR. REISNER: -- so everybody understands that
 14 into the record, please?
 15 MR. BRANDT: Certainly. If you give me a
 16 moment to find them.
 17 Okay. It is section eight of the SEMSCO
 18 bylaws, which is page twelve, conflict of interests: "Any
 19 member of any Committee of the State Council who has an apparent
 20 conflict of interest in any matter before such Committee shall
 21 declare the nature and extent of his or her interest prior to
 22 discussion of the matter. And such member shall abstain from
 23 voting if so directed by such Committee. Members of the State
 24 Council and the State Emergency Medical Advisory Committee must
 25 comply with applicable sections of Section 73(a), 74 and 75 of

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 2 Public Officers Law as amended."
 3 And then they reproduce a Section of 74,
 4 Public Officers Law below. Do you want me to read that as well?
 5 MR. REISNER: How long is that one?
 6 MR. BRANDT: It's a couple of paragraphs.
 7 MR. REISNER: Yes.
 8 MR. BRANDT: "Definitions as used in this
 9 section, the term 'State agency' shall mean any State department
 10 or division, board commissioner, of bureau or any State
 11 department or any public benefit corporation or public authority
 12 at least one of whom's members is appointed by the Governor.
 13 The term 'legislative employee' shall mean any officer or
 14 employee of the legislature, but it shall not include members of
 15 the legislature.
 16 "Rule with respect the conflict of interest.
 17 No officer or employee of a State agency, member of the
 18 legislature or legislative employee, should have any interest,
 19 financial or otherwise, direct or indirect, or engage in any
 20 business or transaction or professional activity or incur any
 21 obligation of any nature, which is in substantial conflict with
 22 the proper discharge of his duties in the public interest."
 23 There are no members wishing to declare a
 24 conflict?
 25 MR. JONAS: I just want to check that we have

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 2 the following people present and we haven't missed anybody who
 3 are Committee members. Richard Brandt, Paul Cousins, Tim
 4 Czapranski, Robert Delagi, Vincent Faraoe, Lester Freemantle,
 5 John Hassett, Ron Hasson, Andrew LaMarca, Yedidyah Langsam, Alan
 6 Lewis, Sr., Michael Mastrianni, Jr., Michael Murphy, Michael
 7 Quinn, Michael Reid, Walt Reisner, Raymond Serowik, Mark Zeek
 8 and Michael Washington. Did I miss anybody?
 9 FROM THE FLOOR: What's the total number?
 10 MR. JONAS: The total number, which actually
 11 has to be by voting --
 12 FROM THE FLOOR: Voting members.
 13 MR. JONAS: -- voting members is thirteen, so
 14 we do have a quorum. There are seventeen voting members for the
 15 record, so -- and at this point we can actually take the public
 16 statements.
 17 MR. BRANDT: We're going to now begin the
 18 public statement process. I just want to reaffirm the following
 19 people have signed up to speak. The mayor, Patrick Fitzgerald
 20 attorney for Rural Metro; Karen Taddeo, attorney for Kunkel
 21 Ambulance; and Mary Roach, attorney for the City of Utica.
 22 Is there anyone's name I've missed?
 23 MS. ROACH: I'm Mary Roach, I intended to --
 24 to put my name down to be available to answer questions only.
 25 I -- I have no prepared remarks.

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 2 MR. BRANDT: Okay.
 3 MS. ROACH: Thank you.
 4 MR. BRANDT: All right. Very good. Thank you
 5 ma'am.
 6 Okay. That being said, we're going to allow
 7 eight to ten minutes for each speaker, about ten minutes for
 8 each speaker. And we'll ask the mayor representing the
 9 Appellant to speak first if he's able.
 10 MR. ROEFARO: Good evening. Thank you for
 11 allowing me to present this evening. On January 19th, 2005, the
 12 Utica Common Council resolved to empower the Utica Fire
 13 Department to establish and operate an emergency medical
 14 ambulance service. That resolution originated because of the
 15 finding of need within the city for both emergency medical and
 16 transportation services. Pursuant to that resolution and that
 17 finding of need, the City of Utica has been operating the
 18 ambulance service since August of 2005.
 19 During their intervening five-year period, we
 20 have serviced over thirty-seven thousand E.M.S. calls,
 21 transporting over twenty-eight thousand patients.
 22 Currently, the City has four ambulances,
 23 fifty-four paramedics, and forty-seven E.M.T.s. From the
 24 inception of this, the response time has been less than four
 25 minutes and thirty seconds greater than ninety-five percent of

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 2 the time.
 3 As the mayor of Utica, I've come to tell you
 4 that we have made a finding, and continue to find a real public
 5 need for these services. Under the law it is the prerogative of
 6 the city to determine the needs of its citizens. And under the
 7 law, the City is entitled to a strong presumption in favor of
 8 its -- of its application.
 9 Without regard to the actual need and the
 10 City's entitlement to a strong presumption in favor of its -- of
 11 its application the Regional Council summarily denied the City's
 12 application. The administrative law judge who considered and
 13 studied this matter, in a report dated June 11th, 2010, has
 14 recommended to the SEMSCO that, quote, the State Council issue
 15 an -- issue an order overturning the determination of the
 16 Regional Council in granting the application.
 17 This is really the only right thing to do.
 18 And I please urge you to do so. It has been five years. Please
 19 do the right thing. Thank you very much. I appreciate your
 20 time.
 21 MR. BRANDT: Thank you, Mayor.
 22 Mr. Patrick Fitzgerald.
 23 MR. FITZGERALD: Good evening. My name is Pat
 24 Fitzgerald. I'm a lawyer with the law firm of Girvin and
 25 Ferlazzo here in Albany, New York. My involvement in this -- in

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 2 this matter was somewhat tangential.
 3 On behalf of our client, Rural Metro, we filed
 4 a friend of the court brief, an amicus brief, with the Supreme
 5 Court in connection with an Article 78 proceeding that had been
 6 commenced by the City of Utica against the Department of Health.
 7 And -- and we became involved in the process at that time really
 8 just from a legal standpoint of educating the Supreme Court on
 9 what we felt the interpretation of the law was, the Public
 10 Health Law was, with respect to municipal C.O.N. applications,
 11 and because our interpretation of the law conformed with what
 12 the Department of Health's interpretation of the law was at that
 13 time.
 14 I -- I speak to you tonight kind of as an
 15 outgrowth of that, because I was somewhat shocked and surprised
 16 when I received the administrative law judge's, the A.L.J.'s,
 17 opinion in this case, which I think completely ignores the law.
 18 And -- and I just want to talk about his interpretation of the
 19 law in a couple of respects tonight.
 20 And in particular the part of his opinion
 21 that -- that I would like to talk about is his comments on the
 22 role of finding of a public need in the municipal health C.O.N.
 23 application process. And -- and perhaps, you know, I should
 24 frame it more as his lack of discussion about that. And I think
 25 that that's where -- where his opinion falls apart here.

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 2 In his opinion he -- he pays scant attention
 3 to public need, other than to criticize the policy statement of
 4 the Department of Health in which it set forth parameters that
 5 could be used by a REMSCO to determine public need. And he also
 6 says in his -- in his opinion that the REMSCO simply found that
 7 there was no public need here. And on that basis, he criticizes
 8 the REMSCO for making that finding and -- and determines that he
 9 should or that this -- or that the SEMSCO should overturn the
 10 REMSCO.
 11 Well, that's exactly what the REMSCO was
 12 supposed to do in this case. The REMSCO is supposed to look at
 13 the record that had been presented to it. And the REMSCO is
 14 supposed to use the guidelines that had been promulgated by the
 15 Department of Health to determine whether or not there was
 16 public need. And the REMSCO was supposed to make a decision
 17 based on the record before it in terms of whether or not it felt
 18 that there was public need. And that's completely supported by
 19 the rulings of the Supreme Court in this case before we got to
 20 the REMSCO process when the City had attempted to challenge
 21 and -- and say that they didn't have to go through the REMSCO.
 22 And the Supreme Court found -- stated in its
 23 ruling, "the Court finds that the plain language and construct
 24 of Public Health -- Public Health Law Section 3008 limits a
 25 municipal ambulance service's exemption from the requirement

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 2 that it substantively satisfy the public need requirement to the
 3 two-year period immediately following an -- an initial filing.
 4 The legislature's decision to amend Subparagraph B to Subsection
 5 7 further demonstrates its intent that a municipality
 6 demonstrate a public need after the initial two-year period."
 7 That's what the law is.
 8 I wasn't party in terms of presenting evidence
 9 at the REMSCO. I'm not going to talk about the evidence that
 10 was presented at the REMSCO. What I'm here to talk about is
 11 that the A.L.J. ignores what the law is when he renders his
 12 decision. The law is set forth in the Public Health Law. It
 13 needs to be followed. It wasn't followed by the A.L.J.
 14 When you look at the REMSCO's decision, the
 15 REMSCO was following what the law was, and was following the
 16 directive that had been issued by the lower courts -- or not the
 17 lower courts, by the Supreme Court. And -- and you know, the
 18 REMSCO's decision shouldn't be upset because the A.L.J. would
 19 like to substitute his own opinion, or his own balancing of the
 20 interests, for the REMSCO.
 21 And I thank you very much.
 22 MR. BRANDT: Thank you, Mr. Fitzpatrick.
 23 Ms. Taddeo.
 24 MS. TADDEO: Hi, I'm Karen Taddeo and I
 25 represent Kunkel Ambulance. And we have been involved in this

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2 since the get-go, obviously since Jack's ambulance company was
3 the one that was displaced out of the City of Utica back in
4 2005.

5 You see all -- if -- you have had an
6 opportunity to read all the papers, I'm not going to go over
7 everything we put in our opposition. There was no complaint by
8 anyone that Kunkel Ambulance wasn't taking care of business,
9 meeting every need, making the calls, providing the service. We
10 gave you to look at and listen to tapes of the public meetings
11 before the resolution was passed. We gave you transcripts where
12 the only need that was identified was the City of Utica wanted
13 to make some money. And we all know that money -- making money
14 is not an indices of need.

15 And for those of you who need it, there is a
16 comptroller's opinion from either 2005 or 2008 that says a
17 municipality cannot go into the business of offering ambulance
18 services for the purpose of making a profit.

19 What we did in our opposition to the
20 application was we took the application and assuming, based upon
21 the -- the Supreme Court's decision that there was a presumption
22 that was to be applied, albeit it's not the strong presumption
23 of -- of 3008.7, it is the lesser presumption, but there is a
24 presumption of need in Subsection 6. We took their application,
25 and we went through every single thing that could even arguably

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2 be a need, and we gave you competent evidence, sworn evidence,
3 demonstrative evidence, we gave you videos, we gave you tapes
4 that showed that anytime they said there was a need, there
5 wasn't a need that Kunkel couldn't meet.

6 The big hook at the time was that the fire
7 department could provide a continuity of service. We analyzed
8 the continuity of service, and it appeared, in fact, that the
9 first responders did go there. The fire department stabilized -
10 and no one's saying they don't do a good job, don't get me
11 wrong, no one says they're not doing good medicine - they
12 stabilize, they treated, and then somebody else came on the
13 ambulance and transported, other firefighters. There's --
14 there's no more continuity to that, than having fire first
15 response go there, stabilize, get them ready and have Kunkel
16 come and transport.

17 But we even went a little step further,
18 because if this was a need that only the fire department could
19 meet, they might have an argument maybe. Except back, way back
20 when one of the previous mayors got a little ticked off, he had
21 Jack doing first response and transport. And they did it. So,
22 even if that was a need, it's not a need that he couldn't meet.
23 So, we went through the process, and we took every single
24 argument that could have even be close to be construed as a
25 need, and we rebutted it. We gave you evidence that showed it

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2 wasn't a need.

3 Now, that gets us to this problem of
4 presumption. Presumptions are not absolute things. It's in my
5 papers, it's in my appeal papers. We give -- I give you the
6 definition of a presumption. It's something -- it's a little
7 bit of a waiting thing. I wish Mr. Fitzgerald had done his
8 definition. He's got the best definitions of presumption,
9 including case law, but you presume something, but when there's
10 evidence that is offered to refute it, the presumption
11 disappears. And then it becomes the obligation of the applicant
12 to prove its need.

13 If you think about it from things you know, we
14 all know in the criminal matter. But the one that I was
15 thinking of that was even kind of similar is paternity. If you
16 are married, the child is assumed to be the child of your
17 husband, that's a presumption. But we all know that you can
18 disprove that presumption. And then, it becomes the burden
19 to -- for the mother to then prove that -- that he is the
20 father, that her husband is the father. You always have the
21 ability to rebut a presumption, and then the burden is back on
22 fire -- on the City of Utica to prove a need.

23 I didn't prepare remarks. I'm hoping you guys
24 read the papers and if you have questions you can ask me. But
25 the most important thing as I know as I stand -- I've stood up

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2 here way too many times in the past twenty years. If you don't
3 like 0606, you don't like the definition of need, change it.

4 You don't like the presumption, you don't like
5 the way municipalities are granted operating authority, change
6 it.

7 We're -- we're stuck with what we've got here.
8 You've got Article 30, and forces have gone forward and tried to
9 change it so that municipality gets a C.O.N. once based on its
10 own determination of need and keeps it forever. They tried that
11 with the last amendment, it didn't happen. The legislature is
12 not willing to go that far, you can't make that change. And
13 just in case you're wondering it's all in my papers somewhere.
14 All the things I'm saying, I sticking to the record.

15 So, if you don't like Article 30, change it.

16 I looked around here. I've seen so many of
17 you -- how many of you sat on that Article 30 revisions
18 committee? How many times have you looked at that? How many
19 times have you tried to change it? I mean the last round of
20 changes that I remember I did back in '92. I mean, if you don't
21 like it, change it. And if you don't like 0606, that's
22 something you can change, too. But as Pat said, you're bound by
23 it. Your agency promulgated it. Your agency adopted it. And I
24 don't think Mid-State, and Vinnie may be able to correct me,
25 there's an ability under 0606 if you want to add additional

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 2 indices or change some of the criteria for need, you have the
 3 ability to do that at your Regional Council level. But if you
 4 do it, you have to do it properly. You have to notify the
 5 applicants before the application process.
 6 Utica started under, I think it was 9310,
 7 continued under 0606, made its applications. It took part in
 8 that process, it's kind of stuck with it.
 9 That's all I have to say. I think you have to
 10 support the decision of the REMSCO. I think they did a good job
 11 with a hard task. They've elected the court process. And I
 12 don't want you to fault them for something that they may or may
 13 not have said on the record. Because everybody in that -- in
 14 that Regional Council went through the appeals process, went
 15 through the Court, the process of being sued, went through the
 16 Article 78. They went through a determination of need. And it
 17 wasn't their first rodeo. They've done C.O.N.s. They've done
 18 other things. They knew what they were doing, and they did it
 19 correctly.
 20 Thank you, and if you have questions ask.
 21 MR. BRANDT: Thank you, Ms. Taddeo.
 22 MS. ROACH: Mr. Chairman, I respectfully
 23 request an opportunity to respond to some of the legal points
 24 that have been made.
 25 MR. BRANDT: We'll give you an opportunity to

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 2 present, if you wish to present.
 3 MS. ROACH: Now?
 4 MR. BRANDT: Yes, if you're signed in,
 5 absolutely.
 6 MS. ROACH: Thank you.
 7 MR. BRANDT: Present.
 8 MS. ROACH: Just a few minutes.
 9 Good evening, my name is Mary Roach.
 10 MR. MURPHY: Point -- point of order, please.
 11 Mr. Chair --
 12 MR. BRANDT: Yes, Mr. Murphy.
 13 MR. MURPHY: -- who is this woman?
 14 MR. BRANDT: I'm sorry. This is --.
 15 MS. ROACH: I was just going to introduce
 16 myself.
 17 MR. BRANDT: I'm sorry. Mary Roach. She's
 18 the attorney for the City of Utica.
 19 MS. ROACH: Yes.
 20 MR. BRANDT: She signed in as --
 21 MR. ROACH: And R-O-A-C-H.
 22 MR. BRANDT: -- presenter number four, and is
 23 afforded that opportunity by having signed in.
 24 MR. MURPHY: Thank you.
 25 MS. ROACH: Okay. Just -- just to respond to

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 2 some of the legal points made earlier. You're dealing with a
 3 city here. A city has to be -- its rights are measured
 4 differently under the Public Health Law. It is entitled to a
 5 strong presumption in favor of its application. And as we
 6 contended in our papers - and we could fill a small room with
 7 the papers that have flown around this issue over the past five
 8 years - that and the City's view means if the City meets the
 9 training, vehicle and equipment parts of the certificate of
 10 public need, you must grant its application.
 11 Further, if you look at the legislative
 12 history behind the amendment of Section thousand three -- Public
 13 Health Law 3008 that provided for this strong presumption that
 14 is what the presumption means.
 15 Secondly, I want to tell you I was at that
 16 REMSCO meeting. And unlike Karen, I am not as familiar with
 17 these processes as probably all of you are. But I was astounded
 18 at how summarily the City's application was denied.
 19 I was also astounded that the procedures
 20 allowed for Mr. Kunkel from the competing private ambulance
 21 service, to sit at the table and vote on the matter.
 22 FROM THE FLOOR: Oh, no. There was no voting.
 23 He didn't vote.
 24 FROM THE FLOOR: He didn't vote.
 25 MS. ROACH: Well, he was at the table and we

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 2 couldn't really -- the people from the City who were at the
 3 meeting couldn't tell what was going on. But I was astounded
 4 that Mr. Kunkel was permitted to sit at the table. And it --
 5 it -- it really felt somewhat like -- like a kangaroo court.
 6 A second motion came out to deny the City's
 7 application. There wasn't one word of discussion. I -- I asked
 8 for the minutes, I also received a video -- a disk with a video
 9 of the meeting. The word strong presumption was never argued.
 10 It was completely ignored.
 11 Further, as -- the A.L.J. who wrote this
 12 report and recommendation, he is a neutral. I believe he is an
 13 A.L.J. in a pool of A.L.J.s that work for the Department of
 14 Health. He's not in the City's corner, he's not in Retro's
 15 corner, he's not in Kunkel Ambulance corners. He is the first
 16 neutral to look at the merits of this application and recommend,
 17 without reservation, that the REMSCO decision be overturned and
 18 the City's appeal granted.
 19 And in the course of doing so - I know a lot
 20 of you, and I -- I respect the work that you do, I know it's for
 21 the most part volunteer work, you're not paid to attend these
 22 meetings and to do this hard work - but one of the City's
 23 difficulties is the definition of public need. Your own -- this
 24 A.L.J. found that it was so vague to be almost meaningless. And
 25 if you look at it from the point of view of a municipal

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2 applicant, how do we prove a lack of services being provided by
3 a private ambulance service? That information isn't available
4 to us.

5 I had also argued, and I've discussed with Lee
6 Burns, we argued in our papers an argument the A.L.J. did not
7 accept, that the definition of public need found in Policy
8 Number 0606 is, in fact, in reality a regulation that was never
9 properly adopted as a regulation and promulgated pursuant to the
10 New York State Administrative Procedures Act.

11 Now, admittedly the A.L.J. rejected that part
12 of the City's argument, but he did go on to find that for
13 different reasons, the definition of public need has -- have a
14 lot of, you know to be tactful, we'll call them legal
15 entanglements.

16 Again, I'm -- I'm not going to argue every
17 point that was made on behalf of the City or to answer all the
18 points made tonight. I ask you just to respect the distinction
19 between a private entity of some sort coming to you and asking
20 you to approve the public need in that particular jurisdiction
21 or geographical area. This is the City of Utica, it has been
22 operating this ambulance service since August 5th, 2005. And I
23 ask you to grant them the right to continue those operations.

24 Thank you.

25 MR. BRANDT: Thank you, Ms. Roach.

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2 At this point I'd like to offer the Committee
3 members a chance to ask questions of any of the presenters.

4 Are there any questions for the presenters;
5 please raise your hand you'll be acknowledged? Mr. Faraone.

6 MR. FARAONE: Early on, the mayor made a
7 statement that they found that there was a need. Could he
8 elaborate on that? How did -- how did he found out there was a
9 need? Their attorney just said that there's no way that the
10 City could prove that there was a need, or determine that there
11 was a need, so what did the mayor use to determine that there
12 was a need?

13 MR. BRANDT: Mayor, do you wish to answer that
14 question?

15 MR. ROEFARO: My chief will answer.

16 MR. BRANDT: I'm sorry, would you -- would you
17 please step to the podium so we can have it incorporated in --
18 thank you.

19 Chief, could you state your name for the
20 record please, too?

21 MR. BROOKS: Russell Brooks, fire chief, City
22 of Utica.

23 To answer Mr. Faraone's question in 2005 when
24 this began, we had identified an issue. One of the issues was
25 touched on earlier was the continuity of care; when we would

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2 respond, we would do basic life support, advanced life support,
3 and then completely turn the patient over to another agency.
4 This -- you know, we've mention that the continuity of care
5 still isn't there, but it is there. Because the people
6 currently that do the basic life support, the advanced life
7 support, for the most part, go on the ambulance to the hospital.
8 They maintain that continuity of care. So, we did have an
9 issue. And prior to 2005, you know, we identified the issue.

10 Obviously, we took every call at our dispatch
11 center, over five thousand E.M.S. calls. We responded basic
12 life support and advanced life support to every call. Very
13 often we were required to send our personnel on a private
14 ambulance. Very often -- not very often, there were times, just
15 as there are today when, you know, we would have to call for an
16 outside agency, mutual aid. And there were times when the --
17 the private ambulance was delayed. And the -- this one agency,
18 continuity of care, giving people a choice as to how they want
19 their prehospital care responded to was -- was -- was basically
20 the -- the -- you know, illustrated the need. And it's probably
21 something, you know, that you have to be out there in the street
22 and see.

23 You know, you have to see this two-tier
24 process. And it's not a seamless process. And when the fire
25 department began that last component, you know, the transport,

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2 the process became seamless.

3 And I'll say this, every call that we go on,
4 we send out an evaluation sheet. And the people in the City of
5 Utica overwhelmingly, the approval rate for this service, as it
6 is, is over ninety-seven percent. People want this service.

7 MR. BRANDT: Thank you, Chief.

8 Mr. Lewis?

9 MR. LEWIS: You wanted to do this to give the
10 people a choice; is that correct?

11 MR. BRANDT: Can you get a microphone to Mr.
12 Lewis?

13 You say you wanted to do this because you
14 wanted to give the residents of the City of Utica a choice.

15 MR. BROOKS: To enhance -- we did it to
16 enhance prehospital care in -- in the City of Utica.

17 MR. LEWIS: I was just repeating what you
18 said; you wanted --

19 MR. BROOKS: Well, I said --

20 MR. LEWIS: -- to give --

21 MR. BROOKS: -- to give --.

22 MR. LEWIS: -- them a choice.

23 MR. BROOKS: They do have a choice --

24 MR. LEWIS: Okay.

25 MR. BROOKS: -- now.

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 2 MR. LEWIS: Now, let me ask you this question:
 3 When they call nine one one, can they say, "send me Kunkel
 4 Ambulance" or "send me the City of Utica fire ambulance?"
 5 MR. BROOKS: They can say -- they can ask for
 6 Kunkel and they get Kunkel. Okay. And many of them do. Well,
 7 not many of them, but a number of them do.
 8 But even when they ask for Kunkel we still
 9 send the pump in that area of the city that is manned with
 10 paramedics and equipped with advanced life support equipment.
 11 And we still do the basic and the advanced life support. But to
 12 reiterate your question, absolutely. There are people that ask
 13 for Kunkel, and they get Kunkel, with no reservations.
 14 MR. BRANDT: Are there any other questions for
 15 the chief?
 16 Thank you, sir.
 17 Mr. LaMarca?
 18 MR. LAMARCA: I have a question, I think
 19 directed, excuse me, to the counsel for the City. Putting aside
 20 for a second the issue of presumption versus strong presumption,
 21 you seem to be arguing also that the City has an inherent right
 22 in that, you know, the current regulations as stated by the
 23 A.L.J. perhaps are not appropriate, or you know, should be
 24 redone, I guess. How would you explain the fact that you are
 25 not the first muni C.O.N. to come forward here, you know, to go

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 2 through the process at the two-year mark to be compliant with
 3 the current regulations and law, and to actually afford it. You
 4 seem to be asking for an exception, that others never have and
 5 they are municipalities, that are ones that can determine their
 6 own fate?
 7 MS. ROACH: Well, what I meant to emphasize is
 8 that this --
 9 MR. LAMARCA: I -- my --
 10 MS. ROACH: -- I don't think anybody in this
 11 room can deny that --.
 12 MR. BRANDT: Ma'am, could you step up to the
 13 podium, ma'am --
 14 MS. ROACH: Oh, I'm sorry.
 15 MR. BRANDT: -- just we're recording.
 16 MS. ROACH: No one in this room can deny that
 17 by law under the Public Health Law, the City's entitled to a
 18 strong presumption in favor of its application. And I submit
 19 the legislative history behind that amendment of the Public
 20 Health Law - obviously, Mr. Fitzgerald, and Ms. Taddeo disagree
 21 with me - but we submitted as part of this record, legislative
 22 history that indicated when a municipality is -- is applying, if
 23 at the time they apply for their CON, they meet the equipment
 24 and training requirements, the application should be granted.
 25 It's in several memos to the governor, et

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 2 cetera, et cetera, when this amendment was changed, so I'm --
 3 I'm not sure beyond that --
 4 MR. LAMARCA: Well --
 5 MS. ROACH: -- if I understand your question.
 6 MR. LAMARCA: -- well, I think in the evidence
 7 that has been presented in these cases at the two-year mark we
 8 should have proceeded to conversion of the munis that went to a
 9 full C.O.N. that was not what was occurring.
 10 MS. ROACH: I -- I can't speak for what this
 11 Committee has done with --
 12 MR. LAMARCA: No, not the Committee.
 13 MS. ROACH: -- respect to other municipal
 14 applications.
 15 MR. LAMARCA: Not the Committee, it seems like
 16 the City of Utica failed to follow the procedure laid out in the
 17 muni C.O.N. process, which all other muni C.O.N.s from
 18 municipalities have followed.
 19 And I would say that was remanded back to you,
 20 because you had to go through the process. It seems like, you
 21 know, you're stating still here, that presumptions, you know,
 22 that apply to the City of Utica, you know, are unique. And they
 23 are not. They have been followed by --.
 24 MS. ROACH: I didn't mean to suggest that the
 25 City of Utica is unique. I think it is unique in this one

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 2 respect. This process has taken five years.
 3 And I think the City can legitimately argue
 4 that given the numbers and given the experience to date. The
 5 experience to date, itself, establishes a public need. So, I
 6 would submit, there's one difference.
 7 MR. LAMARCA: I -- I would say that the five
 8 years probably was more of your doing, perhaps, than --
 9 MS. ROACH: Well, the -- the --
 10 MR. LAMARCA: -- due process.
 11 MS. ROACH: -- the City is determined to
 12 continue to provide this service --
 13 MR. LAMARCA: That's fine. I understand that.
 14 MS. ROACH: -- to the citizens.
 15 MR. LAMARCA: I understand that.
 16 MS. ROACH: And I don't think the City can be
 17 faulted for trying to exercise its lawful rights. You may
 18 disagree with those rights, but the City has the right to do
 19 that.
 20 MR. LAMARCA: But my personal opinion aside,
 21 I'm just looking at what the muni C.O.N. process entails, how
 22 every single other muni C.O.N. coming before the State has
 23 followed and has adhered to that. And that, at the two-year
 24 mark where you, or the City, should have done the same, you
 25 chose a different pathway to argue it.

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 2 MS. ROACH: Well, we -- we --.
 3 MR. LAMARCA: But now you want to claim that
 4 five years, you know, there's some entitlement. That's where I
 5 do -- I think I have a problem. At two years all of the
 6 municipal C.O.N.s have -- have mandatorily to be converted.
 7 MR. BRANDT: Mr. Mastrianni?
 8 MR. MASTRIANNI: My understanding of the muni
 9 C.O.N. process is that a municipality gets -- gets a presumption
 10 of need for the two years that they are afforded. I wrote 0606.
 11 Or I -- I shouldn't say that, I'm sorry, I was involved in the
 12 writing of that.
 13 MS. ROACH: I'm sorry, I don't know your name
 14 sir.
 15 MR. MASTRIANNI: Mike Mastrianni.
 16 MS. ROACH: Thank you.
 17 MR. MASTRIANNI: I was involved in the
 18 drafting of 0606. My understanding is that a municipality has a
 19 presumption of need for the two years of -- of the muni C.O.N.,
 20 at the point in time in which the two years is up, they then
 21 must provide evidence and prove need in the same manner that
 22 anyone else proves, has to provide need -- for need.
 23 The municipalities get no different treatment.
 24 They get different treatment for the first two years. And that
 25 was the whole purpose of the muni C.O.N. Once that two years

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 2 expires they are required to convert to a regular -- go through
 3 the regular C.O.N. process, and be subject to the same scrutiny
 4 as a private or a volunteer ambulance corps must go through in
 5 order to prove need and then obtain a certificate.
 6 MR. BRANDT: Excuse me, Mr. Mastrianni, do you
 7 have a question of the presenter? This is -- this section --
 8 this session portion is to ask questions to clarify the record.
 9 MS. ROACH: I think he's asking me if I agree
 10 with -- with that understanding of -- of 3008.
 11 MR. MASTRIANNI: Right.
 12 MS. ROACH: And no, sir, I would respectfully
 13 disagree.
 14 MR. MASTRIANNI: Okay.
 15 MS. ROACH: The City contends that upon the
 16 City Council passing its determination of need back in January
 17 of '05 I believe it was. And upon applying to the State
 18 Commissioner of Health showing it meets the training
 19 requirements, it meets the equipment requirements, it was
 20 entitled, and it was granted, permission to operate for a
 21 two-year period.
 22 Upon -- that is -- I agree with you that it is
 23 required because the City lost its case in trying to say that we
 24 don't even have to apply for CON, so that law's clear now. When
 25 a municipality comes before you to -- or before a REMSCO to

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 2 apply for a certificate of need, in my view its clear, that is
 3 where the strong presumption kicks in, not during the two-year
 4 period.
 5 MR. MASTRIANNI: So, you believe a
 6 municipality, when it comes time to convert, should be treated
 7 differently than anyone else who is applying or going through
 8 the C.O.N. process?
 9 MS. ROACH: No, it's not what I think. It's
 10 what I contend the law provides, that at the time it applies
 11 after the expiration of the two-year period, at the time it
 12 applies for its CON it is -- I contend it is entitled to a
 13 strong presumption in favor of its application. And -- and that
 14 is what the City contends the REMSCO totally disregarded --
 15 MR. MASTRIANNI: Thank you.
 16 MS. ROACH: -- among other objections.
 17 MR. BRANDT: Mr. Delagi, you had your hand up?
 18 MR. DELAGI: Thank you, Mr. Chair, just a
 19 follow up question please, Ms. Roach. And I guess I kind of
 20 just want to follow the --
 21 MS. ROACH: Yeah. Could you just speak up
 22 just a little bit?
 23 MR. DELAGI: How's that? Any -- sorry about
 24 that.
 25 MS. ROACH: Thank you.

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 2 MR. DELAGI: I just want to follow up that --
 3 that thread for a second, because I'm a little confused about
 4 something. I understand what 3008 says. I understand about the
 5 presumption of need strongly in favor of a municipal applicant.
 6 What I'm having a little bit of trouble with, as a layperson, is
 7 understanding your comment, or -- or statement, about asking us
 8 to respect the distinction between a private entity and a
 9 municipality in terms of given that we're supposed to give the
 10 presumption of need, what makes a municipality different in that
 11 case law that you cited, that -- that says that a municipality
 12 should be treated -- and the reason why I ask that question is
 13 because we are always criticized about 0606, and we're always
 14 criticized about the definition of need. But as we've heard,
 15 that's all we have to work within. It's statute, it's
 16 regulation and it's policy statement.
 17 But now we're being asked to ignore all that,
 18 and go outside the box even further, simply because a
 19 municipality is involved. And I'm not sure I understand what is
 20 the distinction?
 21 MS. ROACH: Well, beyond the -- what we
 22 contend is the statutory requirement that the City's application
 23 for a CON be given a strong presumption. A city is different
 24 than from -- a city or other municipal subdivision, a town, a
 25 county, whatever it might be, is different, in that it has

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 2 certain home-rule powers. It has the power to determine that
 3 it's going to provide police coverage. It has the power to
 4 determine we are or are not going to have a fire department. It
 5 has the power to determine we're going to provide emergency
 6 services of a different nature, such as snow removal or flood
 7 control or sewers. These are all municipal services that a city
 8 has a right to decide they're going to provide them, they're not
 9 going to provide them. If they're going to provide them to
 10 what -- what level of service will be provided, and then how are
 11 we going to pay for it?
 12 A city has the power of taxation to pay for
 13 those type of services. And I am just submitting that with
 14 respect to a city, especially one that has been already doing it
 15 for five years, more than five years, it has -- it -- it should
 16 be taken into consideration that in addition to the strong
 17 presumption that it is a different -- it's a different animal.
 18 It's a different breed of applicant, by nature and by
 19 definition.
 20 MR. DELAGI: Thank you.
 21 MR. BRANDT: Thank you, ma'am.
 22 Are there any other?
 23 Mr. Zeek.
 24 MR. ZEEK: I want to go and talk about those
 25 twenty-seven thousand calls that's been done over the last five

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 2 years. Would it be fair to say that --?
 3 MR. ROEFARO: Thirty-seven thousand.
 4 Thirty-seven thousand.
 5 MR. BROOKS: Thirty-seven thousand.
 6 MR. ZEEK: Thirty-seven?
 7 MR. ROEFARO: Yes.
 8 MR. ZEEK: I stand corrected, thirty-seven.
 9 Let's see, would it be fair to say that if the
 10 City of Utica did not have a municipal C.O.N., would those calls
 11 have been done by the service that was in the City at the time?
 12 MS. ROACH: I'm going to defer to the
 13 operational people.
 14 Chief Brooks. Chief?
 15 MR. BROOKS: Would they have been serviced?
 16 Let me put it this way. Every fire gets put out eventually,
 17 okay. I'd like to think in the City of Utica their response
 18 time of two or three minutes, and if they get put out very
 19 efficiently and there's lives saved, and -- and property
 20 preserved. And it would be the same thing with responding to
 21 those twenty-seven (sic) thousand calls. At some point, yeah
 22 they would get serviced without the fire department. But
 23 currently we go throughout the county. We've been called
 24 even -- we go to Marcy, we go to Whitesboro where they are out
 25 of ambulances. Where the private companies are out, the

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 2 volunteer ambulances aren't available. And we get called to
 3 those. We get called to the suburbs. We are -- we handle all
 4 the bariatric calls, basically in the surrounding areas. Yeah,
 5 I would say that eventually they get -- they get service. But
 6 they wouldn't be serviced in the amount of time that one would
 7 require to save lives and -- and prevent deaths.
 8 MR. ZEEK: Could -- could you substantiate
 9 that with numbers?
 10 MR. BROOKS: What -- such as what? Bring out
 11 numbers right now? No, you asked me do I -- did I think that
 12 the twenty-seven (sic) thousand calls would be serviced, and I
 13 say yes they would be. But not in the amount of time with the
 14 response time that they are serviced now.
 15 MR. ZEEK: All right. That's -- that's an
 16 assertion that really should be backed up with some numbers.
 17 Let me ask you another question.
 18 MR. BROOKS: Well, you asked me what I thought
 19 (sic).
 20 MR. ZEEK: Let me ask you another question.
 21 Let me ask you another question.
 22 Prior to 2005, were there a cluster of calls
 23 somewhere in the City of Utica or in adjacent areas that were
 24 not being handled by the service that -- that had the -- that
 25 was doing the -- the calls before you --

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 2 MR. BROOKS: I --
 3 MR. ZEEK: -- before you took over?
 4 MR. BROOKS: -- if -- if you were going to say
 5 that I -- you know, when I give you an answer that I need
 6 documentation or numbers, I'm not going to be able to answer
 7 you.
 8 MR. ZEEK: Well, I asked --
 9 MR. BROOKS: -- if -- if --
 10 MR. ZEEK: -- you a general question --
 11 MR. BROOKS: -- if I --
 12 MR. ZEEK: -- was there -- was there a cluster
 13 of calls somewhere that wasn't being serviced by the --
 14 MR. BROOKS: They're -- they're being serviced
 15 sooner and more efficiently, and prehospital care has enhanced
 16 morbidity, mortality rates are have been impacted, yes, by this
 17 system.
 18 MR. ZEEK: Prior to 2005 was there a cluster
 19 of calls that, somewhere in the City of Utica or in adjacent
 20 areas, that were not being handled?
 21 MR. BROOKS: Was there a -- I'm sorry, sir, I
 22 don't -- a cluster of calls, I -- I --
 23 MR. ZEEK: Well, there would be a need for
 24 Utica fire to take care of those calls?
 25 MR. BROOKS: Yes. Yes. And were there

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 2 times -- and I'm not saying it's the rule, but were there times
 3 when we responded and there was no ambulance available, and
 4 there was no private ambulance, there was no volunteer
 5 ambulance. When they went to call two -- a couple of different
 6 private ambulance they didn't have service, and they called
 7 volunteer, yes that was the -- we run into that situation.
 8 MR. ZEEK: So, since 2005, and the
 9 thirty-seven thousand calls that have been done, they
 10 essentially could have been done by the existing services,
 11 so --.
 12 MR. BROOKS: I didn't -- you said that sir, I
 13 didn't say that.
 14 MR. ZEEK: Well, I think you did say it.
 15 MR. BROOKS: No, I didn't.
 16 FROM THE FLOOR: Yeah, you did.
 17 FROM THE FLOOR: You did.
 18 FROM THE FLOOR: Yeah.
 19 MR. ZEEK: Anyway, so it seems to me that what
 20 you're saying is the need because you've done thirty-seven
 21 thousand calls, you're -- those are really somebody else's calls
 22 that you're standing on. Not your own calls.
 23 MR. BROOKS: Well --.
 24 MR. ZEEK: They're your own calls by default
 25 of the process.

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 2 MR. BROOKS: Well, I mean we can have the
 3 debate they're -- they're their calls, they're our calls. We
 4 took the calls at our dispatch center. And we dispatched
 5 firefighters to do basic life support, advanced life support.
 6 And they went on every one of those calls.
 7 MR. ZEEK: Well, let me ask one more question.
 8 So, operationally now, you have medics on fire trucks and rescue
 9 trucks responding to calls. And then an ambulance from your
 10 other station shows up on the call and takes over the patient;
 11 is that correct?
 12 MR. BROOKS: No, usually there are two people
 13 on the ambulance, and if it's a significant call, that requires
 14 advanced life support or the -- the paramedics and the fire
 15 apparatus (sic) that responded will become part of the ambulance
 16 team. They ride the back -- they ride in the ambulance.
 17 MR. ZEEK: Okay. But the ambulance shows up
 18 after the first response vehicle; is that correct?
 19 MR. BROOKS: Well, it depends where --
 20 MR. ZEEK: For the most part?
 21 MR. BROOKS: -- it depends where it is in the
 22 city. We have a concept where in -- in every neighborhood
 23 basically almost there's a fire station. And it is manned with
 24 paramedics, and E.M.T.s, and advanced life support equipment.
 25 Very often they are there in a minute, a minute and a half. And

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 2 yeah, maybe the ambulance may come in behind them three, four
 3 minutes, two or three minutes. But there's times like center of
 4 the city that the ambulance is actually there first.
 5 It's a tremendous concept. It's far superior
 6 to the two-tier concept. And the people of Utica have embraced
 7 it --
 8 MR. ZEEK: I --
 9 MR. BROOKS: -- in an enthusiastic way, sir.
 10 MR. ZEEK: -- I -- it doesn't seem terribly
 11 different to me than what was going on before, than -- than the
 12 previous two-tier system. That's why I -- I asked the question.
 13 MR. BROOKS: Well, sir, for somebody that has
 14 participated in that system and has been out on the street and
 15 evaluates the current system, it's -- it's like the prehospital
 16 care, it's like night and day. And as I said, the mortality and
 17 the morbidity rates, and the -- the support of the public has --
 18 has been incredible.
 19 MR. ZEEK: There didn't seem to be any -- any
 20 documentation in your application about that difference. That
 21 seemed to be missing. So, that's what concerns me. Thank you.
 22 MR. BRANDT: Thank you.
 23 Yes, sir, Mr. Czapranski?
 24 MR. CZAPRANSKI: Yeah, I'd strike to move the
 25 morbidity and mortality comments. He didn't say which way they

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 2 went, but it doesn't matter because again it was not in the
 3 application and I would consider it new information not privy to
 4 this group.
 5 MR. BRANDT: I would agree with you.
 6 Mr. LaMarca?
 7 MR. LAMARCA: Well, I don't know to address
 8 this to the City or to Ms. Taddeo, but I guess I'm having a
 9 question about what did the City specifically say was the need
 10 that existed?
 11 I mean Chief says he doesn't have -- didn't --
 12 it sounds like he said he didn't have documentation of the time
 13 elements that there was any delays or calls not being answered
 14 as far as Mr. Zeek's comments. So, I guess the question is --.
 15 MR. BRANDT: Mr. LaMarca, who -- who are you
 16 addressing the question to?
 17 MR. LAMARCA: Ms. Taddeo, I guess.
 18 MS. TADDEO: Thanks. Thanks. Okay. I'm not
 19 going to go through a lot of it. Look at -- look at our papers.
 20 When you talk about the calls that were taken,
 21 and I'm not going to talk about the calls that were taken during
 22 the last year while the A.L.J.'s been dealing with this. Mary
 23 and I stopped about a year ago when we submitted to the A.L.J.
 24 But prior to that when we did our opposition
 25 to the papers, we monitored the calls that fire responded to

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 2 with an ambulance. And we gave you systems status reports for
 3 every time they took a call, we had one, two, three vehicles
 4 available, fully staffed, could take the call. There were de
 5 minimus calls that wouldn't have been covered by Kunkel.
 6 In terms of where they're staging, we gave you
 7 the -- in your papers, we gave you evidence of the staging
 8 systems that shows that we are closer with an ambulance to most
 9 areas of the city because of the way they're stationed.
 10 There was no data in the applications to serve
 11 any need. We gave you evidence from the hearings that were held
 12 prior to the resolution where members of fire were saying that
 13 there's nothing wrong with the way Kunkel operated. There was
 14 no need for another service. It was a monetary consideration.
 15 Jack, do you want to say anything more about
 16 that, because you -- in terms of.
 17 MR. BRANDT: I'm sorry, I don't think we can
 18 let Mr. Kunkel speak. He can answer questions directed by
 19 council members.
 20 MS. TADDEO: I don't know if he can answer a
 21 question better for Andy than I could in terms of -- we -- we
 22 put the numbers in the papers, Andy. I don't --.
 23 MR. LAMARCA: I -- I -- I know there was -- it
 24 was so voluminous as far as all the submissions, but just
 25 hearing the Chief, it sounded like there was not any cluster or

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 2 individuals or calls that were unanswered by the previous
 3 provider. There's a vague reference to time elements, you know,
 4 but not that I see a documentation.
 5 MS. TADDEO: But it's not in the documents,
 6 and it wasn't in their application --
 7 MR. LAMARCA: Which -- that's the one I
 8 question.
 9 MS. TADDEO: -- and it wasn't in the -- the
 10 hearings or the -- we gave you the transcripts of the hearings
 11 prior to resolution.
 12 MR. LAMARCA: Thank you.
 13 MS. TADDEO: I don't know what else to say.
 14 MR. BRANDT: Mr. Reisner.
 15 MR. REISNER: A question for the Chief or --
 16 who -- whomever.
 17 Prior to --
 18 MR. BRANDT: Microphone.
 19 MR. REISNER: -- prior to January of '95 (sic)
 20 when the -- when the City determined that they felt there was a
 21 need. Did they address the defect that they felt Kunkel
 22 Ambulance had, that created the need, and ask them to make any
 23 kind of correction?
 24 Again, I'm going back to the -- what limits us
 25 is 0606, and back then it was -- it had another --

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 2 MR. BRANDT: 9310.
 3 MR. REISNER: -- 9310, they're supposed to
 4 take the existing provider, tell them what's wrong, give them an
 5 opportunity to correct what's wrong, and then move forward.
 6 Was there -- I didn't see it in the record,
 7 but was there, and maybe I'm not allowed to ask that question
 8 because it wasn't in the record, but I didn't see anything in
 9 the record that reflected that -- that they'd identified a
 10 defect and that they had asked the existing provider to correct
 11 it.
 12 MR. BROOKS: Well, as I said one of the issues
 13 or flaws in this system was the two-tier system concept, and --
 14 which became a seamless system. And the attorney for Kunkel
 15 spoke a while back about a -- a situation that occurred, and I'm
 16 going to say in the '90s, where they became the first responders
 17 and the transport agency, which was a concept that was tried in
 18 Utica. And it was a disaster.
 19 I -- I mean if you're going to ask me if, you
 20 know, did I bring records indicating that? No.
 21 But even the mayor at that time who took
 22 credit for this, who wanted this to happen, who pushed this
 23 issue backed right off on it in a very short period of time. As
 24 much as he wanted us out of that business, he realized that
 25 prehospital care and people's lives and -- and -- and health and

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 2 welfare were -- were suffering. And he backed right off on it
 3 and plugged us back in as the -- the first responders.
 4 MR. REISNER: Again, I come back to --
 5 MR. BROOKS: So, it -- it couldn't be -- it
 6 couldn't be accomplished by --.
 7 MR. REISNER: -- the -- the -- the question
 8 was were the defects identified, and the defect that was
 9 identified, you stated that it was lack of a continuity of care.
 10 Were there any other defects?
 11 You've mentioned response times have improved
 12 since you took over. Was -- was there any response time issues,
 13 and were they pointed out to Kunkel, and were they asked to
 14 improve them?
 15 MR. BROOKS: I do not recall, sir.
 16 MR. REISNER: Okay. Thank you, sir.
 17 MR. BRANDT: Okay. Mr. Zeek, one more
 18 question, then I'm going to ask are there any additional
 19 speakers or members of the Committee who want to ask questions
 20 of the record?
 21 Because I'd like to wrap this up and call for
 22 a motion to close.
 23 MR. ZEEK: I -- I wanted to ask, Mr. Chairman,
 24 may I ask a question of either Mr. Faraone or Mr. Hoffman about
 25 the process, or should we save that after we have a motion?

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 2 MR. BRANDT: I think we should save that for
 3 after we have a motion. That's acceptable.
 4 Thank you, Chief.
 5 MR. BROOKS: Thank you.
 6 MR. SEROWIK: Mr. Chairman, I'd like to direct
 7 this question at Ms. Roach.
 8 Ma'am, having read all the material, in my
 9 mind, this question largely turns on what this meaning of
 10 presumption and strong presumption is, and how that's properly
 11 applied to the -- the issue of need for an ambulance service
 12 here.
 13 In the City's legal opinion, does a
 14 presumption, or a strong presumption, of need equate to a
 15 default that's beyond refutation by -- by an opponent?
 16 Just to illustrate what I mean by this
 17 question, every American knows or should know that there's a
 18 presumption of innocence in our criminal system in the United
 19 States. As a matter of fact, one might even say that there's a
 20 strong presumption because the State would need to prove guilt
 21 beyond a reasonable doubt, which is a pretty high standard.
 22 Does a "strong presumption of the existence of need," put the
 23 question beyond being refuted by an opponent, and did it -- did
 24 it -- does it simply mean that if -- if the -- if the applicant
 25 is able to meet the training and equipment standards that that

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 2 automatically equates to there being an irrefutable need?
 3 Is -- is that the City's position?
 4 MS. ROACH: Well, I'd like to, you know, this
 5 is somewhat of a complex area, and I -- I do concede and the
 6 example you use is very good. It's a -- it's a common law
 7 presumption in favor of innocence that, you know, we all are
 8 very familiar with as a concept. The strong presumption in
 9 favor of the City, yes, I do contend that unless you can show
 10 some -- I -- I think what I would say is that strong presumption
 11 shifts the burden to the SEMSCO at the stage we're at now, to
 12 come up with a compelling reason why the City's application
 13 should not be granted.
 14 And -- and I would submit it has to be a very
 15 compelling reason, given the report and recommendation of the
 16 hearing officer. As I mentioned briefly earlier, he's the only
 17 neutral person to look at this entire record and make a -- come
 18 to a conclusion and make a recommendation. So, I'm trying to
 19 think, you know, standing here now of another instance under
 20 which the SEMSCO might make some factual finding that would be
 21 sufficient to overcome the strong presumption. And truthfully
 22 off the top of my head I can't think of one.
 23 But if I -- I may just also, Ms. Taddeo
 24 mentioned the systems status reports. And I did study those
 25 when they were submitted, and if memory serves me correctly they

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 2 were submitted in a submission to the administrative law judge.
 3 Well, I don't remember. In this five-year process I can't
 4 remember which paper was submitted when, but I submit that we
 5 did study those very carefully. And again, that was information
 6 that wasn't available to the City until Kunkel produced it to
 7 support its position in this proceeding at whatever stage that
 8 might have been. And there were many instances where the Utica
 9 dispatch center was received a call in need of an ambulance and
 10 Kunkel didn't have one available. Dozens of instances.
 11 And that is in the record.
 12 MR. BRANDT: Thank you, ma'am.
 13 I would like to entertain a motion if someone
 14 will make it to close the public comment and questioning period
 15 and move to deliberation among the council members.
 16 FROM THE COMMITTEE: I'll make it.
 17 MR. BRANDT: Mr. Lewis, second. All in favor.
 18 FROM THE FLOOR: Aye.
 19 MR. BRANDT: Any opposed?
 20 Any abstentions?
 21 (The motion carried.)
 22 MR. BRANDT: We'll open it for discussion.
 23 Mr. -- Mr. Zeek?
 24 MR. ZEEK: I would make the motion that we
 25 uphold the determination of the Regional Council in the matter

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 2 of the Utica Fire Department's application.
 3 MR. BRANDT: Mr. Zeek has a motion on the
 4 floor; is there a second?
 5 MR. MASTRIANNI: Second.
 6 MR. BRANDT: Mr. Mastrianni.
 7 Discussion on the motion?
 8 MR. FARAONE: I just -- just for the record I
 9 wanted to clarify, there was a little discussion earlier about
 10 Mr. Kunkel's involvement in the process. On the record he was
 11 not involved in any of the Committee hearings and he did not
 12 vote the night of the -- the Council vote, so just to clarify
 13 that on the record.
 14 MR. BRANDT: Thank you, Mr. Faraone. You're
 15 speaking on behalf of Mid-State REMSCO?
 16 MR. FARAONE: That's correct.
 17 MR. BRANDT: Thank you.
 18 Mr. Zeek.
 19 MR. ZEEK: May I ask my question now of Mr.
 20 Faraone --
 21 MR. BRANDT: Yes.
 22 MR. ZEEK: -- or perhaps Mr. Hoffman?
 23 MR. BRANDT: Yes.
 24 MR. ZEEK: The attorney for the City of Utica
 25 seemed to be quite startled that there wasn't much of a

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 2 discussion at, I guess, the REMSCO meeting. I don't know if she
 3 was present at any Committee deliberations. But it seems to me
 4 that the subject was large and complex enough that there had to
 5 be some kind of discussion somewhere. Could you elucidate that
 6 for -- for us, or should Mr. Hoffman do that. At -- was it at
 7 the Committee level or was there discussion at the -- the REMSCO
 8 meeting?

9 MR. FARAONE: Well, two things. To answer the
 10 one question, their attorney was not present for -- for the
 11 Committee meetings. And there was a lot of discussion about
 12 this presumption. Just -- just for the record, I -- I want
 13 everybody to know that the members of the Mid-State REMSCO
 14 didn't have any private agenda, and we tried to follow 0606 to
 15 the best of our ability. We looked at everything. We were
 16 very, very careful. We gave both parties the opportunity if
 17 they needed an extension of time. We gave both parties an
 18 extension of time outside of the 0606 time frame when they
 19 requested it. We made copies. We distributed copies. We -- we
 20 tried to do everything by our understanding of 0606.

21 There was much discussion about presumption.
 22 But I think, you know we're all pretty clear on the fact that
 23 presumption is our presumption was there's a challenge. And
 24 even if you had -- if you left the presumption in there, it
 25 would flip the responsibility of presumption to the Kunkel's.

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 2 And Kunkel's clearly made plenty of evidence that there was no
 3 need. They showed times, they showed dates, at the public
 4 hearing there was no -- I shouldn't say no, there was -- there
 5 was one or two people that came and said that on one occasion,
 6 they -- they waited for an ambulance.

7 To answer an earlier question, I have been a
 8 member of this REMSCO for quite awhile, and to the best of my
 9 knowledge there's never been an accusation that the -- that
 10 there was a need that we looked at. So, that -- that was to
 11 answer your question earlier about a cluster of calls. That --
 12 that didn't happen.

13 MR. ZEEK: Well, that has been my impression
 14 from reading the record, and I would just like to correct the
 15 attorney for the City of Utica when she said that she thought
 16 that the A.L.J. was the only neutral person who had read the
 17 record. I would submit that all of us who have read the record
 18 on this Committee, who take this -- this responsibility
 19 seriously, have been as neutral as possible in reading the
 20 record.

21 I speak for myself, but I suspect I speak for
 22 most of the people on this Committee.

23 MR. BRANDT: Thank you, Mr. Zeek.
 24 Mr. Lewis?

25 MR. LEWIS: Mr. Chairman, yes. Just a couple

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2 of things. I -- I think, you know before we vote, and I
 3 certainly support the motion, the courts have already stated
 4 twice and ruled that the City of Utica must follow the
 5 traditional C.O.N. process. There's no doubt in my mind in
 6 reading all of the information that the Kunkel Ambulance people
 7 and their representatives totally proved that there's not a need
 8 in the City of Utica for another ambulance service, they could
 9 fill that need, and did fill that need, for many, many years.

10 The other thing I would like to say is the
 11 City also stated, and it was said here again tonight, that they
 12 were getting into the ambulance business to generate revenue.
 13 Well, I'll take you back a meeting ago when Niagara Falls
 14 Hospital was denied an application for a C.O.N. simply because
 15 they wanted to generate revenue. It's not a reason. It's not a
 16 need reason.

17 I can't deal with their issues with having a
 18 shortfall of revenues, other -- other than to say that this
 19 process is not a revenue-generating process, it is for the -- to
 20 fill the void of -- and public need that may exist or does exist
 21 in a community. And they never have proven that in the City of
 22 Utica where Kunkel Ambulance resides.

23 Thank you.

24 MR. BRANDT: Thank you.

25 Anybody else.

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2 I'm sorry, Mr. Hasson.

3 MR. HASSON: As a long-term member of this
 4 Committee, probably longer than anybody else with the exception
 5 of Mike Quinn, and past chair of this Committee and the State
 6 Council, I just want to point out to the members and remind them
 7 that it's very common for us to get inconsistent A.L.J.
 8 opinions, to say it mildly.

9 And I remember many, many years ago actually
 10 appearing before the head of the Administrative Law Judge Bureau
 11 and expressing our displeasure with very, very similar cases
 12 coming down with totally different opinions from A.L.J.s.
 13 There's a lot of times when the interpretation of these A.L.J.s
 14 is different, and part of the process is that we have to send it
 15 to them to go through the -- the fact-finding, but it's very
 16 clear in the rules that they are not to substitute their
 17 judgment for ours. They're supposed to give us a clear outline.

18 I was really, to put it mildly, upset looking
 19 at -- or hearing about this A.L.J.'s recommendation, the way
 20 they treated this particular situation. And with one that had
 21 such very far reaching implications. So, I just wanted to
 22 remind Committee members I cannot vote as I'm not on the Council
 23 at the moment. And if you're worried about going against an
 24 administrative law judge, don't worry about it, we've done it
 25 many, many times in the past. We've gone for Regional Councils,

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 2 and what their decisions were, we've also gone against Regional
 3 Councils, and -- and Mark and I, sometimes butt heads a little
 4 bit about, you know making decisions at this level and not
 5 remanding back. I'm never in favor of remanding back, because I
 6 think we have the power. But when it comes to administrative
 7 law judge decisions, we still can use our own good judgment if
 8 we feel there's an error made there.

9 MR. BRANDT: Thank you, sir.

10 Mr. LaMarca.

11 MR. LARMARCA: I was going to pretty much say
 12 the same thing Mr. Hasson said, that in reading over the
 13 transcript or the finding of the A.L.J., it seemed like he was
 14 more concerned with, you know finding fault with the process
 15 that the Department used it for determining need and respite,
 16 rather than, you know, taking what we are currently obligated to
 17 follow and applying, you know the -- his, you know, process to
 18 that. And he seemed like he railed against the Department and
 19 what he felt was inadequacies in, you know, the policies and the
 20 procedures, but you know, and then came to his own conclusion.
 21 And I -- I think the term that was used was substitute his own
 22 judgment seems to be appropriate.

23 I don't know why he came up with that or why
 24 he did it. We have had varying -- varying sort of findings from
 25 A.L.J.s some, you know clear and some not so clear, and this one

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 2 seemed to stray far afield from what we've seen in the past.

3 MR. BRANDT: Mr. Czapranski.

4 MR. CZAPRANSKI: Unlike my counterparts, I
 5 thought the A.L.J. report was very eye-opening after I read it,
 6 I was a little bit surprised by sort of their going after the
 7 opinion about the certificate of need process. But it helped me
 8 understand the whole presumption process as it relates to
 9 municipalities. And so, I thought it was a good process, and
 10 that maybe we need to in the future address the certificate of
 11 need definition, or something else to strengthen it a little bit
 12 to make it more like other areas of the Department of Health.

13 That said, in reviewing all the Common Council
 14 D.V.D.s that were supplied, or videos that were supplied, in
 15 going through the application what struck me was not once was
 16 there a mention of need, or poor response times, or inadequate
 17 service. It was about the need to generate revenue. And that
 18 was -- that was pretty surprising for me, having handled C.O.N.
 19 applications both at the local level and at the State level.

20 MR. BRANDT: Mr. Washington?

21 MR. WASHINGTON: Yes. As a newer member of
 22 this Committee, but a longstanding member of State Council, I'd
 23 like to thank the mayor of the City of Utica for taking time out
 24 to come here to express his position and his thoughts on the
 25 need for an ambulance in the City of Utica. I think this speaks

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 2 volumes, in that, he is an elected public official. He has to
 3 turn to the General Municipal Law to get an ambulance service
 4 for his City states to me that somewhere there's a flaw in this
 5 system.

6 If the mayor asks for something, runs it with
 7 five years without any blatant violations, shows that he can run
 8 an ambulance service, and the A.L.J. supports that strong
 9 presumption, maybe we should do either the A.L.J. says and
 10 recommend this, or maybe we should think about there is a flaw
 11 in our system. Either way I am in favor -- I am opposed to this
 12 amendment (sic) as it's stated.

13 MR. BRANDT: Thank you, sir.

14 Mr. Serowik?

15 MR. SEROWIK: I -- it's --- it's -- coming
 16 from the perspective of somebody that -- that works for a -- for
 17 a municipal government, I -- I might be inclined to agree with
 18 the -- the sentiments of the Honorable Mayor and his legal
 19 counsel, that any local government that wants an ambulance
 20 service ought to be able to establish an ambulance service, in
 21 and of, their own authority, but I don't think that's what the
 22 law says.

23 And I think that if anything is to change
 24 here, it's -- it's probably the underlying law. So, again, you
 25 know the -- the -- the legal opinions were very, very strong,

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 2 and -- and very elucidating of -- of this -- this whole issue,
 3 but you know, I -- I guess I have to almost reluctantly come to
 4 the conclusion here that even though there -- the strong
 5 presumption in favor of -- of granting the -- the -- the finding
 6 of need, the burden on the opponents of -- of that finding, I --
 7 I think they've met that -- that -- that burden in demonstrating
 8 that they were, in fact, able to cover those ambulance calls
 9 when and if they -- they did occur. So, again, I -- I came into
 10 this room tonight with -- without an opinion on this, but after
 11 having heard the -- the testimony, and considered it, in
 12 addition to the -- to the volumes of information that was
 13 provided for us ahead of time, I guess I would have to speak in
 14 favor of the motion.

15 Thank you, sir.

16 MR. BRANDT: Mr. Freemantle?

17 MR. FREEMANTLE: I think we all have opinions
 18 of what the A.L.J. made. Unfortunately, he did not base his
 19 decision on the current law, the current regulations by the
 20 Health Department. That's what we based our -- our decisions on
 21 now, is based on the current regulations in laws of the New York
 22 State Health Department.

23 MR. BRANDT: Is there any other Committee
 24 member wishing to speak on this motion?

25 MR. LEWIS: One more --?

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 2 MR. BRANDT: Yes. Yes, Mr. Lewis.
 3 MR. LEWIS: There was a count on the voters.
 4 I know Mr. Blum came in so we have one more
 5 MR. BRANDT: Absolutely.
 6 MR. LEWIS: And explain to us a yes and a no
 7 vote, and so that --
 8 MR. BRANDT: Yes.
 9 MR. LEWIS: -- everybody's clear on that.
 10 MR. BRANDT: An affirmative vote --.
 11 MR. LEWIS: And then, there'll be a roll call.
 12 MR. BRANDT: It will be a roll call vote --
 13 MR. LEWIS: Okay.
 14 MR. BRANDT: -- by name.
 15 MR. LEWIS: Okay.
 16 MR. BRANDT: I will not vote as the chair.
 17 MR. LEWIS: Of the voting eligible members
 18 MR. BRANDT: Of the voting eligible members,
 19 which means you have to be a member of this Committee and a
 20 vetted member --
 21 MR. LEWIS: Yes.
 22 MR. BRANDT: -- of the State E.M.S. Council in
 23 order to vote.
 24 If you're an alternate member, you may not
 25 vote.

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 2 I am the chair, I will not vote except to
 3 break a tie.
 4 MR. LEWIS: Okay. So, a yes vote --.
 5 MR. BRANDT: A yes vote supports the motion.
 6 I'll ask Mr. Jonas to read it back in a minute when he's done
 7 counting, but the general jest promotion was to uphold the
 8 decision of the Mid-State Regional E.M.S. Council --
 9 MR. LEWIS: Okay.
 10 MR. BRANDT: -- and deny the City of Utica's
 11 application for an ambulance service.
 12 MR. JONAS: The motion by Mark Zeek was to
 13 uphold the determination of the Regional Council to deny the
 14 ambulance application of the City of Utica. The motion is
 15 seconded by Michael Mastrianni.
 16 MR. BRANDT: And the number of voters; do we
 17 have that?
 18 MR. JONAS: The number of voting eligibles
 19 would include Dan Blum, Tim Czapranski, Robert Delagi, John
 20 Hassett, Professor Langsam, Alan Lewis, Sr., Michael Mastrianni,
 21 Jr., Michael Murphy, Michael Reid, Walt Reisner, Ray Serowik,
 22 Mark Zeek, and Michael Washington.
 23 MR. BRANDT: He has a question.
 24 MR. JONAS: Yes. Ron?
 25 MR. HASSON: I am no longer eligible to vote.

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 2 MR. JONAS: Yes, thank you for pointing that
 3 out.
 4 MR. HASSON: Yes.
 5 MR. JONAS: A matter of record. Valerie
 6 apologizes, since she's not here to give you that personally.
 7 MR. BRANDT: So, we have twelve?
 8 FROM THE FLOOR: Until you're replaced.
 9 MR. BRANDT: Would you -- what -- who is your
 10 replacement?
 11 MR. JONAS: Yeah.
 12 MR. HASSON: Tracy Abermont.
 13 MR. BRANDT: And he's not present; correct?
 14 MR. JONAS: Right.
 15 MR. BRANDT: Okay. Did you confirm the number
 16 of voting members --?
 17 MR. JONAS: Is she vetted?
 18 MR. BRANDT: What?
 19 Did you confirm the number of voting members,
 20 Mr. Jonas?
 21 MR. JONAS: Yeah. Has she been vetted?
 22 FROM THE FLOOR: She hasn't been vetted; has
 23 she?
 24 FROM THE FLOOR: Has she been vetted?
 25 MR. JONAS: She hasn't been sworn in yet;

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 2 right?
 3 MR. HASSON: Correct. She received a letter
 4 from the Commissioner.
 5 FROM THE FLOOR: Then she's been vetted.
 6 FROM THE FLOOR: She's been vetted.
 7 FROM THE FLOOR: She's been vetted.
 8 MR. BRANDT: Okay.
 9 (Off-the-record discussion)
 10 MR. JONAS: Thirteen.
 11 MR. BRANDT: Does that include me, Dana?
 12 MR. LEWIS: No.
 13 MR. JONAS: Including you, thirteen.
 14 MR. BRANDT: Okay.
 15 (Off-the-record discussion)
 16 MR. JONAS: A -- a quorum is nine.
 17 MR. LEWIS: Correct.
 18 MR. BRANDT: Huh?
 19 MR. LEWIS: Correct.
 20 MR. BRANDT: A quorum is --?
 21 MR. JONAS: A quorum is nine.
 22 MR. BRANDT: We have a quorum; right.
 23 MR. JONAS: Thirteen is the voting eligible
 24 members.
 25 MR. BRANDT: Right.

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 2 MR. LEWIS: Right.
 3 MR. BRANDT: Would you call the roll?
 4 MR. JONAS: Please indicate either yea or nay.
 5 And again, a yea vote is to support the motion.
 6 Dan Blum?
 7 MR. BLUM: Yea.
 8 MR. JONAS: I'm going to skip the chair.
 9 Tim Czapranski?
 10 MR. CZAPRANSKI: Yes.
 11 MR. JONAS: Robert Delagi?
 12 MR. DELAGI: Yes.
 13 MR. JONAS: Professor Langsam?
 14 DR. LANGSAM: Yes.
 15 MR. JONAS: Alan Lewis?
 16 MR. LEWIS: Yes.
 17 MR. JONAS: Michael Mastrianni?
 18 MR. MASTRIANNI: Yes.
 19 MR. JONAS: Michael Murphy?
 20 MR. MURPHY: No.
 21 MR. JONAS: Michael Reid?
 22 MR. REID: Yes.
 23 MR. JONAS: Walt Reisner?
 24 MR. REISNER: Yes.
 25 MR. JONAS: Ray Serowik?

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 2 MR. SEROWIK: Yes.
 3 MR. JONAS: Mark Zeek?
 4 MR. ZEEK: Yes.
 5 MR. JONAS: Mike Washington?
 6 MR. WASHINGTON: No.
 7 (The motion carried.)
 8 MR. BRANDT: Please confirm my count, ten
 9 votes in the affirmative in support of the motion, and two votes
 10 against, no abstentions.
 11 MR. LEWIS: Confirmed.
 12 MR. JONAS: That's confirmed: Ten -- ten yes,
 13 two no, no abstentions. The motion carries.
 14 MR. CZAPRANSKI: Does the chair officially
 15 abstain, since there are thirteen eligibles?
 16 MR. JONAS: The chair has abstained from
 17 voting.
 18 MR. CZAPRANSKI: Okay. So, there's one
 19 extension.
 20 MR. JONAS: There is one extension, I'm sorry.
 21 One extension. All right. I'm new.
 22 MR. LEWIS: Thank you, you're doing fine.
 23 MR. JONAS: Again, ten for the motion, two
 24 against, and one abstention by the chair. The motion carries.
 25 This motion will be brought forward and is

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 2 eligible for general discussion, if the Chair chooses, at
 3 tomorrow's the Systems Committee. But because this pretty much
 4 wraps that up.
 5 MR. BRANDT: This wraps up the this agenda
 6 item.
 7 MR. JONAS: It wraps up the agenda item it
 8 will be brought to the general body of the SEMSCO at the
 9 Wednesday meeting of the general session of SEMSCO.
 10 MR. BRANDT: There being no further agenda
 11 items for tonight, I'll entertain a motion to adjourn?
 12 FROM THE FLOOR: So moved.
 13 FROM THE FLOOR: So moved.
 14 FROM THE FLOOR: So moved.
 15 MR. BRANDT: Second?
 16 FROM THE FLOOR: Second.
 17 FROM THE FLOOR: Second.
 18 MR. BRANDT: In favor?
 19 FROM THE FLOOR: Aye.
 20 MR. BRANDT: Aye.
 21 (The meeting concluded at 7:37 p.m.)
 22
 23
 24
 25

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 2 I, Howard P. Hubbard, do hereby certify that the
 3 foregoing was taken by me, in the cause, at the time
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 Howard P. Hubbard, Reporter

 Date

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