

# Memorandum

To: James Tucciarelli  
From: Mary J. O'Connell  
Date: December 22, 2009  
Re: **City appeal of Comptroller's Determination**

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At 4pm on December 22, 2009, the City served the union with a Notice of Petition to overturn the Comptroller's Determination issued November 23<sup>rd</sup>.

The City is taking the position that the Comptroller's Determination was not supported by "substantial evidence" and is arbitrary, capricious and an abuse of discretion. Fundamentally, what the City is saying is that the match of STWs and SSTWs to Operating Mechanic A and Plant Operator was incorrect. The City also noted that during the hearing, the Comptroller revised his earlier findings as to the comparable titles. The City is further arguing that neither the rate of wages nor supplements set by the Comptroller is supported by the record, and that the wage rates and supplements set by the Comptroller are not the "prevailing rate of wages" as defined in the Labor Law. It asks the Court to annul the Comptroller's Determination and remand the case back to the Comptroller for further proceedings.

The union and the Comptroller will respond to the City's factual allegations and legal argument, and the court will decide whether the Comptroller's determination was supported by "substantial evidence." The court will either affirm the Comptroller's determination, or reverse and remand it back to the Comptroller for further investigation consistent with the court's decision.

The party losing the court proceeding may seek to appeal to the New York State Court of Appeals. Note that if the Appellate Division decision is unanimous, there is no appeal as of right, and the party will have to request permission to appeal from the Court.

After the conclusion of the court proceedings, the parties must bargain to determine how to modify the determination to account for differences in non-wage items such as pension, vacation, sick leave, health benefits, etc.