

The Port Authority of New York and New Jersey
Committee on Operations Transcripts
September 17, 2014

[Chair J. Degnan] Operations is being held in public session in its entirety. and is being broadcast live at the Port Authority's website for those interested in viewing today's proceedings versus via the internet. Karen, are there any commissioners recusing themselves in this discussion?

[K. Eastman] Yes. On the Port Authority Bus Terminal for the Professional Retail Brokerage Services, Vice Chairman Rechler is recused. On the PATH Journal Square agreement for Professional Retail Brokerage Services, Vice Chairman Rechler is recused on that matter. 2 Montgomery Street has no recusals to note.

[Chair J. Degnan] The first item on the agenda today is the discussion of the Retail Brokerage Agreements at the Port Authority Bus Terminal. Mike, are you going to lead that discussion?

[M. Francois] Thank you. Good morning, commissioners. I'm seeking authorization to retain expert professional retail brokerage services, thank you, to market and lease retail space in the north and south wings of the Port Authority Bus Terminal. And vacant space in a building located near the Port Authority Bus Terminal across Ninth Avenue, 551 Ninth Avenue. And retail space at Journal Square Transportation Center. Staff is recommending Cushman and Wakefield to provide these services for the bus terminal and Journal Square. Cushman and Wakefield has assembled a highly qualified team of retail leasing professionals and advisers with extensive experience in the New York Metro area and nationally. Both agreements will be for a period of three years with the Port Authority having an option to extend for up to three one year periods at the Port Authority Bus Terminal. And two one year periods at Journal Square. The scope of the work will consist of providing brokerage services including leasing retail space on behalf of the Port Authority, developing and implementing leasing and marketing materials and plans, and preparing reports documenting services performed. In May 2010, the Board authorized the execution of a Port Authority Bus Terminal [retail management agreement with 20 Times Square Associates; that's an entity related to Vornado](#) to broker, manage and operate a retail space in the north and south wings which expired in August of this year. Alternatives that staff considered when the Vornado agreement expired was reverting to staff handling leasing efforts; two, continuing with Vornado, or three, seeking a new exclusive broker. Our consensus was that the Port Authority benefits from having an outside broker with a wide range of contacts and retail leasing experience. The Port Authority issued a publicly advertised Request for Proposals with procurement; three proposals were received. Cushman and Wakefield has the highest rated proposal. Cushman and Wakefield also provided a detailed outline for a strategic and comprehensive approach to the marketing, leasing and rebranding of retail at the Port Authority Bus Terminal. And will develop a similarly detailed outline for 551 Ninth Avenue. Cushman and Wakefield will be responsible for marketing and leasing approximately a 150,000 square feet of retail space in the North and South Wings of the Bus Terminal. And approximately 13,000 square feet located at 551 Ninth Avenue. C&W suggested that several median improvements would help attract major retailers to the bus terminal as well as enhance the shopping experience. These upgrades include brighter lighting, improved signage and store fronts with a cohesive appearance. Cushman and Wakefield suggestions dovetail with enhancements that will be incorporated into the Port Authority Bus Terminal Quality of Commute Program being discussed today during the Committee of Capital Planning Execution and Asset Management. The Port Authority would pay commissions calculated on a sliding scale from 5% to 1.5% based on the length of the lease and whether the tenant is a new or renewal. Cushman and Wakefield acting as the Port Authority's broker has agreed to accept 90% of the commission if it is the sole broker, so it's a slight reduction normally. Commissions will be adjusted and shared if the tenant is also represented by a broker other than C&W. In October 2012, the Port Authority retained HR&A in partnership with Beyer Blinder and Belle to complete a retail improvement analysis and plan for Journal Square including addressing space utilization and design challenges as well as identifying a strategic tenant mix. One of HR&A's recommendations was that a retail broker be engaged for short term to recruit a higher caliber of tenants at the facility, to improve customer experience and to enhance retail revenues. The Port Authority issued a publicly advertised Request for Proposals working through procurement. Two proposals were received. C&W had the highest rated proposal and provided also a detailed outline for a strategic and comprehensive approach to marketing and leasing and rebranding the retail at Journal Square. In May 2013, the Board authorized various agreements with Kushner Real Estate Group in connection with the proposed mixed use development adjacent to Journal Square which once completed will result in capital improvements to the facility at no cost to the Port Authority. As well as it should

increase PATH ridership at that particular location. It was anticipated that retaining a broker for this facility would lead to enhanced identification of retail opportunities, and increase in PATH retail sales. Cushman and Wakefield will market and lease approximately 47,000 square feet of retail space at Journal Square. At some future date the current retail space may be expanded by approximately 22,000 square feet for a total of approximately 69,000 square feet. There's an opportunity there. The broker should help us in that. The Port Authority would pay commissions calculated at 4.5% and negotiate a reduction from New Jersey's standard 5% rate of the aggregate rental for both of new and renewal leases. The Port Authority would pay 90% of the commission to Cushman and Wakefield if it is the sole broker and again, commissions will be adjusted and shared if the tenant is also represented by another broker. Entering into a retail brokerage agreement with C&W will provide the Port Authority an opportunity to work with experts who are experienced in leasing of retail space in the greater New York/New Jersey Metro area and will collaborate with the Port Authority to create and implement the strategy to optimize the Port Authority and PATH's revenues, enhance retail offerings, and provide an improved customer experience for the commuters and the surrounding neighborhoods. Commissioners, I request that you advance these items to the full board for approval today.

[Comm. J. Lynford] Jeff? Mr. Chairman, I just would like to ask about the commission schedule. I understand that New Jersey has a different schedule than New York. I won't comment on the merits of that. But in New York, and Scott, maybe you can help here, he said up to 5%. Does that sound like the market in New York City for commercial? That seems a little high to me. [INAUDIBLE] with three, two, one kind of thing technically.

[Comm. J. Lynford] With the amount of business we have—

[Chair J. Degnan] Let me just remind the commissioners if we're going to speak we should put your mic on in front of you so that the people listening can hear.

[Comm. J. Lynford] I'm just making sure that we get the best negotiated rates for brokerage. I'm not questioning the quality of the broker. I think they'll be perfect for this. I was just hoping that with the amount of business we do with this firm and others in New York, we getting the best possible rates. I would like to get your thinking giving that you are a major factor in New York City.

[Vice-Chair S. Rechler] Well, you know, I recuse myself on this topic because I have business with Cushman and Wakefield so I prefer not to comment about their rates. [Board Chair J. Degnan] That's a fair point.

[Comm. J. Moerdler] I'll comment then on the rate. I have mixed opinions and I say this to my clients regularly about negotiating brokerage agreements. Cushman and Wakefield is a big reputable firm. Certainly with smaller firms you run the risk that if you have a lower commission rate, then the property next store the broker may be more inclined to steer a tenant to the property where it's going to get a higher commission. I think that's certainly not going to happen as a corporate philosophy issue with a firm like Cushman and Wakefield. You never know if that's a factor with individual brokers. I take the opposite tact personally. I like to bonus brokers. I want them to earn a higher commission to get the better deal for us. So if our target rent is X and they get us X plus 2 on that plus 2, I'd pay them a higher commission. So I want to incent them to the opposite. To as much as possible want to focus—that's no different than what you see advertised in the real estate papers regularly where somebody says you do a full floor lease in this building and you get a three year—the broker gets a three year car lease on a Mercedes sports car kind of thing. So I think it's more important that we have the right firm than that we penny pinch on the amount of the commission. We want the right deals.

[Comm. J. Lynford] Well, you did say if there's an adjoining property, I don't know how many bus terminals are next to our bus terminal but I think it's a very unique site. I agree.

[Chair J. Degnan] I have actually a broader question about this and, Mike, I don't know whether you can answer this or whether Lillian should address it, but first of all, a preliminary question. Each of these Requests for Proposal was issued on an independent basis. They are in no way related one to the other.

[M. Francois] Correct. Right.

[Chair J. Degnan] And maybe you could elaborate a little bit on what highest rated means. It clearly suggests something more than the lowest rate. So could one of you tell me what highest rated means and what process was used to determine that?

[M. Francois] I think there's a number of factors that go into evaluating firms. One is their experience and experience related to a particular facility. Port Authority Bus Terminal is unique because it is a transportation facility in midtown Manhattan. I mean if you were to have similar facilities akin to that you'd look at Penn Station, look at Grand Central. And some of the other proposers that have experience in that. You look at the team, what

the people who are actually doing the leasing, what their experience is and particularly what type of experience they had in this particular market. You look at how broad the brokerage's contact is, both on a regional and national basis. If you're looking for local firms, you'd want them to obviously have a fair amount of experience in the New York Metro area. I mean, for example, New Jersey, you're probably looking at more locals than nationals around here whereas in midtown Manhattan it's more of a national mix. And then there's probably price and other factors as well. So those are some of the factors that —

[Chair J. Degnan] Probably?

[L. Valenti] Yes.

[M. Francois] Yes. I'm sorry.

[L. Valenti] In addition to that we also look at technical approach, so in the case of C&W they came prepared to discuss their marketing plan. They were prepared in the context of the current ongoing discussions about the impending work at the bus terminal and how they would approach new tenants in the context of construction. And relative to that, they presented the best price given the amount of work that we had for them and need from them in the next several years. [Chair J. Degnan] Okay, so is this a formulaic determination or is it a subjective one?

[L. Valenti] There are weights associated with each Request for Proposal but it's more subjective than formulaic. [Chair J. Degnan] And now are there weighted categories?

[L. Valenti] Yes, there are.

[Chair J. Degnan] So, let me ask you on the price issue alone, I think I heard you say Lillian that this was the best—

[L. Valenti] Value.

[Chair J. Degnan] On that criterion alone, the best of the three proposals.

[L. Valenti] Correct.

[Chair J. Degnan] I.E., the least cost to the Port Authority of the three proposals.

[L. Valenti] Yeah, but the first determinations that are made are on the qualitative management approach, staff and firm experience, so and then the price is taken into context of that. So the combination of two is the highest rated and they did have the best pricing and commission.

[Chair J. Degnan] They did. Okay.

[L. Valenti] Yes.

[Chair J. Degnan] Dave, you had a question.

[Comm. D. Steiner] Yeah, I'd like to know if you—C&W is traditionally not known as a retail broker. They're primarily office buildings and that sort of thing. There are a great number of retail brokers who specialize. I'm not talking about New Jersey. That's a story for a day and a half later. In New York, there are a great number of retail specialists. Did any of them bid the proposal?

[M. Francois] No. I think some of the firms—I know who you're referring to.

[Comm. D. Steiner] Is there any reason why we are not attracting those people because traditionally, most of the retail brokerage deals are not made by someone like Cushman and Wakefield or Richard Ellis or any of those companies. That there's a whole coterie of specialized people who do nothing but retail in New York. And I think we're doing ourselves a disservice by not dealing with those people because they're in the market every day and they make—I would say the great preponderance of deals in New York and I think we're missing an opportunity and maybe we're doing something in our solicitation that isn't right and it could be that we should be reaching out for the specialists in this and I'm concerned that we're not making the right choice for that reason.

[L. Valenti] Commissioner, we did publicly advertise and in addition to that, we reached out to 150—directly solicited 158 firms.

[M. Francois] Yes. And one of my staff is on Ridley's Retail Committee. We talked to them. I made a presentation to Ridley, not on this, but just generally about real estate development at the Port Authority. I think we went out of our way to cultivate them as much as possible. At the same point in time C&W is more of a broader firm. It is known obviously for office leasing. However, I must say I have dealt with their retail branch before. In fact we consulted with them way back when in retail downtown at the World Trade Center. So and Jay Allel who was also

by the way, a bidder for this had experience in Grand Central Station. So they may not be specialized retail brokers and I totally appreciate that, but I think they do bring a fair amount of experience to the table.

[Comm. D. Steiner] I think there might be a feeling out there that it's hard to do business with the governmental agencies and I think we're on the wrong path. It might be expedient now but I think, if it were my building I would have a retail broker. I would not have a general broker. But that's my opinion. And as to New Jersey with the commissions, it's a very strong brokerage community. As a New Jersey developer in the past, I have never been happy with the commissions but you do the best that you can and you make the best deal. The important thing is to lease the space and that's why I say I think we're missing the opportunity in our New York space and our retail in not doing business with a retail broker. Notwithstanding what the whole bidding process is.

[Chair J. Degnan] Commissioner Lynford had a question?

[Comm. J. Lynford] Yeah, I was just going to reinforce what you said. I'm glad you said it that if we only had three responses to 158 solicitations or RFPs, the market is telling us that our process might be a little labyrinthian or difficult and we should think about it for the future.

[Chair J. Degnan] Lillian, do you have a comment on that or—

[L. Valenti] No, I cannot potentially think about going forward about making a requirement in terms of the experience of retail brokers. So that we did do a public advertisement as well. My staff did reach out and ask why some firms did not respond and given the hotness of the market in the metropolitan region and the fact that we're estimating \$1.1 million over a couple of years was the answer back.

[Comm. J. Moerdler] Two things; one is I agree, David and Jeff, with your comments regarding our procurement process. It's something I've spoken at length several times with Pat and Lillian about. Broader than this procurement. I think our procurement process is broken. I think it's way too complicated. I think the package of materials we make people submit particularly smaller firms discourages participation. I've gotten feedback from small firms that have complained I had to go out and get my accountant to do \$10,000 of work because I'm a small firm but specialized for a particular procurement that we were doing in order to be able to satisfy the requirements and then I didn't get the job. For Cushman and Wakefield, that's not a big issue. For a 10 man retail specialty brokerage firm, that's a big issue. And it takes tens or hundreds of hours to complete the voluminous procurement materials. That's at least the feedback I've had. I've met with Pat and Lillian, we talked about trying to consolidate simplify, set up better tiering of the materials on the procurement process for smaller project to fast track and simplifying. And this also dovetails with both the of increasing minority and women and veteran participation. The goals of achieving more economic development and pushing to smaller firms. And our cost savings and economic development goals of getting procurements done as quickly as possible so we can get the work underway. I know there's a lot of history built into the system and it's not easy. It's much harder to cut and simplify something than to expand it and grow it but I think it's a process that we really need to put some substantial effort and maybe get some outside consultants to come in and look at it and work with the staff to try and simplify and expedite the process and what needs to be done to respond.

[Comm. D. Steiner] Spoken very articulately and you got to the heart of the issue. Now I'm not the biggest developer in the world, but I've developed a half a dozen shopping centers and retail things. And I want to tell you I have never made a deal through one of those major companies. It's always been people who deal in retail. Now, Mike, I know that you go to the International Conference of Shopping Centers. Do you ever see a representative there from C&W or any of those people? I know I used to go but I never saw them at the meetings. It's a special coterie and it says to me we have to look into that process and we have to develop a plan of sitting down and meeting these people and giving them the confidence and having some program where they can fit in. I think we're missing an opportunity and I think it's— well, hopefully we'll be out of the real estate business anyway. But in our major building, I think that we're not on the right path.

[Chair J. Degnan] So there have been a number of comments here of a much broader nature than the topic that is before us this morning. And I'm not sure that this is the appropriate time without adequate notice and preparation to debate the overall procurement process and its efficacy. But I do take seriously the commissioner's comments. And I think at some point and I guess the appropriate place would be the Operations Committee, we ought to have a broader discussion about the procurement process and a thoughtful observation about it. I've had a fair amount of experience myself in dealing with public bidding and the requirements of it. I'd be concerned now if we broadened the requirements that we've articulated and didn't act on the Cushman Wakefield recommendation today in the context of the process that we've gone through. So if it's all right with my colleagues here, let's schedule a broader discussion of the procurement process at some point on an Operations Committee agenda. And move forward on

this issue. I agree a hundred percent with your comments, Chairman. I have one specific question on this process. I don't think I heard it, Mike, can you tell me who the specific team leaders from Cushman and Wakefield are?

[M. Francois] Let's see. David Green, Vice Chairman of Retail Services. Al Shmerzler, Executive Director of C&W. Michael Stone, Senior Director. They also have brought in a MWBE firm, Jody Polise, Founder of JRT Realty Group. And Craig Smith with JRT.

[Comm. J. Moerdler] I know a few of those names, not all of them. And that sort of dovetails with your comment, David, about the firm is a huge player, but they may not be the biggest specialty retail brokers.

[Comm. D. Steiner] Well, it's like going to a specialist when you're sick. You don't go to a general practitioner if you have a broken arm. And I think we're missing the boat and we've got to do something with the procurement and the way we deal with these people. And I think it's something we have to develop those relationships. Not only on this type of leasing, but other things that we do. For example, if you're going to do port leasing, you work with people who do port leasing. You don't go to a general practitioner.

[Chair J. Degnan] All right.

[Comm. J. Lynford] I agree with you. Thank you. Mr. Chairman, I agree with you on the procurement. And I just want to ask Mike a different question that I think is integrated to this topic. I know that Ken Lipper probably would agree. Did I get your attention, Ken? Since this has become such a radioactive topic of what we're going to do at the Port Authority Bus Terminal, are you getting any special instructions or crafting of leasing so that it will fit into the larger picture of your strategy for the rehabilitation on the terminal because I assume it's going to have a commercial element. [M. Francois] Well, I don't think that it's been definitively defined yet from what I understand. I think the focus from the retail we'll be putting together more or less as we see kind of a 10 year strategic plan that can upgrade the retail as well as we upgrade some of the basic infrastructure there to make it more valuable. But I think until we know what sort of commercial development opportunities—

[Comm. J. Lynford] I can understand. Does that mean you would try to have shorter leases?

[M. Francois] Yes.

[Comm. J. Lynford] Rather than longer leases. I just want to make sure you're thinking about it.

[M. Francois] Okay.

[Comm. J. Lynford] And you will give instructions to them. [

M. Francois] Yeah. But I think the trick will be also there are some opportunities at the bus terminal to potentially bump out some of the space to enhance it. I mean specifically the second floor of the north wing. And so it'll be tricky, you know, who's going to make an investment for, you know, the term of the lease. So that's something we'll have to talk at length to the brokers about.

[Chair J. Degnan] At this point and in the interest of time, we need to move forward. Karen, do we need to—I know this is on the Board's agenda for the public session meeting this afternoon. Do we need a resolution here to recommend it to the Board? Okay, is there a motion? And a second? Okay. Are there any opposed? We'll deem is approved then. And the next issue on the agenda is the 2 Montgomery Street lease for Adventures in Learning Care.

[M. Francois] Yes, so commissioners, I'm asking for authorization to enter into a 15 year lease agreement with Adventures in Learning Day Care for the ground floor space to be operated as a day care center at this building, 2 Montgomery. The lease would also have two five year extension options. The proposed lease will create a new day care center of approximately 7,445 square feet on the ground floor of this building. The space is currently vacant. Staff hosted several open houses to lease the space. Flyers and marketing information were also sent to commercial real estate brokers to generate interest in the space. In addition to the day care center there are other large tenants such as drug stores and smaller tenants requiring subdivision of the space that express an interest in this particular location. The day care center proved to be the best alternative with the most competitive rental rate. The Port Authority will also need to invest less capital to prepare this space for this tenant. And the entrance to the day care center will be more aesthetically consistent with the building's facade. Adventures in Learning has been operating day care centers in New Jersey for approximately 10 years. And they currently own and operate three centers in Hoboken and Jersey City. The lease will commence on or about January 1st, 2015 at a total aggregate base rent plus index rent of approximately \$6,922,000 and that translates into a \$56 per square foot net rental. Port Authority will pay the tenant broker, NJR, a commission of \$152,565. The Port Authority will also

perform certain base building work which includes constructing a new entrance to the day care facility. And installing certain necessary infrastructure to provide separate utility services at an estimated cost of \$310,000. Adventures in Learning will invest approximately \$425,000 to renovate the space for its own use which includes pre-school learning rooms and play areas as well as administrative space. Adventures in Learning has identified a growing demand for day care in Jersey City waterfront area where the neighborhood is transitioning from a 9 to 5 business community to a mixed use commercial and residential 24 hour community. Approximately 40 employees will work at the center which will accommodate approximately a hundred children. The hours of operation will be Monday through Friday, 6:30 am to 8:00 pm. While the Port Authority employees are not prohibited from using the facility, no preferential treatment or pricing will be offered. Renting this space to Adventures in Learning will further the Port Authority's goal of maximizing value from assets with income generating potential consistent with ongoing discussions that we've had with the Board. Commissioners, I request to advance this item to the full Board for approval today.

[Chair J. Degnan] Question or discussion, Commissioner Lipper?

[Comm. K. Lipper] I only harken back to one of my first experiences here was with the day care center at JFK which for those of you who were not here, was a disastrous experience for the Port Authority. I'm not against this. I know nothing about the details of this particular program. But just being on Port Authority premises gives a certain imprimatur that somehow we're responsible for what happens in this day care center. Even though we're just the landlord, I gather. We're just purely a landlord.

[M. Francois] Correct.

[Comm. K. Lipper] Again, I'm only asking this as a question based on our experience last time. Should we be renting to this kind of facility given the nature of our public exposure as a government agency? Are we in fact somehow responsible for doing some kind of an investigation of the qualifications of people who work in such a facility? God forbid if there's some pedophile or some other thing that we don't know about, we're authorizing a lease. Even though we're only being a landlord, but are we implicitly under the public point of view kind of putting an imprimatur on such a facility. So given the fact, again, I have no objection to the facility. I know nothing about the particular operator. So I have no reason to—I'm not trying to in any way say this facility or this person or this operation has any element. But from a general policy point of view, given our experience in the past, given what goes on with things that are being—literally that will be beyond our control, given the fact that it's not serving Port Authority employees particularly, not an in-house thing where we would have continuous oversight, we would investigate everything all the time, is this a prudent lease on the substantive merits. Not the price. I understand it's the best price and things. Is this something we should be involved with?

[Exec. Dir. P. Foye] So, Ken, in all reasonable questions, let me respond to it in this way. One, JFK Kids Port was a marginal operator pursuant to a long term lease, no rent. We're getting \$56 a foot here, one. Two, the IG has vetted and has, among other things, concluded that this agency, this for profit business, has all its licenses and perfects in the State of New Jersey. That their child care record is pristine. The IG and procurement has signed off on the insurance requirements including with respect to child abuse and other liability items. Three, I'll note that there are lots of leading landlords in New York and New Jersey, I mean for instance the Horvath Law Firm right on Eighth Avenue that operates street level child care service A, to generate rent, and B, to provide a service to the tenants in the building and the community. I think the vetting and the IG is here and can speak to it. I think the vetting has been comprehensive and we're comfortable with this operator which operates three or four other facilities in Jersey City and Hoboken. So I agree with Mike and recommend it for the Board's consideration. I think your questions a little reasonable ones that were contemplated and considered in the process.

[Chair J. Degnan] I assume when you reference the insurance requirements that you're talking about a requirement that the operator have liability insurance which would cover all of those events.

[Exec. Dir. P. Foye] Yes, sir. At a large amount.

[Chair J. Degnan] Do we know what our own general liability policy has any exceptions for this kind of use?

[Exec. Dir. P. Foye] I'll let the CFO speak to that.

[Chair J. Degnan] If there were a claim of, you know, negligent supervision on our part or negligent retention of the firm. I'm not aware that that would be a general exception in the general liability policies, but I don't know here.

[E. McCarty] I'm not aware of there being any—it is our policy generally with respect to our lessees that they are the primary insurance from a general liability perspective. We are a layer above that. [E. McCarty] Right.

[Chair J. Degnan] That makes sense. Commission Lynford.

[Comm. J. Lynford] Thank you, Mr. Chairman. No objection to the use and tenant, but I do have three questions that I think we should have every time we get a presentation like this. One is this a net lease? Two, are there any inflators for inflation? I mean for expenses. Three, this is a long term lease. Twenty-five years plus two five year renewals. So we have a prohibition on a right to assign or sublease because that lease could be rather valuable because of inflation. And lastly, could you just explain to me the \$152,000 on a \$6.9 million rental stream, what is that as a percentage in brokerage commission?

[Exec. Dir. P. Foye] So Jeff, it is a triple net lease? One, two, and the term on it is, Mike, correct me if I'm wrong. Fifteen years? And I'll let Mike speak to that.

[Comm. J. Lynford] Is it a 15 year lease? [M. Francois] It's a 15 year lease. It's a triple net lease, by the way. I thought I mentioned that earlier. I'm sorry. The commission level is at 4½%.

[Comm. J. Lynford] Good. The last one was the right to a sublease or assign the lease without our permission or with our permission. or profit share..

[Comm. D. Steiner] Definitely the profit sharing. Which you participate in besides having the right to reapprove which would not unreasonably be withheld that we participate.

[Comm. J. Moerdler] Recapture and the profit share.

[Comm. D. Steiner] Yeah, we have the right to recapture and usually we get 50% of any profit that's earned.

[M. Francois] They cannot assigned without our permission. Number one. I don't believe, I'm sure if there's any participation. I will look into that, but we also have a 30 day termination clause by the way as well, Commissioner, so—

[M. Francois] You didn't tell us that. That's standard operating procedure.

[Chair J. Degnan] These are good things to the extent you have these in each one of these memos then we won't ask you and we're impressed. [M. Francois] Okay.

[Comm. D. Steiner] And you know I fight for those general lease terms and I'm very concerned about the hold harmless thing and the amount of insurance that they have. And I think that we ought to talk to our carrier to see what he says about it.

[Chair J. Degnan] Commissioner Moerdler, question?

[Comm. J. Moerdler] I just no comment to Commissioner Lipper's comments which I think as questions were all terrific questions and valuable. But I just want to conceptually comment that I disagree in this instance and probably in general to saying there are categories of things we should say we're not going to do. We also have to balance our obligation to provide a community service, not just for our own staff in this building but elsewhere. And you can't take one single experience and say you had one bad experience. You're never going to do something again because you had one bad experience. I think it's something where we have to learn from that experience and clearly do our homework and due diligence and Pat's responses to your comments and questions indicate that we did the appropriate due diligence and homework and we should continue to look into them but I don't think we should make a policy statement we will never do something like this again. It's a little too broad. By two cents.

[Chair J. Degnan] A very broad statement. I assume you would not include a sex shop in that because I can't imagine this Board approving a use such as that in the building.

We have to know the details. [LAUGHS] It's a very gross operation.

[Chair J. Degnan] I think Ken raised a legitimate concern. And I do think it's fair for us to think about as a public agency the uses to which we deploy our assets. So I welcome the comment. I would echo something that Pat said though in my experience forward thinking employers often take the risk that's inherent in operating a day care center as an accommodation for their employees as a legitimate public good to be served by these agencies. I wish the Port Authority could afford to subsidize day care for our own employees who are juggling two income families or single parent facilities. We're not prepared to do that now. Giving the vetting that's been done here, Ken, I wonder whether that obviates your concerns somewhat now that that's been amplified.

[Comm. K. Lipper] I think the vetting by the IG is very important. I just ask again. I don't know.— I'm only going on our past experience. And what I read in the newspapers. So I have no specific knowledge here. Do we have some kind of ongoing obligation to kind of periodically look into such an operation? We vetted it now, but if something happens five years from now or changes or—I just don't know the nature of our— it's not an ordinary lease. Let's

put it that way. It's not selling things, it's not a Best Buy or whatever. It's a very serious delicate kind of operation. So the question I have is are we assuming any future obligation either implicit oversight or vetting as you said by the IG. Is there some period of every three years or five years or— I don't know what's reasonable in this kind of thing. I just never encountered it other than my experience here a few days after I got here with this JFK fiasco.

[Exec. Dir. P. Foye] Okay, Ken, I guess I can say two things. And then we'll refer to Del; I'm not going to speak to the creativity of the plaintiff's counsel in the United States in the year 2014. There are ongoing obligations of the tenant in this lease and every other lease to provide for instance annual updates confirming that they have insurance and that they're in compliance with applicable law including in this case the permits that they need to operate a child care facility in this State of New Jersey. I'll also note without defending JFK Kids Port, right, which was done long before any of us arrived, that was intended to be a rent free deal. Whether that was a good thing or a smart thing at the time is a decision that was made by this Board 20 years ago. But I think we've been careful and conscientious about looking at the risks of this tenant which is going to pay us \$56 a square foot and involve the IG and procurement and gone through the appropriate process.

[Chair J. Degnan] Commissioner Rechler.

[Vice-Chair S. Rechler] Yeah, I just wanted to reiterate what the Chairman said in terms and what the Executive Director said in terms of the private sector. This is a typical type use both in terms of commercial buildings and also not only for the tenants in the building but for community service as well. And we have them in many of our buildings and we also have clauses about certain standards of operations that have got to be met and if not, then we can step in and terminate the lease under those circumstances.

[Comm. D. Steiner] I'd like to commend you on that and I hope that you would make some of that information available to our legal people because this is, you know, I'm the one that's been fighting for standardized leases. Anything you can tell us of your experience will help us in structuring a lease. But I wanted to point out one thing. I want you to know that the Port Authority will pay the tenant's broker. That's how most real estate retail deals are done. The tenants have their own broker and they come to the landlord. I just want you to know that's the traditional way in here and in most retail that I've ever been involved in. Just another nail in the coffin.

[Chair J. Degnan] I can't believe anybody ever criticized this agency for the lack of robust discussion at public sessions. Are there any further comments on this and then Karen, we should entertain a motion to recommend to the Board approval of this lease. So moved. Second? I'll second. Any opposition? Okay, we've deemed it approved. It's 10:00; I think this meeting was scheduled to have been over at 9:30. Okay, but we have an overtime discussion still on the agenda of this meeting. So I'm asking my colleagues, this is a critically important subject.

[Vice-Chair S. Rechler] I'll also note that the World Trade Center discussion is very brief and we could probably shrink that down to no more than 10-15 minutes. Because I went through it yesterday.

[Chair J. Degnan] Then with that generous offer on the part of the Chairman and the committee which we'll hold him to let's go ahead with the overtime discussion here. So Stephanie, are you going to lead that? Yes.

[S. Dawson] Good morning, Commissioners. Today we will provide you with a brief overview of the Port Authority overtime control program and year to date performance. We'll start with the financials which the CFO will provide. And I will discuss the overtime control procedures and improvements to date which have brought us to a place where the budget and the actual overtime actually are very close. I will also present the actual year to date expenses as well as the associated dashboard and we'll talk through the three out of 26 departments that are over their budget. With that said, the bulk of the departments are within budget. We'll also look at the trending since 2011 which again shows our budget to actual performance. We'll also talk through any department heads for the departments that are over budget are here if we need to drill down further. Thank you.

[E. McCarty] Good morning Commissioners. I just wanted to frame the overtime in the context of our total expenses as well as our total labor dollars. We talk a lot about overtime. We report regularly to you on hours. But really without any context as to how that relates to our total. So overtime expenses represents 19% of our total labor costs. And 7% of our total operating costs. So again, just to think about that, we always look at overtime, we evaluate overtime as to whether or not it's more efficient and effective to incur overtime and then we're correctly resourced. So there's always a balancing act there. The one thing I would say year to date while we are over budget or plan in terms of overtime hours, when you look at our net cost impact, factoring in the underrun in straight time, factoring in cost recoveries and/or grants we are net neutral from a dollar perspective this year with respect to our overtime cost versus our budget.

[Comm. J. Lynford] Are these grants specifically for covering overtime?

[E. McCarty] Yes, as an example the overtime we incurred around Super Bowl had some grant monies because that was a special event, so it's those types of things. So, so as Stephanie mentioned, we've been working very diligently on budgeting more effectively, on factoring this into our ongoing budgets and I think we've made great strides both from a control perspective, a budgeting perspective, and we have a positive story to talk about how we are controlling this, and I'll turn it back to Stephanie.

[S. Dawson] Okay, next slide. So the bottom line is that the Port Authority operates in a very demanding operational context. And that's associated with three main factors. The fact that we have continuous operations 24/7, and that many of the workers have to be properly relieved when their tour is over so they just can't leave when their tour is over. That contributes to overtime. We have significant security needs and obviously we operate in a regulatory and contractually sensitive environment. Next slide. Since 2011, we have been aggressively working to control overtime and if we read left to right, you'll see that in 2011, we were managing on a departmental basis. We implemented a number of improvements, many of them pursuant to the New York State Office of the State Controller's Audit of the Port Authority which identified the fact that while we were managing overtime, the fact that it was departmentally focused and didn't have codes that could be viewed across the landscape of all the departments, was an opportunity area for improvement. So we collapsed all of those codes approximately 400 odd down to basically 26 categories that justify overtime and in addition we implemented self-audits by the departments as well as audits by the management and budget department. Additionally, starting in 2012 we commenced with really focusing on budgeting by hours because when you look at the dollars there are a lot of changing benefits and other factors that kind of distort the view so I always give the most cogent view of the activities and how they can be managed. In 2013, we continued to aggressively manage the overtime and moved towards zero based budgeting so each of the departments is required to budget accordingly and we look at the base and variable workload, the productive time as well as vacancies and turnovers. In 2014, we've moved even more aggressively with overtime management and we now have an overtime oversight steering committee which includes a CFO the COO, the Chief Security Officer and the Chief of Human Capital. And we look at all of those factors that corporately we have responsibility for as well as the activities that the departments are responsible for. And we adjust the resources accordingly. In 2015, we plan to ensure that the budgeting is consistent with prior [UNINTELLIGIBLE] and that the departments continue to monitor the overtime aggressively. Next slide.

[Chair J. Degnan] Commissioner Laufenberg has a question.

[Comm. G. Laufenberg] I have a question; you said that the budget for overtime is revenue neutral for overtime? Does that include the impact of future costs for the pension liabilities going forward? [E. McCarty] Well, we'll get into the impact on the pension. In terms of the budget to actual, it was neutral to us. Pension from that perspective we have equalization approaches to make sure that people are we're not necessary loading toward the back end and more controlling the impacts on the pension.

[Exec. Dir. P. Foye] Can you just take a second and explain what that means? [Chair J. Degnan] Is that a subject you're going to address in the course of the presentation?

[E. McCarty] yes. [Chair J. Degnan] Would it be okay with you if we deferred that until—

[Exec. Dir. P. Foye] Sure—

[Chair J. Degnan] if we deferred that until it came up in and if it doesn't come up, we'll come back to it.

[S. Dawson] This slide was really just meant to convey that we use standard techniques. Each time there's a question of overtime we look at whether or not we should use overtime pay or a new hire. And this sample just shows the type of analysis that's done in every case.

[E. McCarty] And that's done on a loaded basis.

[Comm. P. Schuber] Can we see that slide again please? That's a very dense slide for that description. I actually don't have a copy of this here, particularly on this topic. Particularly on this topic, I think it would be really helpful to have had this in advance. This is a very important issue. Quite frankly, and I've got good glasses here, I have trouble reading this.

[Chair J. Degnan] Want to borrow mine?

[Comm. P. Schuber] And I think that we should have had this in advance to look at. It's an important factor and it's got good information on it and I really would have liked to have seen this in advance.

[Chair J. Degnan] So this is not the first time today this issue has been raised. Commissioner Bagger raised it in the finance committee as well. I think from now on we will have a requirement that the slides being utilized by staff during the course of a Board meeting or any committee meeting be shared with the Board in advance of the meeting since we're holding ourselves to a public disclosure three days before the meeting let's get the slide to the Board three days before the meeting. That will shorten the discussion, I believe. And make it more penetrating in the sense that most Commissioners will have had a chance to look at it. It's not a criticism of anybody now. We haven't done that up until now, but I don't know why. So. As an SOP going forward, that's what we'll do. Pat, do you understand this slide?

[OVERLAPPING]

[Comm. P. Schuber] Yeah, because it went by relatively quickly.

[Chair J. Degnan] Are you saying this process is used for every employee?

[S. Dawson] I guess what we're saying is that when there's a discussion of new workload then this analysis is applied. So we have ongoing workload that is known and we've already made determinations about whether you will deploy permanent staff, temporary staff or consultant staff. When there's new workload, then this analysis is applied such that you look at the factor of salaries if you use overtime for existing employees and you consider the average factored salaries productivity and equivalents for using new hires to make a determination as to whether it make sense to use existing staff or to make the new hires.

[Chair J. Degnan] Let me amend my suggestion and Pat, let's circulate these slides after this meeting to the Board as well and any other slides used today. So we'll start the process going forward in terms of advance disclosure. For today, let's get the slides to people afterwards. Pat.

[Exec. Dir. P. Foye] Just briefly just building on Stephanie's comment. That analysis was used specifically for instance most recently with respect to the new Port Authority police class, right. And there was a detailed analysis of what's the effect of overtime against making what is in effect a lifetime commitment to a new class of police. So while it's not done, of course, on an employee by employee basis, where we're going to be hiring a significant number of employees and we look at it on a life cycle cost, if you will, including pension costs which we'll be able to address in a second.

[Chair J. Degnan] Okay, that's helpful. Thank you.

[S. Dawson] Next slide. And this really looks at the overtime methodology and post by post assessments that's used to develop the budget. And so if we read left to right basically as I alluded to earlier we start with the workload hours then we look at the available resources tie the productive hours and that yields an overtime budget in hours.

[Chair J. Degnan] Okay.

[S. Dawson] You asked about the impact of overtime on pension costs. And Libby has already provided some of the detail. Libby, do you want to continue?

[E. McCarty] Sure. So as I mentioned we have in terms of our policies overtime equalization procedures that exist for all police and PA civilian employees with the exception of certain of our specialized maintenance titles. So those procedures allow that overtime is spread and equalized across the workforce and not geared at your sort of longest tenured employees and that is where pension can be impacted. Specific actions that we have taken to address impacts on pension as well is the increase in the police workforce to address overtime with the two classes that we just graduated this year. That was all worked to manage workload and address overtime. Just as background information, the PATH employees are in a separate pension system and overtime is not included as part of their pension calculation and factoring. And then there were changes in the New York State Retirement system rules so that employees hired after April 1st 2012, the overtime amount included in their pension calculation is capped. So over time this will work that down.

[Chair J. Degnan] How does that cap work?

[E. McCarty] It's a specific cap; percentage cap or dollar cap depending on which system you're in. And that escalates, but it just caps them in the pension calculation.

[Exec. Dir. P. Foye] [INAUDIBLE] Yeah. That's 15%. Fifteen for the, yeah.

[E. McCarty] Then we also—

[Comm. D. Steiner] [INAUDIBLE]

[E. McCarty] It's not retroactive, but it is just another step in terms of addressing that overtime equalization. We also actively monitor our overtime hires so that there's the hire justification needed if it's a specific individual that over time high earners, it's evaluated as overtime justification.

[Comm. G. Laufenberg] Nineteen percent of your overall costs were overtime?

[E. McCarty] Nineteen percent of our total labor.

[Comm. G. Laufenberg] Total labor. What percent did that include for the Port Authority police department?

[E. McCarty] It's probably a little bit more than half. But I would have to get back to you. I don't have that split.

[Chair J. Degnan] I'm getting a signal from the audio operator in the back that somebody can't be heard. Who are you concerned about? You can't be heard. Okay. All right, fine. I don't think we need to hear from you. [LAUGHTER] Unless you want to speak in the public session, that's fine.

[Comm. G. Laufenberg] The security issues and the 24/7 really, the bulk of the overtime would be in that department I'm assuming.

[E. McCarty] Yeah, so the overtime is about 30% for the civilians including snow and ice at this point. And it's about 48% of the base for police at this point this year. That's just this slice of this year that had all that extreme weather. And the Super Bowl and, you know, other events.

[Comm. G. Laufenberg] How is overtime allocated? Is it besides, you know, staying on shift requiring— Is it allocated by seniority under the Collective Bargaining Agreement, Joe? Is it allocated by need? [J. Dunn] We have a system where the lowest overtime earner is up for the overtime opportunity by command. So if someone got 10 hours overtime this week, he goes onto the bottom of the list and someone who has less than 10 is now entitled to it. It's always the lowest gross overtime earner is up for the overtime opportunity.

[Comm. D. Steiner] As I understand it though they gently refuse it and pass it onto the guys who are going to retire that year or next year. Is that the case?

[J. Dunn] No, that's inaccurate, David.

[Comm. D. Steiner] Misinformation.

[J. Dunn] When you get to our dashboard, we have a bar chart that will explain who gets the overtime by use of service. I don't want to get ahead of ourselves. I think that Stephanie wants to finish her presentation. But I'd be happy to discuss that when we talk through the—

[Comm. K. Lipper] Critical question as to under this whole equalization plan which is a good thing that we put in what is happening in actual practice? Who indeed gets the hours? Is there some informal—

[J. Dunn] Again, let's go to the slide then—

[Chair J. Degnan] Well, we'd go to the slide if we had it, Joe. So see if you can get it up on the—

[J. Dunn] Okay, on the bottom right for the PAPD overtime the bottom right, Barbara? Okay. Officers with five or less years on the left, six to 10 years is the next one. Eleven to 15 is the third one. Sixteen to 20 is the next one. Twenty-one to 30 is the red one. And 30 above is the yellow one. That bar graph is pretty even across the board. And I think it underlines the fact that the overtime is given out equally among our officers.

[E. McCarty] That chart that was just up is an example of the dashboard. That's why it's a little busy for this purpose. But that's why it's up there.

[Chair J. Degnan] I was making the point to one of the commissioners lest you— now I realize I do have the slides. I can't read the slides either.

[E. McCarty] Not printed this way. Yes, yes.

[Comm. R. Bagger] [INAUDIBLE] Net cost for the year That's before consideration of the under run in the straight time. But once you factor that in, then we're neutral year to date.

[Comm. R. Bagger] What's the latest estimate for the full year?

[E. McCarty] Well, we expect for the full year other than PATH which is doing the accelerated work in the tunnels, and perhaps a little bit of aviation because they're doing accelerated work on the runway rehabs. That the other departments were expecting to be in line with their budgets as the rest of the year when you take out the extreme weather at the beginning of the year. So we're working toward managing that down and again to try and be in that sort of neutral territory.

[Exec. Dir. P. Foye] I'm sorry, but in some significant portion of the PATH overtime will be recoverable pursuant to Sandy.

[E. McCarty] It's capital related and similarly the decisions at the airfield to try and get that work done and that's capital related overtime, too. So that factors into that.

[Comm. R. Bagger] You also had the chart up that had the hours. I saw the dollar chart and then I saw the hour chart in there.

[E. McCarty] Yeah. Oops,

[Comm. R. Bagger] there's dollars, next one's—

[S. Dawson] hours is the next slide.

[Comm. R. Bagger] Yeah. So our actual to budget variance in 2014 is a third. Right? Thirty-three percent overrun on hours actual to budget. So even given all the financial netting out which is good news, there's something about our forecast thing in our budget and now as we sit down to discuss the 2015 budget we have an estimate for the 2015 budget there's some portion of that 33% is like, you know, beyond our control with things like the weather.

[E. McCarty] Right.

[Comm. R. Bagger] But some percent it isn't. We knew about the Super Bowl. So I'm really focused on our forecasting as we're starting to build the 2015 forecast.

[E. McCarty] And we are as well. So some of the efforts that we used as the example of what we did with the police department and the work of making sure we had the whole body of work and then worked backwards as to what the workforce is that exists, what's needed to add, and what's the overtime. That is underway at this point. And that'll be part of the 2015 budgeting process.

[Comm. P. Schuber] I have a question on the, if I might, on the pension issue itself just to refresh our recollection, please. I saw that in a prior slide, that obviously our PATH employees have a different pension system. And I saw there was a change in the New York pension law with regard to future hires after a certain date and the amount that would be covered for pension purposes on overtime. Could you just refresh my recollection? How many of our employees are covered by the New York pension system?

[E. McCarty] All but PATH.

[Comm. P. Schuber] All except PATH, is that right? That covers police—

[S. Kingsberry] and PATH is a limited group of the PATH because some of the PATH management employees are in the state. But all the people that get overtime get paid overtime are in the union and different pension systems than New York City and they don't get—their overtime is not pensionable.

[Comm. P. Schuber] I got it. Okay. Got it. Thank you.

[Comm. K. Lipper] Following up on Pat's question. So substantively the New York State pension laws regulate what our contractual obligations are to all of our employees except PATH?

[E. McCarty] Yes.

[Comm. K. Lipper] Substantively, not just financially oversight, but investment. But substantively we incorporate New York State pension benefits.

E. McCarty] Right.

[Exec. Dir. P. Foye] But, Ken, just to be clear. It's not a limitation on overtime; it's a limitation on how much overtime for Tier 6 people hired after April 1st, 2012, how much of that is pensionable. And the one thing I'll note; this is going to have a short term and a long term impact on mitigating the cost, right? Because each year for each employee we send to the common fund New York State Pension Fund an amount that, assuming it grows over time will be sufficient for the pension credit with the new limit on newly hired employees and then as they grow as a percentage of the cohort that is covered by the New York plan. The cost will be mitigated both in the short term and the long term.

[Comm. P. Schuber] Tier 6, can you give an explanation of that please?

[Exec. Dir. P. Foye] So the pension fund is depending on what you were hired. Most I think it's fair to say, probably most Port Authority employees in the plan are either in Tier 4—actually Tier 3, Tier 4, Tier 5. And then folks hired after April 1st, 2012 are in Tier 6. Okay, so it's based on the date of hire. Date of hire.

[Comm. P. Schuber] Date of hire. Got it.

[Chair J. Degnan] Commissioner Moerdler has a question. I just want to make comment I found that Joe Dunn's response to the overtime question on the leveling among the PAPD and looking at the dashboard, very interesting. I then looked at the other two pages in the materials of the dashboard on aviation civilian and PATH civilian and in those two sections in the bar charts in the corner of the diagram, you can see that there's about a 25% difference between the 0 to 5 versus the 30 plus in aviation and a 50% difference in PATH. So it may be that those are areas that we have to try to implement something along the lines of what Joe Dunn described for the PAPD or some other strategy unless it's something we're already doing to try and level it out among the employees and give the younger employees a fair shake at getting overtime.

[S. Kingsberry] The challenge on the PATH side is ours is based on unions and so these are part of the union rules. That seniority does rule, but as you know the overtime for PATH is not pensionable. So it doesn't apply.

[Comm. J. Moerdler] But it's still compensation to the employees.

[S. Kingsberry] Yes, yes, but it's part of the union contract that we—

[Comm. J. Moerdler] Okay, so we're sort of stuck with it.

[J. Dunn] Commissioner, likewise I can't credit for instituting this policy. This is a policy that's written in the union contract. The equalization is written into the union contract. It's not a management prerogative.

[Comm. J. Moerdler] We might want to consider for when we negotiate future union contracts—

[J. Dunn] Right—

[Comm. J. Moerdler] in an effort to be fairer across the employee base. Whether it's pensionable or not, we don't want the young guys to get discouraged that I'm not earning as much because I don't have as much a shot at overtime and therefore it discourages people from either from applying to PATH positions as new employees or staying with us.

[Chair J. Degnan] I have a slightly different perspective on that if I understand it, Jeff. I don't want to encourage young employees to believe that they should stay with the Port Authority because they're going to rip off the system on their overtime which is frankly what has happened in the past. So there's an interesting chart here on the civilian overtime has decreased by 10% since 2011. If we limited that to the police department what would the similar line be?

[Chair J. Degnan] Well, we have actually two charts; on page 13 we have civilian overtime starting in 2011 and on page 14 we have the same thing for police.

[Chair J. Degnan] Yeah, it would be. I'm not smart enough to make the same statement since 2011 police overtime has what, decreased, increased and by what percentage? I'm just looking for parallel analysis.

[J. Dunn] It's increased. It's increased. Yeah.

[Chair J. Degnan] And that is what—no, that's budget.

[E. McCarty] That's partially increased and I don't want to speak, but it's partially increased work requirement so increased posts as well as the adjustment down that you're seeing is the impact of the classes coming in to address that increased work requirement.

[Chair J. Degnan] I'm just looking at the parallel treatment of for the Board's information of that, if it's—it is what it is.

[J. Dunn] Our staffing at a great deal to do with the overtime incurred.

[Chair J. Degnan] Okay, at this point we are way over time in terms of the Board agenda. An important subject and a much more helpful presentation to me and a much more informative one than we were able to get through the last time based on constraints of time and the like. So if there are no further questions from the commissioners.

[Vice-Chair S. Rechler] I just wanted to reiterate what Commissioner Bagger said which is obviously looking backwards is interesting, but I think now that we're doing the budgeting for the next year, you know, we should spend a lot of time in that joint operations and finance committee understanding what that overtime forecast is and why and what the mitigants we put in place to try to reduce it.

[Chair J. Degnan] And thank you to all of you for wrestling with this issue. I know how intractable it has been, but I think you're making valiant efforts and while we'd all like to see more progress I would commend you for the hard work you've done on getting this to where we are. Thank you. That was a discussion only item. There's no reason

for motion at this point and I think unless anyone has any new business that concludes the Operations Committee meeting.

And we move onto the World Trade Center.