

SUFFOLK COUNTY LEGISLATURE

SPECIAL MEETING

THIRD DAY

MARCH 3, 2011

**MEETING HELD AT THE WILLIAM H. ROGERS LEGISLATURE BUILDING
IN THE ROSE Y. CARACAPPA LEGISLATIVE AUDITORIUM
725 VETERANS MEMORIAL HIGHWAY
SMITHTOWN, NEW YORK**

Minutes Taken By:

Lucia Braaten & Alison Mahoney - Court Reporters

[THE MEETING WAS CALLED TO ORDER AT 3:45 P.M.]

P.O. LINDSAY:

Okay. First of all, folks, let me apologize for starting late. Things are a little crazy here today, but we're about to start. If everybody could rise for a salute to the flag, led by Legislator Cilmi.

(*Salutation*)

Okay. We have no procs, we have no prayers, except everybody pray for me, all right? So sit down.

(*Laughter*)

Okay. We'll start off with the public portion. Each speaker has three minutes. Cesar Malaga, followed by Karen --

MR. LAUBE:

Roll call.

D.P.O. VILORIA-FISHER:

Roll call.

P.O. LINDSAY:

Oh, roll call. I'm sorry. Go ahead, Mr. Clerk.

(Roll Called by Mr. Laube, Clerk)

LEG. ROMAINE:

Present.

LEG. SCHNEIDERMAN:

Here.

LEG. BROWNING:

Here.

LEG. MURATORE:

Here.

LEG. EDDINGTON:

Here.

LEG. MONTANO:

Here.

LEG. CILMI:

Here.

LEG. BARRAGA:

Here.

LEG. KENNEDY:

Here.

LEG. NOWICK:

Here.

LEG. HORSLEY:

Here.

LEG. GREGORY:

Here.

LEG. STERN:

Here.

LEG. D'AMARO:

Here.

LEG. COOPER:

Here.

D.P.O. VILORIA-FISHER:

Here.

P.O. LINDSAY:

Here.

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. As I was saying, we'll start it with public portion. First speaker is Cesar Malaga, followed by Karen Derryberry.

MR. MALAGA:

Good afternoon, Presiding Officer --

D.P.O. VILORIA-FISHER:

Please make sure you're pressing the bottom of the mic.

MR. LAUBE:

You have to press it.

MR. MALAGA:

Oh, I have to press it. When did we get new ones? Good afternoon, Presiding Officer and Legislators. My name is Cesar Malaga. I am the President of the Hispanic American Association. I spoke several times concerning the nursing facility at the chambers. We are sure --

D.P.O. VILORIA-FISHER:

Mr. Malaga, can you speak -- oh, thank you, Kara.

MR. MALAGA:

All right. Thanks. All right. We are sure Suffolk County approved the building of the nursing facilities so that residents in need can be able to go to this place. I'm sure it was not built to be sold in the future to meet the budget needs of Suffolk County.

We Hispanics do not always agree with the County Executive Levy. We support his efforts to cut expenses so taxes will not be increased to meet expenses, but a nursing facility should not be sold to care for the budget needs.

Some municipal employees are overpaid. What we read in the newspapers, that municipal employees making a basic salaries, \$75,000 a year, he or she can retire making 200,000 or 300,000 a year is insane, it is greed. I mentioned to you several times here greed is destroying our country. It's not the fault of the municipal employees to retire making two or three times their basic salary, it is the politicians and the unions that make decisions to grant such amount of money to municipal employees. These views must be eliminated and must be changed. With politicians, increased taxes, unions demand more money for the members. Politicians grant the increase because unions support and donate funds to politicians to get reelected in the future. This is a vicious cycle that should be changed. We, the taxpayers, do not agree the budget -- we not get the budget to analyze line by line. The budget should be available in the libraries. We can look and be aware where and how we are spending our tax money. We can recommend which line items should be eliminated or decreased. I mentioned about three times here that how our tax dollars are wasted year after year in this County, John J. Foley Skilled Nursing Facilities should never be sold because of budget needs. I will not, mention but all of you know, we have the highest paid municipal employees in our country and the world. Let's not continue to be greedy.

D.P.O. VILORIA-FISHER:

Please wrap up, sir.

MR. MALAGA:

Our country is facing a critical economic situation that will continue for a while, perhaps years. Washington is not going to send money to Suffolk County as it did in the past. Let's be realistic. Our country is not what it used to be. Thank you.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

Karen Derryberry. Karen Derryberry. Okay. And if I could ask everyone please to adhere to the allotted --

MS. LOMORIELLO:

Your mic is not on.

D.P.O. VILORIA-FISHER:

I have my finger on it. Please adhere to the allotted time. We have many, many, many speakers.

MS. DERRYBERRY:

You ready?

D.P.O. VILORIA-FISHER:

Yeah. Can you make sure you're speaking right into the mic?

MS. DERRYBERRY:

My name is Karen Derryberry. As of tomorrow, I will be a one-month retired employee at the Suffolk County Sheriff's Office. I hate public speaking, so, I'm sorry, I'm very nervous. I didn't prepare a speech because I didn't know I was going to be here today.

I really believe that the Foley Center should not be sold. I want to remind you all that Mr. Levy, in his wisdom, has promised to use this money from the sale multiple times for multiple different allocations through the press. We were going to have Deputies, we were going to hire people, we were going to do this, we were going to do that. I am embarrassed to have been a member of AME union. I think it's terrible that the union has sold out Foley employees.

*(*Applause*)*

And now I think it's very dirty politics that the union has tied themselves to the new contract with the sale of the Foley Center. I think it's a lie. And that's all I have to say, because I'm terrible at this. Thank you very much.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

You did fine. Thank you, Karen. Our next speaker is Chris Destio.

MR. DESTIO:

Good afternoon, Honorable Legislators. Today it's possible that this votes going to come through here. And I think what's happening here with this Rozenberg deal, I think this whole deal just totally stinks. I think you have a major problem with this. I think if you have other options to look at, especially Legislator Browning's resolution, 2271, it also brings in a longer term revenue, not short term. But at the same time token, the Rozenberg deal brings in revenue right away. So, you know, Levy is saying there's 20 million dollars here that we need to fill that budget hole, but that's actually a phantom revenue here. Budget Review says it's 15 million. And I also believe, too, that if you eliminate the employee salaries and all these other -- like the lag payroll, I believe it's actually lower. So you're trying to tell me that we're going to dump this nursing home for 10 million, 12 million dollars? I think that's kind of terrible. And, plus, with Rozenberg's background, I really don't think this is a gentleman that you would like to sell this to.

And needless to say about the union here, I've never in my entire life have seen something like this where a union throws their members under the bus. And this is affecting our residents and our staff. Our residents are always paramount to me, but it's affecting the whole circle here. And to turn around and say that we're not going to have to a contract unless we sell the nursing home -- so you're putting our residents in jeopardy because of this? In my entire life, and I'm pretty new to politics, I've never seen something like this. I think it's a terrible thing that certain people have so much power and the way it's abused. I just hope, as we move along this process, that we always keep the residents paramount in our decisions here, especially the veterans in our nursing home. If my understanding is correct, Stony Brook is going to be losing 100 beds, so where are these veterans going to go? We have plenty of veterans at John J. Foley. And you know something, you keep eliminating the beds, we're still considered the safety net of Suffolk County.

I'd also like to comment on something, too. I believe Sawicki, Mr. Sawicki is doing an audit on the nursing home, and I must commend him on this. You know why? The employees have always said there's something smells with this -- with this two-and-a-half million dollar grant at the nursing home. Why do we have this grant going in the nursing home if you plan on selling it? If there's wrongdoing, so let's straighten it out. That's still State money. And if this is sold to Rozenberg, you know something, maybe the State needs to be reimbursed back on it, and that would be another burden on your back.

So any Legislators here that don't support, you know, I 'm sorry I can't convince you at this point, but you've got to say no to the Rozenberg deal and hopefully we can push Kate's deal through. Thank you.

D.P.O. VILORIA-FISHER:

Thank you, Chris.

*(*Applause*)*

Kathy Reeves? Kathy Reeves?

MS. REEVE:

I'm coming.

D.P.O. VILORIA-FISHER:

Okay. After Kathy is Susan Schlomann. Miss Schlomann, if you can start preparing to come up, wherever you are.

MS. REEVES:

Hi. Good afternoon, Members of the Legislature. My name is Kathy Reeves, I work at John J. Foley.

D.P.O. VILORIA-FISHER:

Barbara.

MS. REEVES:

I'm pressing. Can you hear me?

D.P.O. VILORIA-FISHER:

Is your finger on the button?

MS. REEVES:

I am.

MS. LOMORIELLO:

Just lean toward it a little.

MS. REEVE:

All right. My main purpose here is I'm not pushing -- I mean, of course I don't want you to sell the nursing home. Our residents have been scared for years about what's going to happen. It's finally come across that it's not closing. We need you not to sell it so that they have stability, and they'll be stable with the staff that are there, not with all new staff being brought in. And regardless of what Mr. Rozenberg says, the staff will change and so will the residents.

But my main reason that I came up here today is I want to thank every single one of you that supported us, that stood behind us, the Legislators, their staff, all of you. And we can't thank you enough, those of you that joined us in the lawsuit, those of you that voted not to sell, because it has made a big difference in all the residents at Suffolk County when we got the news yesterday. And that's really all I came up to say, is thank you, and thank you very much.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

Thank you. Susan Schlomann. Okay. On deck we have Harold Moskowitz. You have three minutes.

MS. SCHLOMANN:

Thank you. I would just like to once again urge you to sell the Foley home. I'm glad that there's a chance again, and that an out and out closing doesn't have to happen. I do think it's the best for the staff and for the residents for continuity and I hope that that will be your decision.

I wanted to remind you that the State Medicare Redesign Committee just recommended the closing of A. Holly Patterson in Nassau County, which is a county-owned quasi government-agency-run facility that's even larger than the Foley home, and the State has already recommended to us that we rid ourselves of this nursing home facility. Thank you. I urge you to sell. Thank you.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

Thank you. Harold Moskowitz. And after Harold Moskowitz we have Patricia Kliss.

MR. MOSKOWITZ:

Good afternoon. I also believe that, at this point in time, the best possible thing to save jobs at the Foley Nursing Home would be to go forth with the sale. But my statement today deals with a far greater issue than just the Foley Nursing Home, which is part of a greater picture.

The framers of our Constitution separated government powers into three branches. Although separate and distinct, they were to operate as a finely-tuned machine in the best interest of the people. We use that same model in our county, but as Abraham Lincoln aptly reminded us, a house divided against itself cannot stand.

There is a noticeable power struggle between the Legislative and Executive branches in our county, I believe to the detriment of our residents. We watch Executive Levy making tough decisions for decreasing current and future government expenses. We also watch as some members of this elective body introduce measures to limit the Executive's ability to control spending.

Concerning the increased cost of living and doing business in Suffolk County, we are not Democrats, not Republicans, not Liberals and not Conservatives, we are families and businesses finding it harder to keep up with costs. In the light of events changing the public perspective on government spending, I submit that this Legislature's actions sometimes seem out of step with the times. The people would like this body to work with the County Executive for fiscal soundness. If you cannot or will not put aside political and ideological differences to work with the Executive for the benefit of all of the people, then you will increasingly be viewed as part of the problem rather than part of the solution. The failed government model and policies of the Twentieth Century have to end. Thank you.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

Patricia Kliss. Patricia Kliss. You have three minutes. You press the button at the bottom.

MS. KLISS:

Hi. I'm Patricia Kliss. I'm one of the RNs at John J. Foley Skilled Nursing Facility. I want to thank all the Legislators for their support thus far. And I just want to say, please, do not consider selling John J. Foley Skilled Nursing Facility. Please do not sell us off. I'm sorry, that's all I have to say.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

Thank you. Okay. Just to clarify the process here, and if the Clerk would make sure that I have it set correctly, that's the last card in the Public Portion. We will now be moving into Public Hearing.

MR. DESTIO:

There is one more card here. I'm sorry.

D.P.O. VILORIA-FISHER:

Okay. We're going to have the Public Hearing now on John J. Foley.

LEG. BARRAGA:

She wanted to speak.

D.P.O. VILORIA-FISHER:

I'm sorry.

P.O. LINDSAY:

Wait a minute, wait a minute, wait a minute, wait a minute.

MR. LAUBE:

Announce if there's anybody else who wants to speak.

D.P.O. VILORIA-FISHER:

I can't hear you.

P.O. LINDSAY:

Wait a minute.

D.P.O. VILORIA-FISHER:

Okay. I'm asking the Clerk, is there -- there's another person who wants to speak on the Public Portion. Can you come forward, please?

MS. LOMORIELLO:

And we have AME that would like to speak.

D.P.O. VILORIA-FISHER:

On the Public Portion or Public Hearing? That's why I was explaining that we have both. We're going to have a Public Hearing on the nursing home. Just wanted to let you know. Okay. Are there any other cards on the Public Portion? Okay. Are you Mary Fredette?

MS. MCGREGOR:

No.

D.P.O. VILORIA-FISHER:

Okay.

MS. MCGREGOR:

Linda McGregor.

D.P.O. VILORIA-FISHER:

Linda McGregor. Go ahead. You have three minutes, Miss McGregor. Make sure that you're pressing the button at the base of the microphone.

MS. MCGREGOR:

Thank you for this opportunity to speak before you today. My name is Linda McGregor. I am a Suffolk County employee and registered nurse at the Department of Health Services. I am a member of the union, Suffolk County Association of Municipal Employees, and a Suffolk County taxpayer. I'd like to speak to the facts related to the sale of the John J. Skilled Nursing Facility.

I had reached out to my Legislators through E-mail; I didn't get a response. I'm aware of the letter that was addressed to many Suffolk County Legislators here from attorney Lawrence Gray, who contends he has experience and knowledge on the sale of public nursing homes and has worked under other government administrations, and he analyzed the contract of sale to the private buyers and he expressed some legitimate concerns. I was wondering if you could address to us your opinion on attorney Lawrence Gray's letter regarding the sale to the private buyers and the legitimate concerns he raised. He contends that the Suffolk County taxpayers would be taking a financial loss on this specific contract of sale.

Facts related to this that involve my union, the Suffolk County Association of Municipal Employees: My union president, Cheryl Felice, has repeatedly published that all of you, the Suffolk County Legislature, have violated the Mary Hibberd Law. Acknowledging that, she had a legal and moral responsibility to the employees of the union that she was elected to represent to seek judicial intervention on their behalves. She did not. So our union president violated her duty to represent the members of her union.

Today at my job, I work at the Riverhead Health Center, we were planning a farewell for more than a half a dozen employees who would have been affected by the bump-and-retreat, and instead it turned into a celebration because of the Appellate ruling, putting a stay on the layoffs.

Just this past Monday, I was speaking to a medical provider from Stony Brook University Hospital. They wanted a patient with special needs transferred to John J. Foley because they know they get excellent care over there and the admission was declined. And they were told, quote, "We don't know if we're going to be closing or not, but we can't accept any new patients."

Thank you for your time. Thank you for listening.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

Thank you very much. Our next speaker is Mary Fredette.

MS. FREDETTE:

Good afternoon. First of all, I want to thank all the Legislators who tirelessly stood behind us in this fight and continue to -- and yesterday I was very ecstatic and excited to hear that the lawsuit was won, only to find out today that our County -- our president, the union president is ready to sell us out and throw us down the river, just because we're not -- because we're a small entity. But the service that we provide at John J. Foley, myself as a nurse there, is beyond what you can -- you know, the money just -- it's beyond what money could pay. And it's not about capitalizing, it's about doing a service that is needed for the desperate -- you know, for people, to provide for people. You know, it's just common sense.

This facility has been there for 100 years and I just don't -- you know, to sell it for such a measly price, you know, it doesn't take -- it's just common sense, it's worth a lot more than what it's being sold out for.

And that's all I have to say, is just that we need to continue the fight. We won a battle and we need to continue fighting the war. The care that is given there is above and beyond the care that is given in many of the private sectors, and we need to set the example and standards for private sectors. That's all I want to say. Thank you.

D.P.O. VILORIA-FISHER:

Thank you.

*(*Applause*)*

P.O. LINDSAY:

Is there anyone else that would want to speak under the Public Portion, not the hearing, on the Public Portion? If there is, please come forward. If there's anyone else, would you please approach the mic and the Clerk will have you fill out a card. You can speak first and then fill out the card.

MR. LAHMANN:

Okay. My name is Walter Lahmann. I'm a resident of Suffolk County, I live in Northport. I've heard several times references to the fact that the Foley home is a wonderful place to be and a wonderful place to for the residents, but it doesn't agree with this report that I'm looking at off the internet for medicare.gov that says that the Foley home gets a rating of one out of five stars, which means much below average, it's the worst rating you can get. And there are item after item after item on here that are rated below average. I'd like somebody to tell me why this report says that and we continually hear how great of a place it is. Thank you.

*(*Applause*)*

P.O. LINDSAY:

Who else wanted to speak? Go ahead.

MS. LIZZOL:

My name is Madeline Lizzol and I've been an employee of the John J. Skilled Nursing Facility for almost 25 years now. And I wasn't prepared to say anything, but, you know, I've been inundated with a lot of papers from our secretary that a daily basis gives us the newspaper reports. And right before I got here today, I got a fax from another County facility, from AME Happenings, and it said that our -- that they wanted them -- another County facility who has a family member at my job wants them to come down to speak against us to close our facility, and her husband was there. And she said, "Maddy, how can I do that?" And I said, "Well, you do what you have to do, but you know the right thing to do." And they're sitting on the fence putting -- wanting to put him into another facility and she's been waiting, and like every day it's like an anticipation. And I can't tell you how much this has affected a lot of our personal lives, how we are like stuck on the edge and don't want to make a move, because we don't know what our fate is here. And it's a shame that I've been with the County for 25 years and I've never needed the union, but now I need them and where are they? Where are they? They turn their backs on us.

You know, I heard of the RFP, you know, the private/public entity that they wanted to provide, and that sounds like something that might be -- that works, you know, it's for both parties, you know? You know, I'm not sure exactly how politics runs and I'm learning a lot these last couple of months, because I'm not a public speaker and I'm up here a lot, and, you know, August 17th has profoundly impacted my life, when right here in this auditorium we saved a man's life due to the stress of what happens.

*(*Applause*)*

And thank God he's still with us today, you know? And it's really a shame that I'm a union member and I have to fight against my own union to save my job. We shouldn't have to be, they should be legally representing us. You know, I've been there and a lot of my day is spent not only nursing, but now counseling my patients from stress. And yesterday we had a going away party for one of my residents, and they cried so much because she's been there at the day care ten years, and the family took her out because she does not know the fate of this building. And she did not want to remove her, but she didn't -- there's no perspective. Where do we go, what do we do?

You know, I mean, I've been there for 25 years and I -- you know, today News 12 came to me this morning like off the whim and said, what about -- what's the difference in care between private and public? And you want to know what the difference in care is, is the continuity of care, the turnover of staff at a private industry. I've been in private places before and I came back to John J. Foley 25 years ago and I don't want to go anywhere.

D.P.O. VILORIA-FISHER:

Thank you.

MS. LIZZOL:

Thank you.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

Is there anyone who wants to speak during the Public Portion? Is there anyone who wishes to speak during the Public Portion? Ma'am, are you coming up here or are you leaving?

MS. CUELLO:

No, I'm coming to speak.

D.P.O. VILORIA-FISHER:

Okay. Come on up. Just come to the podium, please. You have three minute.

MS. CUELLO:

Hi. My name is Yira Cuello. I work at the John J. Foley, too. I just want to say that I'm a single mother and I came to this country because I was looking for a better opportunity for my life.

The other day I was talking on the phone with a friend going through all this that we are going through. My daughter I guess heard me talking, and after I finished, I went to her room to tell her something and I found her crying. And she told me, "Mommy, I don't want to be homeless. If you lose your job, what are we going to do?" Because I'm a single mother, I have nobody else in here to support me, just my job, and I'm putting her through school. She's going right now to college. And she is a very bright kid. And she -- she make National Honor Roll two times in a row. She went to Europe as a student ambassador representing the United States of America because of what this country have to offer her. She is starting and she wants to be a diplomat, because she wanted to be somebody, and she studied really hard. And when I saw my daughter crying, thinking that if I lose my job, she won't be able to keep going to school. Right now she is like -- she doesn't know if next semester she's going to be able to be in the school. She's going to have to stop going to school, start working. So I would like you to think about that.

Don't you want a better life for your kids, for your grandkids? Don't you want that they be able to go to school and -- if I was somebody else, I would maybe be in Social Service getting help, but, no, I choose to work and I work hard. And I've been working since the first day that I came to this country almost 20 years ago. Think about that. It is not right. And I feel so ashamed of my

supposed union that sell us, telling a few months ago, "We will stand together." And today, if they don't -- if you don't go over there and talk about agreeing the sale, then you're not going to have this. This is the kind of union that we want in the Suffolk County? I don't think so.

*(*Applause*)*

P.O. LINDSAY:

Go ahead.

MR. TOMASZEWSKI:

Yes. Good afternoon. My name is Dan Tomaszewski, I'm from Middle Island, and I came here today because I'm very, very interested and concerned about a very, very difficult decision that you all have to make. I did not intend to speak, but I chose to do so now.

You all have to make a very, very difficult decision and you're in a hot seat, and you got a lot to think about. I ask that you ask a question of yourself. Whichever way you decide to make a decision today, you contemplate getting in your car and you drive to John J. Foley, and you walk around those halls and you talk to the patients, because they can't come here today, they can't represent themselves, they need other people to do that. But you go there and you visit them and you explain to them why you voted the way you did. Now, I'm not telling you which way to go, that's your decision, but if you can live with that, then you've probably made the right choice.

And I'd like to conclude with one statement. Legislator Browning, I applaud your courage. Don't ever for one second let anyone in this country tell you --

*(*Applause*)*

Don't let them tell you that you don't have a right to go someplace and talk to the people that you represent. Thank you.

*(*Applause and Standing Ovation*)*

P.O. LINDSAY:

Kate, you want to take a bow?

*(*Laughter*)*

LEG. BROWNING:

(Shook head no).

P.O. LINDSAY:

Is there anyone else that would like to speak to us under the Public Portion? Okay. Yes, please come forward. Go ahead, Dennis, you're right there. Go ahead.

MR. BROWN:

Actually, if the Public Portion is concluded, Mr. Presiding Officer, and thank you for recognizing me --

P.O. LINDSAY:

It isn't concluded.

MR. BROWN:

Okay. But at the end of the Public Portion, the County Executive's Office would like to be recognized under the Legislature's recently amended rules. Thank you.

P.O. LINDSAY:

Okay. Do you want to speak under the Public Portion or the Public Hearing?

MR. BROWN:

Actually, it's under the recently amended rules of the Legislature, the County Executive's time after the Public Portion.

P.O. LINDSAY:

Okay, that's fine.

MR. BROWN:

Thank you, sir.

P.O. LINDSAY:

Thank you. Please come forward, sir.

MR. BARNES:

Good afternoon, everybody. My name is George Barnes. I've been here several times before. My son, Christopher Barnes, is a resident at J.J. Foley. He's been there since the end of October. He's a lifelong Suffolk County resident, a U.S. citizen born March the 2nd. Yesterday was his birthday, he's 38 years old. He suffered cardiac arrest while jogging in London, England almost six years ago. He came here on the 26th of October. Prior to coming here, he was turned down at four different facilities here on Long Island. I am proud to say that J.J. Foley accepted him.

Sadly, Chris is 100% disabled, both mentally and physically. He is unable to speak, he is unable to move his arms or his legs, or any part of his body for that matter. He's able to move his head. I believe he knows me, I believe he knows his brothers, his sisters and his cousins. He moves his head, he acknowledges to them.

I have to share with you folks that had he not been able to come home to his family and had J.J. Foley not accepted him, quite frankly, he'd probably still be in England and it would have been emotionally and terribly unable for anybody in his family to go see him, his aunts, his uncles, his brothers, his sisters, his nieces, his nephews. And I'm proud to say that the care that he is receiving at J.J. Foley is exemplary. It is a skilled nursing facility. The nurses, the OTs, the PTs, and the care that his receiving is second to none, and nobody else would take him. And I have to share with you folks, and I don't want to be passing judgment, but if Foley were a private facility, I really don't think he would have been accepted. And I have to share with you, if it becomes a private facility, I suspect that he'll be on the top of the list, because of his required care, that they'll be looking to discharge him. I don't like to say that and I don't like to pass that judgment, but I really think that's going to happen, because he requires a high level of care and skilled care, and I'm just not sure that's going to happen, and I really don't know where he'll go. I really don't know where he's going to be placed.

And I would ask you folks, one day, if you have 15 minutes, to stop by at J.J. Foley on the fifth floor, 507B I think is the room number, and stop and see him, just stop and see him. If you talk to him for a couple of minutes, just talk to him. Just tell him your name, just talk to him. He'll lift his head and he'll smile at you, he'll smile. Just lift his head and he'll smile. Just talk to him, tell him you're going to give him a kiss or a hug and he'll smile. He'll lift his head for you. And if you sell this facility, folks, if you don't look at some other alternative, and there are other alternatives, but if you privatize it, and privatizing it is a business, and I understand that businesses are out there to make money, they're out there to make money, and I understand that, and I just don't know where my son's going to go. And I don't wish this on anybody else here, I really don't. I don't wish this happening to anybody, your son or your daughter. But if you've got ten minutes, stop at J.J. Foley.

I don't know if the County Executive has ever even been there, I really don't know.

AUDIENCE MEMBER:

No.

I don't know if he's before ever been there, but he's trying to market a facility for business purposes. And I would respectfully suggest that there's a hell of a lot of other ways that we could raise the money to keep that facility open, even as a partnership, that we could raise the money to keep that facility operating. My late mother retired from that facility in 1972 when it was down the road. That place has been there for 100 years and is taking care of the needy. Why do we -- why do we balance our budget on health care? I don't get it. Anyway, thank you very much for your time.

P.O. LINDSAY:

Thank you, Mr. Barnes.

MR. BARNES:

Thanks.

*(*Applause*)*

P.O. LINDSAY:

Do we have someone else under Public Portion? Please come forward.

AUDIENCE MEMBER:

I've never spoken in public before but -- I've never spoken public before but I'd like to say this -- am I holding it down? Sorry. As you could see. This gentlemen spoke before and said it was rated number one somewhere, and I'm not interested in his real facts, but my nephew's there and the real facts are he's taken excellent care of. Again, I don't understand where that rating came from. He's been from nursing homes from the Hamptons to Far Rockaway, private and public. And let me tell you, this is the best nursing home he's ever been in. His care --

*(*Applause*)*

I have nothing to gain from this except to tell you how I feel. His care has been exceptional. A lot of places wouldn't accept him because he's only 59 and that means a long hall of taking care of him, and a lot of places don't want somebody that they have to take care of for a long time. They want little old biddies like me. Not for anything, in a few years I'm gone. But someone they have to take care of a long time, and good care and quality care, a lot of places don't want. So please think it over. Think it over carefully. There's not many places that take people like my nephew. Thank you.

*(*Applause*)*

P.O. LINDSAY:

Thank you very much. Is there anyone else that wants to speak under Public Portion? Okay. I'll take a motion to close the Public Portion.

LEG. ROMAINE:

So moved.

P.O. LINDSAY:

Motion by Legislator Romaine.

LEG. MONTANO:
County Executive.

P.O. LINDSAY:
Yeah, I'll take him now. And seconded by Legislator Eddington. Okay. All in favor? Opposed? Abstentions? The Public Portion is closed.

MR. LAUBE:
Sixteen.

P.O. LINDSAY:
And if the Executive --

MR. LAUBE:
Seventeen.

P.O. LINDSAY:
-- whoever's speaking on behalf of the Executive would come forward, please. If you want to sit down at the table and talk or you want to stand, whatever you want to do.

MR. DUMAS:
I'm good here. Thank you, Mr. Presiding Officer and members of the Legislature. My name is Ed Dumas. I'm a Chief Deputy County Executive. I'm here on behalf of the Administration today to implore you to vote yes on the sale of the John J. Foley Skilled Nursing Facility.

The enormity of the decision you make today cannot be understated. Mr. Rozenberg has indicated that without a sale today, a vote for sale today, he will take his down payment back. Therefore, there literally is no tomorrow for this deal. If you say no to the sale and no to the facility's closure, a fiscal nightmare will indeed ensue.

If it was the Legislature's desire to keep this facility open, then it was incumbent on the Legislature not to spend the 18 million dollars budgeted foreclosure on other things in the 2011 Operating Budget as adopted. The stark reality is, if there is no sale, the next step will be a resolution to come before you that's going to call for the layoffs of no less than 800 County employees, which will be the only way that we can fill the hole that such a decision will create in our budget. The only way to fill that void will be through layoffs and draconian cuts to service, cuts that your constituents will not understand. This can be averted. You have the power today to deliver the best possible solution to the largest amount of people.

Selling this facility would keep the patients of Foley, including Mr. Barnes' son, in their homes. It would include the vast majority of employees are continuing to work, including Ms. Cuello and her colleagues. It would eliminate millions of dollars of losses year after year, and would provide us with the funding to keep the 2011 Operating Budget balanced.

Over the course of this debate we have heard from individual Legislators and their concerns, and we have made every effort to address those concerns. We have set aside a million dollars for facility employees that would transition to employment of the private operator, and another million dollars to help patients stay in their beds, even when their medical needs change, and that would add even more protection than presently exists.

Some of you have advocated for public/private partnership to explore long-term care options. We're committed to working with you in crafting an RFP that would identify some of those options to be pursued, such as assisted living, transportation, and senior housing on the adjacent parcel in

Yaphank. The private operator can run this facility better and less expensively than the County can and does.

Changes to State funding formulas are wreaking havoc in this industry and counties across the State are scrambling to cut their losses. Most recently, Nassau County, which experiences less losses operating its nursing facility than does Suffolk because of its higher reimbursement rates with its hospital, has indicated it has to look possibly for a sale of its nursing facility.

The County negotiating team has struck a deal with the negotiating team of AME, the County's largest union, that both sides are extremely happy with, but that deal is strictly contingent on the sale of the Foley. Without the budget certainty of the Foley sale, the AME deal is dead, there will be no funds available for any kind of deal. This is a reality that AME's leadership understands. Without a sale and faced with a closure process protracted by litigation, we'll be dealing with the worst of all possible worlds, as every day we remain in operation beyond March 31st, it will require funding that we do not have. We're confident that based on the very strong wording of the lower court's opinion, that we'll prevail in the merits of the lawsuit on closure. But dragging that inevitable outcome out only digs a deeper hole from which we'll have to first climb. It will hamstring us at every turn, not to mention the fact that no department throughout the entire county now or during this litigation will be able to hire anybody in any similar title that exists presently at the Foley, as preferred lists have been created for those employees, and there'll be no hiring until this is resolved. And if that goes the route of the litigation, it could be until the Fall or even beyond. From custodians to account clerks, we will be hamstrung in that regard.

A sale of the Foley today will provide us with labor peace, it will maintain the balanced budget that was adopted, it will keep Foley patients in their beds and keep the majority of employees working. And we all recognize that the decision that we make are impacting the lives of real people, and we have the chance here today to do what is in the best interest of all of the residents we serve. And I cannot stress enough that failing to sell today will culminate in financial chaos, and no one can claim surprise when hundreds of layoffs follow, our historically high bond rating is downgraded, and services are slashed.

And I did want to point out, too, I know that today the Comptroller had issued an analysis of the process on the sale, and the most important point I think to consider, if you didn't notice it, was on page five of his report, where the Comptroller opined that the process followed by the committee does not conflict with New York State General Municipal Law or the County Code. He also noted that consultation with Division of Legal Services exposed no legal requirement to make the RFP amendments prior to opening the bids. And, as you know, and I know Presiding Officer was part of that process, the RFEI that initially anticipated a lease option did include language that said we could potentially consider a sale in the future, and that went all to 127 potential bidders. When the 12 respondents came in, two of them had given us an option that included a sale. We did an amendment to the RFP that was sent to all of the respondents and that was a completely open, transparent process, and, as the Comptroller indicates, an entirely legal one. Thank you.

P.O. LINDSAY:

Ed, I -- there's a couple of Legislators. That's why, you know, it wasn't under Public Portion, because we could have some dialogue.

I'll tell you, I don't know who sent you over there with that speech, but you didn't move the ball far down the court, I'll tell you that right now. You just did more to tee more of us off than anything. You just --

*(*Applause*)*

You know, for the last two days I've have been trying to negotiate with the Administration to protect the patients and the employees, that's my main concern, always has been. And you guys just -- you know, however far the negotiations went, you just said like it was unilateral that you instituted that. What are you trying to do, blow up anything that we're trying to do here? We're all concerned about the bond rating, we're all concerned about the Medicaid reimbursement. What do you think, we live in a shelter? We know we're in dire fiscal shape, but --

*(*Applause*)*

And we know about Mr. Barnes and the patients and all that, and we care about them, and we don't trust Mr. Rozenberg. We want language to protect them, if, in fact, we do agree with a sale. We want our employees, our excellent employees. I mean, we've come to know them over the last three years. We know them more than the County Executive knows them. They're before us all the time.

*(*Applause*)*

And all we're trying to do is to protect them. We're trying -- we don't want to see mass layoffs, we don't want to see those people laid off, we don't want to see that facility closed. We're trying our best here, and for you --

MR. DUMAS:

Then vote for the sale. Bill --

P.O. LINDSAY:

Don't come over here and grandstand.

MR. DUMAS:

This is not grandstanding.

P.O. LINDSAY:

Your boss, as of yesterday --

MR. DUMAS:

You are controlling this debate from a unilateral position yourself.

P.O. LINDSAY:

Okay.

MR. DUMAS:

This debate has been framed entirely by the Legislature. I'm here to say that you are not the only body of government that cares about the patients, that cares about the employees.

P.O. LINDSAY:

Whoa. Boy, I'll tell you, you don't show it over there. I'll tell you what, the best thing you could probably do is sit down, because you're not moving the -- you're not helping the cause at all.

*(*Applause*)*

MR. DUMAS:

Bill, before you is a deal that puts in the utmost protections for all of the constituents that we --

P.O. LINDSAY:

The deal is still being negotiated as we're talking. We were just out in the hallway saying, "Can you put this and that in writing," because we don't trust anybody. So don't tell these people the deal is before you.

MR. DUMAS:

The deal is before you. If we continue to negotiate and modify it, then so be it.

P.O. LINDSAY:

Legislator Browning, do you have something to say?

LEG. BROWNING:

Yeah.

P.O. LINDSAY:

I don't mean to be rude or anything, but you guys come over here and you're insulting, you really are.

*(*Applause*)*

LEG. BROWNING:

Yes, they are. I think Bill pretty much asked most of what I said, or what I'd like to have asked. However, Mr. Barnes is here. It took him five years to get his son here. You tell me that you can guarantee Mr. Barnes that his son, for the duration of his lifetime, will stay at John J. Foley; can you guarantee that?

MR. DUMAS:

Kate, I'm here to tell you that faced with --

LEG. BROWNING:

Yes or no. No, I don't want to hear excuses, it's a yes or no.

MR. DUMAS:

I'm not on trial here.

LEG. BROWNING:

You're telling me.

MR. DUMAS:

This is --

LEG. BROWNING:

No. Bill.

MR. DUMAS:

If this is going to be a dialogue, please let it be one. I'm not here to answer yes or no questions. As I'm saying --

LEG. BROWNING:

It's a yes or no answer.

MR. DUMAS:

-- the notion that Executive Branch has no compassion for the patients at the Foley is a fiction.

LEG. BROWNING:

No, he does not.

MR. DUMAS:

This is a fiscal crisis and it requires incredibly tough decisions, which requires leadership that is being exhibited on both sides of the aisle. I didn't come here with an intent to insult you. I came here with an intention to implore you to take this option or to negotiate one as we go forward here today, not to carve out the moral high ground on the issue. It's a horrific issue that we all face and there is no ideal solution. We're trying to find the one that works the best for the most and largest amount of all of us.

LEG. BROWNING:

So what guarantee do you have for the residents of John J. Foley that they will continue to stay in their beds? Do you have anything in writing that for the duration of their lives, if they choose to stay there, that they will stay there?

MR. DUMAS:

There is a provision in the contract that requires the patients in their beds to stay in the facility. We are adding an added protection of a million dollars for the private operator to absorb whatever additional costs may come, if the people presently in the facility whose medical conditions change, would make them eligible for transfer as they presently are under our ownership and management of the facility. This would give protections that don't presently exist with the County running the facility.

LEG. BROWNING:

But you will not make guarantees to anyone. I'd like to also ask, you are -- have you had negotiations with AME to find comparable jobs for the members who could potentially lose their job if Mr. Rozenberg takes over? And we know that what he's -- the first thing he's going to do is massive layoffs, and I've seen it, I have read about it in other facilities where 1199 represents them. So do you have comparable jobs for CNAs, LPNs, if they get laid off and if Mr. Rozenberg chooses not to hire them?

MR. DUMAS:

We have said from the beginning, Kate, that we would make every effort to keep as -- all of the employees in the facility that we can.

LEG. BROWNING:

See, you're not giving me an answer.

MR. DUMAS:

But what --

LEG. BROWNING:

Do you have CNA positions and LPN positions elsewhere in the County, yes or no?

MR. DUMAS:

The new operator will offer positions. This man is not going to start from scratch.

LEG. BROWNING:

Do you have positions in the County elsewhere, yes or no?

MR. DUMAS:

There are certain titles in the nursing home that there are no comparable positions for in the County.

LEG. BROWNING:

Thank you. That's my answer.

MR. DUMAS:

The hope is that those people would be employed with the new operator. And the other option, Kate, is 800 other employees will be laid off. You understand that the funding for this facility expires March 31st.

LEG. BROWNING:

And this Legislature votes on that, too, it's not the Executive.

*(*Applause*)*

There is another branch of government here and this Legislator does have the opportunity to vote on that also. And you have not answered my question. If CNAs or LPNs are laid off at John J. Foley and Mr. Rozenberg chooses not to hire them, will you make sure they have a job somewhere else in the County at that same title, yes or no?

MR. DUMAS:

The answer is no.

LEG. BROWNING:

Thank you.

MR. DUMAS:

And the answer is no --

P.O. LINDSAY:

Okay, okay.

MR. DUMAS:

-- with a limited, you know --

LEG. BROWNING:

I got my answer. No more questions.

MR. DUMAS:

Kate, this is -- if it's about trick questions, then you win. The answer, the truthful answer is we will make every effort to keep everyone employed. Can I make a guarantee that there will be some people that will not be employed? Of course I can't. But I can guarantee there will be a lot more people unemployed if this isn't resolved.

P.O. LINDSAY:

Okay. Vivian, Legislator Viloría-Fisher.

D.P.O. VILORIA-FISHER:

When the Presiding Officer made his remarks, I think you have to understand that you began your statement with a kind of blame game that we have been trying to avoid by saying that the budgetary crisis was begun by the Legislature, when, in fact, the County Executive created phantom revenue through a sale that had not been approved, through a sale that had not been approved by this Legislature, and so that was phantom revenue that he put in the budget and phantom savings.

But I have a question for you, Ed. You said that one of the crisis situations that would arise if we don't sell the nursing home is that there would be titles and there would be positions in the County that you would be frozen -- that you would not be able to fill. Can you itemize that? Approximately how many positions? And I'll tell you why I'm asking that. When our Director of Civil Service came here to speak, when Alan Schneider spoke to the Health Committee, it was very clear that there really weren't that many positions, as Legislator Browning has pointed out. There aren't that many titles that -- where bump-and-retreat would be moving. So I'm wondering how many titles will you be forced because of the court action or the court decision, that stay, where you would be hampered regarding employment?

MR. DUMAS:

I don't have a complete list. It's extensive, because in addition to the titles that are locked up now, there -- you know, it's every, you know, common rank and file title; that in addition to the specialized titles in the health care field, any account clerks, any maintenance mechanics, custodians, commonly used titles throughout the County. We are unable to hire people from the existing Civil Service list now because they've all been put on the preferred list frozen status, and that will remain throughout the duration of the court battle until this is resolved. We can't right now take people from those positions because we are obligated to continue to run the facility for as long as we are, you know, pending whatever resolution comes.

D.P.O. VILORIA-FISHER:

Okay. It seems from other information that I had gotten that there are only 27 positions and that there are three titles.

MR. DUMAS:

No. There are significantly more titles. And I work with Alan.

D.P.O. VILORIA-FISHER:

Okay. If you could give us more specific --

MR. DUMAS:

I can get you -- Alan has a list of all of the titles, and I have it in my office, I will get it to you.

D.P.O. VILORIA-FISHER:

Can you get it to us as soon as possible? The next item is that -- I've lost my train of thought. We talked about the titles, we talked about the fact that he put it in the budget. The -- I had a meeting with the Presiding Officer earlier and many of the elements that you're saying that you're coming up with I think were suggested by Mr. Lindsay, and so we do want to change that pronoun to "we" working together trying to reach something.

MR. DUMAS:

If I gave the impression that I was blaming you, or trying to take ownership of whatever solution may come about today, then I apologize for that. I know that this Legislature has agonized over this decision as long as Executive Branch has. I've talked with this -- with the Presiding Officer on many occasions about the difficulties and the challenges in dealing with this issue. I understand that we are all in this together, and that we all have to live with the decision, whether it's a sale or not, closure or not, and whatever financial horrors that might come about if we do nothing. I did not mean to give the impression that this was something you were ignoring or that's something that we were moving forward with unilaterally. That is not the case. We have been in a constant dialogue in attempts to get this done.

D.P.O. VILORIA-FISHER:

I have one more question, and you may or may not be able to address it right now on the record, but I'd like you to give me an answer at sometime.

There's been one particular gentlemen that we've come to know because he has been such an advocate for the workers and the patients at John J. Foley, his name is Chris Destio. You might have seen that he spoke during the Public Portion. It's come to our attention that Mr. Destio has -- is no longer at John J. Foley, that there has been a place found for him somewhere else in the County at a considerable loss of salary. What concerns me about this is that this seems like punishment. It seems that a person who's trying to speak up for the rights that he has as a worker, his rights as -- and his representation of his fellow workers and the people whom he serves, and isn't a millionaire, isn't collecting what someone said on the record, you know, a \$500,000 pension. He's a guy who's a hardworking guy and I think he's lost thousands of dollars in salary.

Now, it was my impression when Mr. Schneider spoke to us that the person would be put in a position that would be comparable. And when we spoke -- when Mr. Rozenberg testified before us and we spoke about the plan and the RFP, we also spoke about trying to find places that would be comparable, and this really seems like it was an outright punishment of someone who tried to speak up.

*(*Applause*)*

MR. DUMAS:

I mean, the way I understand how Civil Service works in this regard is when layoffs like this occur, it impacts people based upon their seniority and that is the first threshold. Then when you bump -- if you have a place to go under the bump-and-retreat rights, it is the closest comparable position. This is done by formula, there's no room to be discretionarily cruel to anyone. It's essentially an analysis that's done, you know, without any kind of discretion, that's my understanding. And if I'm wrong, I'll find out, but I simply know that --

D.P.O. VILORIA-FISHER:

Well, I have to say, I do feel very skeptical, because this is a man we've come to know because of his advocacy on behalf of his colleagues and himself, and he took a big hit and he took it early in the process. So I just want to put that on the record, and it's --

MR. DUMAS:

See, and I believe that's a seniority issue. I will look into it and if it's not the case, I'll report back to you, but that was based on seniority and the available title that he could bump into.

D.P.O. VILORIA-FISHER:

And I believe this is a question that should have been brought up very loudly, very clearly by his union and it wasn't. So I'd like and answer to that.

*(*Applause*)*

P.O. LINDSAY:

Okay. Legislator Barraga, you --

LEG. BARRAGA:

Mr. Dumas, let me ask you a couple of questions. I just want to make sure for the record that the transitional aid that we had discussed all along, the 2.3 million dollars, but a component of that is still in there. The whole aid is still in there, but a component that has to do with if this facility is sold, whereby the then former employees would receive the same salary that they had been

receiving with the County. So if the private vendor was offering less, the County would make up the difference for a period of one year; is that true?

MR. DUMAS:

I believe the last time the Legislature took up the issue of the sale, there was a two million dollar package for those transitional costs. In the earlier version of what we were discussing today, that was split, a million for employees and a million for the added patient assurances. But, you know, as the Presiding Officer indicated, there are still discussions going back and forth right now, so I believe that's still in flux.

LEG. BARRAGA:

Because originally, as I understood it, for example, if I was a County employee working at Foley and I was making 45,000, and the facility was sold and I went to work for the new owner at 40,000 for a period of one year, I would get the 5,000 from the County to make up the difference.

MS. CORSO:

The money, we could put the money in, but the terms have to be collectively bargained, so whatever they decide is what will happen. We can't set the terms, you -- neither you nor I can set the terms.

LEG. BARRAGA:

Well, who's going to do the collective bargaining?

MS. CORSO:

I guess we'll talk about it -- you know, we'll have to figure it out. Is Jeff --

P.O. LINDSAY:

Could I just weigh in on this? The original proposal that you -- that money was taken off the table at some point in the process. There was no money. When the Executive came to me yesterday, there was a lower threshold that was a starting point and we kept talking about it. You know, one of my wishes is to see that quantified, how it's going to be divvied up, and there -- if I'm not mistaken, Ms. Corso, you guys are working on a revision that will show you how the money will be dispersed.

MS. CORSO:

We have in the -- we have in the resolution that we gave you kind of like an even split. But I'm -- you know, but --

P.O. LINDSAY:

I know, but you -- I'm -- when I was in the back before, I was told that that's being modified, right?

MS. CORSO:

Right. We're bringing it up to your threshold that you asked for.

P.O. LINDSAY:

Right.

LEG. HORSLEY:

Do we have that resolution?

P.O. LINDSAY:

No, we don't have it yet; it's being worked on as we speak.

LEG. BARRAGA:

As I understand, there's one million in funding to assure continuity of care for current facility residents, and one million in transition money for facility employees.

MS. CORSO:

Right, but as part of this give-and-take that we have, I don't think it was the desire to have that million. But, again, we can break and talk about it.

P.O. LINDSAY:

Yeah. I want --

LEG. BARRAGA:

That's still open to negotiation?

P.O. LINDSAY:

No. I wanted to see the two million back on the table for the employees. And we're talking about it, you know, and I thought we had an agreement on it, but --

MS. CORSO:

Yes, we do.

P.O. LINDSAY:

Okay.

MS. CORSO:

We have a two million dollar agreement for the employees.

LEG. BARRAGA:

Okay. All right. So going back to my example, if I take a \$5,000 cut in pay for the year, do you make up the difference?

MR. TEMPERA:

And, again, I think what Connie had said -- Jeff Tempera, the Director of Labor Relations. All subject to collective bargaining between the County and the union. We can't dictate the terms of an agreement with AME. AME represents the employees, and until we reach an agreement, we can't walk into a room and say, "Here's the terms, take it or leave it," it's an improper practice.

LEG. BARRAGA:

All right. Okay.

MS. CORSO:

What we did in the resolution is we laid out the options that we thought you could do. Now, whether, you know, it's A, B, C, D, just like we discussed, subsidizing your salary for a year, or a one-time bonus, or however -- it's all subject to a negotiation, but however you split the two million dollars up, it's two million dollars.

*(*The following testimony was taken & transcribed by
Alison Mahoney - Court Reporter*)*

LEG. BARRAGA:

But if the union goes back to the original package where the employees' salaries, the differential would be covered for a year, you don't have a problem with it.

MS. CORSO:

No.

LEG. BARRAGA:

Okay.

MS. CORSO:

As long as it doesn't add up to more than \$2 million.

*(*Laughter From Audience*)*

LEG. BARRAGA:

All right. Well, that's what the figure was. The original figure I think was 2.3 million for all the transitional elements in the package.

MS. CORSO:

And it does, it does cover it; \$2 million does cover that.

LEG. BARRAGA:

Okay. Now let's -- you know, as a Legislator, all of us have been sitting here for at least three years dealing with this issue, and as Mr. Tomaszewski said when he got up to speak, it's a difficult decision. But the reality as an individual Legislator, yes, it's a difficult decision, but on a personal level I risk nothing. I really have to concentrate my decision on the residents and the employees of the Foley Nursing Home and what is in their best interest at this particular time.

And as I look at it, you know, we have like three options; you can sell it, you can close or it can remain open, and this special deals with the sale. And certainly I would like to see all of the employees continue their employment, but you're never going to get an absolute guarantee from an employer on that.

The residents, on the other hand, I would hope that all those residents would stay exactly where they are, because for any of you out there who have dealt with the elderly, for example, as one gets older, one likes to live in a very structured setting where they have familiar surroundings, familiar people and they have a routine every single day. And certainly that's most assuredly the case when someone is in a nursing home or an assisted living facility. But the last thing I would like to see is a closure where these people would be dispossessed and spread throughout the County; it would be both psychologically and I think physically devastating to many of them, and the sale would not necessitate that. But if you move to a closure, you're not only dispossessing the residents, the employees are basically terminated as well, unless there's sort of a bump situation with reference to the County.

And keeping it open would just -- the money is just not there to keep it open. And then if you do keep it open, there's a real potential that at some point the figure has been used 800 employees, it could be 600, it could be 900, these are people who aren't, in many cases, even following this; they may be home in their living rooms having dinner right now, never feeling that they're going to possibly be in harm's way if this place is kept open.

So when I take a look at the three options, the best option at this juncture is the sale. It gives the better opportunity for people to stay there as residents and lays down a parameter that most of those who are employed there will stay employed, as opposed to a closure or there's dispossession, termination, as opposed to keeping it open where there's no money in the budget and seven or 800 people wind up losing their jobs.

I guess my main concern, and I'm going to push this a little bit, I want to make sure that if I vote for the sale, and I will, that that transitional aid money is in there. But you know, I'll be candid with you, Mr. Dumas, I'm fed up with this. It's been three years. The clock isn't ticking, the clock has stopped. It's time to make a decision. This is the second vote on this issue. I really don't want to take a third or a fourth or fifth vote. Based on what happens today, everybody will move forward, hopefully for the sale. But if you want to take a look at the courts and get involved with closure, so be it, you want to wind up keeping it open, but the ramifications of those two other options are extremely negative for everyone at this juncture.

P.O. LINDSAY:

Legislator Kennedy.

LEG. KENNEDY:

I understand some of the sentiment that the County Executive's Office brought across. I did have a question for Mr. Tempera, though, in some of what the dialogue was here, and maybe I just misunderstood. When you speak about the sale and the prognosis for the employees post-sale, are you suggesting that AME would continue to be the bargaining unit for them, as they would presumably become employees in a private sector?

MR. TEMPERA:

I was referring to the negotiation of a package from the County paying them as County employees as they leave, a severance package. Not anything to do with benefits once they go over to a project facility.

LEG. KENNEDY:

So just so that I make sure that I understand it, and I think I do, that when they -- if a sale was to go forward, they stop being County employees, they stop being municipal employees. They may be hired by Rozenberg, they may be hired through 1199, they may be hired by the man on the moon, but they're not Suffolk County employees anymore; is that correct?

MS. CORSO:

Can I get in here a second? Because this is part of the negotiation and part of the terms that the Presiding Officer brought to us and that we've agreed to. That there would be two -- that Rozenberg wouldn't interfere in any union organizing and that the union -- those employees would be able to separate from their union, which I think, if Jeff can correct me, is what would happen anyway.

LEG. KENNEDY:

Connie, I -- maybe I should ask it a different way, because I thought I asked it in a way that was pretty straight-forward. If there was a vote to approve a sale to Mr. Rozenberg, the 240 employees that are still on the payroll in Fund 632 would no longer be employees of the municipal corporation of the County of Suffolk.

MR. DUMAS:

At closing.

LEG. KENNEDY:

I see everybody nodding their head yes.

MS. CORSO:

12/31/11.

LEG. KENNEDY:

I'm sorry?

MS. CORSO:

1/1/12 they would cease to be County employees.

LEG. KENNEDY:

On January 1st of 2012. But we would be bargaining for --

LEG. HORSLEY:

Look at number five, that's the language.

LEG. KENNEDY:

I did see some of that as far as where things go.

D.P.O. VILORIA-FISHER:

(Inaudible).

LEG. KENNEDY:

I'm sorry, say again?

D.P.O. VILORIA-FISHER:

I think what (Inaudible).

MS. MAHONEY:

I cannot hear you.

D.P.O. VILORIA-FISHER:

Jeff, what I just said -- I'm sorry, it's a side-bar. John, if I may, you're saying the County would have to make the deal with -- I forgot this is Bill's mic and it stays on. That the County would be making -- I'm going to use the term "making a deal", but making the arrangement with these employees while they're still employees of the County before the sale is consummated; is that what you're saying, Jeff?

MR. TEMPERA:

That's correct. We're negotiating a severance package with the employees as County employees, and this is the impact of what happens to them. They're being laid off; as part of this transition, we would negotiate with AME a severance package.

LEG. KENNEDY:

And is it your proposal, just so that I make sure that I understand, that unless we negotiate for them to voluntarily separate 250, the administration's position is you're going to have to move to terminate 800 or whatever number it is you want to put out there.

MR. TEMPERA:

I don't know that I understood the question.

LEG. KENNEDY:

Well, I think Mr. Dumas said before that failure for us to go ahead and embrace a sale proposal, which we've repeatedly not accepted previously, is now going to predict an action of laying off "X" number of County employees. I mean, it's moved, I've seen a thousand, I've seen 800.

MR. DUMAS:

That's only coupled with the inability to close, as was in the adopted budget. It would be -- if you --

LEG. KENNEDY:

Well, that's going to portend a whole nother (sic) discussion, because we're under a restraining order at this point. And it's going to be my contention that we can take no action whatsoever, we're enjoined, and I shared that earlier. But I think there's some other types of options that we might have under the budget. I just wanted to make sure that I wasn't confusing or misunderstanding what the notion is with the sale. On some date certain, in this case I guess it's January 1st, the 250 people that are now municipal employees stop, they're laid off. So I appreciate that. Thank you.

P.O. LINDSAY:

Legislator Stern.

LEG. STERN:

Thank you. I just wanted to go back to the \$2 million number, I think that that was confirmed during the course of the conversation during Legislator Barraga's questions, that there would be this \$2 million set-aside for the benefit of the employees. But earlier you had also mentioned this \$1 million figure that would be for the benefit of the residents, if and when, as they remain at the facility, if there were additional medical costs that weren't covered for some reason, that there would be this pool of money as well.

Number one, that's the case? I just want to be clear on the number. Because before you said that there was a one million and a one million for a total of two, but now we're saying two million for the employees. I just want to be clear that there is the additional million that would be for the benefit of the residents.

MR. DUMAS:

Yeah. Unfortunately, Steven, I guess things are moving behind the scenes now. So while those details may be the case as we speak, they may have changed ten minutes ago. There is some ongoing negotiation and discussion right now, and I'm before you and not privy to them so I can't answer with a hundred percent certainty.

LEG. STERN:

You're saying that there's a possibility that there wasn't that million dollar figure for the benefit of the residents as we speak.

P.O. LINDSAY:

Could I just interrupt? Steve, we're going to get a revised bill as per some of these discussions. If we don't get a revised bill, it's not there.

LEG. STERN:

Right.

P.O. LINDSAY:

All right? But I want to see it in the bill.

LEG. STERN:

Okay. Is that -- and I appreciate that. Is that something that -- I guess my question, Ed, is if that is an acceptable provision, any idea how that would work? If there is to be this set-aside procedurally, where does that money go? Who makes the determination as to how and when that money is used for the benefit of the residents? If you feel it's premature to have that discussion because it hasn't been negotiated for sure yet, I appreciate that. But procedurally, it's going to be a

concern that I would like to have addressed.

MR. DUMAS:

Yeah, that would be, as I understand it, would be a negotiated side agreement. A pool would be established and then a side agreement with the logistics of that would be -- you know, a reserve account would be established and then a procedure for how to draw from that and when to use it would be done as a side agreement of the contract.

LEG. STERN:

Okay. We'll continue that part of the discussion. Thank you.

P.O. LINDSAY:

Okay, I don't see anybody else, so have a seat.

Before we go to the public hearings, I have some other procedural matters that if you go to your packet, I want to take a vote on two Procedural Resos.

MR. NOLAN:

And CN's.

P.O. LINDSAY:

And CN's. One is for the Treasurer, I think she is -- I don't know whether she's still here, but I promised -- yep, I'm sorry. I'm sorry, Ms. Treasurer. She's still hanging in here valiantly. I told her I would try and take that as soon as I can.

It's *IR 1096-11, it's authorizing the County Treasurer to borrow cash funds from other County funds (County Executive)*. This is a Procedural Motion, really a procedure; it isn't a Procedural Motion, it's a procedure that we do really every year. So does anybody have any questions of Ms. Carpenter, our Treasurer, on this? And if not, I'm going to make a motion to approve.

LEG. NOWICK:

Second.

P.O. LINDSAY:

Second by Legislator Nowick. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. Angie, you can go home.

MS. CARPENTER:

Thank you.

P.O. LINDSAY:

You're welcome.

MS. CARPENTER:

Not home, but back to work.

P.O. LINDSAY:

Okay. And the second one is IR 1232, and this was the one with the Legis --

D.P.O. VILORIA-FISHER:

Tobacco.

P.O. LINDSAY:

No, no, no, 1232 is the gas tax that we had a problem with in procedure and the State told us we have to pass a new reso.

1232-11 - Of the Legislature of the County of Suffolk, electing a cents per gallon rate of sales and compensating use taxes on motor fuel and diesel motor fuel, in lieu of the percentage rate of such taxes, pursuant to the Authority of Article 29 of the Tax Law of the State of New York (Muratore).

LEG. KENNEDY:

I want to make a motion to approve on that one, Mr. Chair.

P.O. LINDSAY:

Okay. Legislator Muratore, would you like to second that?

LEG. MURATORE:

Yes, please.

LEG. KENNEDY:

And on the motion, I appreciate the fact that the County Executive assisted us with bringing this CN forward.

P.O. LINDSAY:

Okay. We have a motion and a second. We've passed a similar one before. Any questions? All in favor? Opposed? Abstentions?

D.P.O. VILORIA-FISHER:

Opposed.

LEG. SCHNEIDERMAN:

Tim, cosponsor, please.

MR. LAUBE:

Sixteen (Opposed: Legislator Vilorina-Fisher).

LEG. HORSLEY:

Cosponsor.

LEG. ROMAINE:

Cosponsor.

P.O. LINDSAY:

Okay. With that, I will go in to the Public Hearing.

UNKNOWN SPEAKER:

(Inaudible).

P.O. LINDSAY:

No, it's just to be laid on the table. I'll do that at the end of the meeting.

Okay, we're going to go to Public Hearing on the Foley Resolution and I have a stack of cards here. First up, Chris Destio followed by Kathy Reeves. So if you could come to the mic and we'll see if we can go through this as fast as we can. Okay. Chris, come on up, you're up, followed by Kathy Reeve. Chris, you've got five minutes under this portion.

MR. DESTIO:

Thank you, and I plan on using every bit of it. I brought up at the Health Committee that -- my name is Chris Destio and I'm the one that went from a Grade 14 to a Grade 8. I believe that once it leaves Civil Service's hands, I think that's where the gray area is. Then Health Services takes over, which I think it's Levy's people, and then they can basically pick and choose what they want to do. So I believe that's exactly what happened to me here, is that they figured here you've got a vocal person here and he's -- you know, you've got a unique position in the County, and so we have our avenue to get him out of there so he can shut up; that's exactly what happened here. And plus, he also laid off three custodians in our department, he totally attacked our department. So this is what happens to people who try to do the right thing?

And Mr. Dumas is up here saying how compassionate they are and everything. Well, they also fired the gentleman that had a massive heart attack here and almost died, Pete Mastando. Did you know that he also got fired, too? He was forced into retirement. And his office is talking about compassion? You've got to be kidding me. We're fighting Mr. Levy and we're fighting our union. This is all about the residents here.

Applause

And God forbid you speak up against the union, you're going to get slapped down.

Applause

Terrible, ain't it? There's a democracy here, you're allowed to speak your mind. And obviously there's a lot of people, I know the Legislators don't like to get involved with union business, but you know something? This affects our residents here and I think it's a terrible thing.

But I'm not here to talk about that, I'm here to talk about this deal with Mr. Rozenberg. If Mr. Levy gets his way with the Rozenberg deal, he's going to put that metal on his chest and parade it around like, "Look what I've done." Just like he did with the Police, "I won." He's going to use this in his campaigns to run around and say, "I got the nursing home." He's going to use this, the residents and the staff here, as his campaign step. This is exactly how he's going to approach this.

Anything is better than a Rozenberg deal. What we have to do here is -- I don't know where you're going to find the money. I'm not a budget analyst, but I really think Kate's proposal needs to be looked into, Legislator Browning's proposal. Like I said at the Health Committee, it's a longer term revenue, but you know something, if he can hire a Commissioner for Energy for \$115,000 and he lays off a dietary worker at a Grade 7 that makes \$26,000 and another 15 employees, isn't there something wrong here? He's laying off and then he starts hiring. I mean, what's the problem here?

I mean, and these layoffs, too, in my opinion, were done totally illegally. Did anybody vote for these layoffs at Foley? Don't you's have the right to vote for layoffs? I believe you's do, and I still believe that's in a violation here. And I also believe, too, that any transfers within the County, that you still need a notice, and I don't believe I got any notice at all. The only notice I got was from

AME which I grabbed that letter and I trashed it, because I don't need that no more.

Applause

So please, all I ask you is that this is not a good deal with Rozenberg, you have to understand this. I also work in the private sector, too, part-time; I work two jobs. And I got a heavy -- I got slammed pretty heavy with this demotion. A good employee, 450 hours sick on the books, I've never been late in 12 years, check my records, and this is how I get treated. And they say that Levy's Office is compassionate? I've got to travel 40 miles. And you know something? I'll travel a thousand miles to do whatever I have to do to keep fighting for the nursing home. I'm not there no more, I don't have to stand up here. I don't have to do nothing. I believe this is right. But I really think you guys need to take apart this deal and look into this audit for this two-and-a-half million dollar grant money and see what's going on with that, because that doesn't smell right to me. Thank you.

Applause

P.O. LINDSAY:

Kathy.

D.P.O. VILORIA-FISHER:

Who's on deck?

P.O. LINDSAY:

And we have Phyllis Garbarino on deck.

MS. REEVES:

I came up here to tell you, as Chris did, the deal with Mr. Rozenberg stinks. Number one, you can't get any guarantees. Even if you have it in writing who's going to uphold them? Is Mr. Levy going to take back the nursing home if he starts shipping residents out? They have done this over and over and over again; they send them out to the hospital and they don't take them back.

When the TRO was originally in place, residents that were sent out and then the TRO was lifted, they were not going to be taken back. Mr. Rozenberg is going to do the same thing. The County has set aside a million dollars for the residents? Any residents who don't have hospitalization -- some kind of insurance, that will last about four days, maybe a week.

Applause

It's nothing. And the cost of health care is going up daily. It's -- I don't think that the majority of you, and I'm not saying it to degrade you or anything else, realize what's involved in health care; monetarily, physically, emotionally, mentally. It's not just going in and changing a diaper or giving a medication. As Mr. Barnes said, Chris hears and Chris recognizes. I've talked to him, I've given him a kiss and he laughs right in my face. He knows what's being said. And those of us at John J. Foley, we have fought in the lawsuit and as I said, we're very thankful to those of you who have joined with us. And we know changes have to be made and they're going to be difficult changes and we know that and we're ready for it. We've been fighting this for three years, to make changes, to make it better, to do what needs to be done to make it viable. And I'm not saying we're going to make any kind of a profit, but we're going to make it viable and we're going to make it that at least it hopefully breaks even, but we need the continued support.

And as far as compassion, Mr. Levy has none. The minute the TRO was lifted, he had our Social Services Department shipping out people faster than you can change your pants, and this is no lie. And people have been scared, they've been taking their families out. They finally got some reassurance when the lawsuit was won. And it's a facility that's been there for over a hundred years for the residents of Suffolk County, not for Mr. Rozenberg to make a profit. And hopefully we'll be there for another hundred years for the people of Suffolk County.

And I hope none of you ever have family members that need to be put in a nursing home, because there's an awful lot of us out there. And the baby boomers out hitting and the projection is there's going to be well over a thousand beds needed in Suffolk County within the next 10 to 15 years, over and above what we have. So closing John J Foley, selling John J. Foley is probably one of the biggest errors you can make, because it's an asset that's been there for over a hundred years and we need to continue to be there. Thank you very much.

P.O. LINDSAY:

Kathy, before you go, Legislator Kennedy would like to ask you a question.

LEG. KENNEDY:

Thank you for coming out. Thank you for the care that you provide there. You always talk very eloquently about the care that's given there and I know firsthand, we've seen on many occasions how it's done well. But we've heard repeatedly about some of the costs associated with operating John J. Foley.

MS. REEVES:

Right.

LEG. KENNEDY:

And the fact that it periodically has sustained some losses. How long have you worked at John J.

MS. REEVES:

It was eight years this month.

LEG. KENNEDY:

Okay. And you've worked in other places throughout health care? There --

MS. REEVES:

I've worked in Nassau County Medical Center and I've worked in the State.

LEG. KENNEDY:

Okay. How many physicians do we have at John J right now?

MS. REEVES:

Four or five and two Nurse Practitioners.

LEG. KENNEDY:

So we have seven personnel there with prescriptive privileges and things of that nature.

MS. REEVES:

Yes.

LEG. KENNEDY:

Okay. What's the usual compliment for a nursing home?

MS. REEVES:

Private nursing homes, they don't have any. They come in maybe once a week, once a month. The nurses call them, they give them telephone orders and basically they come in once a month, once a week and check on their patients and that's it.

LEG. KENNEDY:

But John J has seven.

MS. REEVES:

Yes.

LEG. KENNEDY:

Okay. How about the admissions function? I know up until probably about four, five months ago we were about -- oh, about 95%; 95, 96 somewhere around there.

MS. REEVES:

Well, when Mr. Levy decided he was going to close the place, he told our admissions department that we weren't allowed to take admissions.

LEG. KENNEDY:

I'm sorry. Say again?

MS. REEVES:

I said when Mr. Levy first decided he was going to close the place, the Admissions Department was told they weren't allowed to take admissions. Somebody in the facility called the Department of Health because they had not yet gotten the approval for his discharge plan, which meant he was in violation by not allowing admissions; then within 48-hours we were allowed admissions again.

LEG. KENNEDY:

So in other words --

MS. REEVES:

But basically they were -- you know, the Admissions Department had to tell him that, you know, "We're in the closing process," until the lawsuit started and then things went back and forth. But the minute the TRO was lifted, Mr. Levy had laid off people, he had residents being sent out and we -- I mean, we have lost probably about 40 residents with Mr. Levy's scare tactics, because he keeps threatening.

LEG. KENNEDY:

But about 20 of them have come from the Alzheimer's Unit, haven't they?

MS. REEVES:

Most of them have come from the Alzheimer's Unit because they're difficult to place and they have behaviors. There was a resident, not from our facility, but that was supposed to go to another nursing home because they were supposed to come to us, but because of the prospect of closing, the family changed their mind. It was an HIV resident. They were sent to another nursing home, when they found out he had HIV they -- a private facility, they shipped him to a shelter.

LEG. KENNEDY:

To a shelter?

MS. REEVES:

To a shelter, yes.

LEG. KENNEDY:

I take no pleasure in discussing about what the hardships are that go on there day-to-day. And quite candidly, my point has been throughout all of this, as you said, John J. Foley can be run efficiently, it can be run economically.

MS. REEVES:

The staff have recommended to the Administration ways of saving money over the years and they have gone on deaf ears, very deaf ears.

LEG. KENNEDY:

Okay, thank you. I appreciate you coming out. Thank you.

Applause

P.O. LINDSAY:

Okay, thank you. Thank you, Kathy. Phyllis, followed by George Barnes.

MS. GARBARINO:

As I've stated to this body before, I'm here in three different roles; one as a resident of Suffolk County, one as a recently retired employee of Suffolk County, and the third as a past administrator of AME, I was past President of AME.

As a resident of Suffolk County, I think a big part of the problem is the people that are saying "Sell this facility," coming up and saying "Sell this facility," only hear, "It's costing us everything." They are under the impression that every dollar to operate this facility is coming out of their County tax portion. The County tax portion that that has been put up many times is the smallest portion of your tax bill, but they think every dollar is going there. They are not really aware, Medicaid funding, Medicare funding. And in the case of my mother, and I'm sure there were many like that, I chose John J. Foley when she needed a nursing home because of the extenuating care they have there. My mother was private pay, I'm sure there are many others like her. So it's not being presented to the public right and that's why they're so angry. They think that, "Oh, I'm paying a million dollars for this person right out of my own personal pocket." That's one issue.

The second issue is as an employee of Suffolk County and past representing them, I think what is happening right now by the proposed collective bargaining agreement which just came to light late last night, that pits employee against employee, that puts in writing, that has been signed by the Presidents of the union and the Director of Labor Relations that states, "You can only have this if John J. Foley is sold." It puts 6,000 people against 250 and said, "Get out, I want my contract, I don't care if you have a job. I don't care who's taken care of. Let these people die, let them find other places," and you've had enough evidence to show that there aren't places to take them.

And I thought that's what public health was supposed to be about. Public health is about taking care of the public. And it's not just the poor and the indigent. This facility has existed for a hundred years, and a mere 15 years ago they put up this building, with the anticipation and the past history they had, that it will be taking care of the public in Suffolk County. Everything is being lost now.

But this last thing that has happened has put everybody in the middle. You as Legislators now have to choose what segment of the employee membership you care about. You have to worry about the employees. It's a terrible thing to happen, this cannot go through the way it has been proposed. And if somebody is going to make money out of this, as Mr. Rozenberg will, why isn't the County making money? The County has always been given proposals on cost cutting and cost

saving. Administrators have taken jobs there and only stayed a few weeks because their hands were tied by the Executive Branch of government, "You can't do this." That tells you they wanted it to fail, they don't want it to succeed, and perhaps be a moneymaker. You have the rehab facility there, which since that was placed a huge number of people coming through there. I don't believe that's losing money.

So I implore you, please do not take this action now the way it is proposed to you. It is going to be damaging in the long run to thousands of people, from now and in the future. Thank you.

Applause

P.O. LINDSAY:

Thank you, Phyllis. George Barnes followed by Pat Rollins.
George Barnes?

UNKNOWN AUDIENCE MEMBER:

He's coming.

D.P.O. VILORIA-FISHER:

He's coming up.

P.O. LINDSAY:

Come on, George. Come on. Where's Pat Rollins; is he on deck?
Get on deck, Pat; she.

MR. BARNES:

Actually, I think I cut ahead before, so I'm really not supposed to be back. But the only thing I'd like to add, I didn't have an opportunity to ask the representative from the County Executive's Office here, and I think Kate brought it up on my behalf, but I would love to get an assurance that my son can remain at John J. Foley. Because quite frankly, I suspect that if that place was to become privatized, that he would not be accepted there for long-term. I hope I'm wrong, I would really like to believe that I would be wrong about that. But I don't think, because he requires a high level of maintenance, a high level of care -- and quite frankly, he was turned down at four facilities before he was accepted at John J. Foley, and I just don't know where he would go, and we're not prepared to take him back to England. And that's the only question I was hoping I would get an opportunity to ask the representative of the County Executive. Can I get an assurance from you, sir, that my son will remain at John J. Foley for however long God may keep him with us?

P.O. LINDSAY:

Mr. Barnes, I think Legislator Browning asked that repeatedly and --

MR. BARNES:

Yes, sir.

P.O. LINDSAY:

-- she couldn't get that assurance.

MR. BARNES:

Yes, sir.

P.O. LINDSAY:

The proposal is to put a monetary fund around to help with the patients that they might want to shed, you know.

MR. BARNES:

Yes, sir. He may exhaust that, though.

P.O. LINDSAY:

Okay.

MR. BARNES:

What happens if he exhausts it?

P.O. LINDSAY:

Well, I don't -- my understanding is that a patient can't be kicked out of a nursing home except when he goes to a hospital, they can refuse to take him back.

UNKNOWN AUDIENCE MEMBER:

That's right.

P.O. LINDSAY:

We have some language in the contract about it, whatever that's worth. But I think the answer to your question, I think Legislator Browning asked repeatedly and the answer was no.

MR. BARNES:

Yes, sir.

P.O. LINDSAY:

They can't give you that assurance.

MR. BARNES:

Thank you very much. Thank you.

P.O. LINDSAY:

You're welcome. Pat, and followed by Mary Fredette.

MS. ROLLINS:

Good afternoon. I'm here once again speaking on behalf of the residents as well as our staff. You know, we've been going on over this and over this and over this and, you know, my kids are like, "Mommy, it's just a job." Well, it's not just a job. This is my life. I have basically lived at the John J. Foley Nursing facility as a worker for the last 24 years. I've been there longer than I've lived in any of my homes, longer than I lived with my parents. This is why our facility is different from other facilities, because as you've heard before, we are a family, there is not a turnover of staff. I've said before, you hurt one you hurt us all. You all saw our reaction when our brother Pete here fell down ill. We are all one body, we really, really are.

You know, the other thing is for the last almost four years, this ride, it's like not even a roller coaster. One day you're on the happy train, the next day you're on a train of despair. Yesterday I was on the happy train. I was so thrilled that, yes, we won this lawsuit. My daughter came home, I said, "We won! We won! We won!", she said, "We won the lottery!" I said, "No. Close, though, close."

I'm begging, pleading and imploring to you, please do not go through with this sale. You've heard repeatedly how this place has been mismanaged. We've watched administrators come and go. We've heard of stories of administrators actually stealing from the facility. We were set up to fail, and we still are being set up to fail.

These last couple of weeks we've lost residents, we can't have admissions, their families are scared. Families have cried to me, "I don't want to take my daughter out of there. I don't know where else to put her. I found a place. She's at the bottom of the list, they tell me they don't know when they'll take her." They say there's a glut of beds in Suffolk County and that's an outright lie, and we know where that came from.

As far as today with what's going on with our union, I am disgusted. I used to be a very proud union member. I -- part of the union board in my place. I cannot believe that she is pitting or our union is pitting one against each other. They're signing those letters in unity. In unity, really? That's all I have to say. And please, please, continue working hard for us. We're very grateful. Thank you.

Applause

D.P.O. VILORIA-FISHER:

Mary Fredette followed by Margie Rosenka. Margie, if you could just come up so that you're ready?

MS. FREDETTE:

Hi. Good afternoon. I'm Mary Fredette, I spoke already, but I just figure I'd like to speak a little more, because I just really want to confirm.

First, I want to -- Kate Browning, you're awesome. I just think -- I applaud you.

Applause

You are just awesome. And Vivian Fisher and Kennedy, I just can't thank you people enough. I just can't thank you. And I just want to, you know, confirm everything that Pat just spoke about, that we have really been sabotaged in every direction, from our union, from our Administration, you know, from the County Executive and from all different directions, not to mention that it's just -- nursing is a very difficult job to begin with. We really -- many of us are, you know, really single parents and struggling families and we've really sacrificed a lot to be in this position that we have with the County. And I just really want to -- I can't emphasize the fact that we have been sabotaged a lot and if the facility was run correctly the way it should be ran, it could very well, you know, support itself and help -- there should be tax relief for the taxpayers. It should definitely be -- you know, if a facility does well, you know, it will pay for itself. I'm sure, you know, people -- it will be used and it will be well worth the investment.

That's all I could say right now. But I just really appreciate everybody listening and all the hard work and I just can't thank you Legislators enough that have been supporting us. Thank you.

Applause

D.P.O. VILORIA-FISHER:

Thank you, Mary. Margie Rosenka followed by Peter Mastando.

MS. ROSENKA:

Good afternoon. My name is Margie Rosenka and I'm a nurse at John J. Foley. First and foremost, I would like to thank all of you who have supported and continued to support our efforts to keep our facility open and County run. We now find ourselves facing our final and most difficult fight. While trying to be optimistic, we must be realistic to the need of compromise for all involved regarding the future of John J. Foley. When you're fighting for what you believe to be a just and righteous cause, you fight with all you've got and that's what we're doing, to the best of our ability. And we need your help and support now more than ever.

Every day we watch as one family after another transfers their loved ones to other facilities; not because they want to, but because they feel if they don't do this now, they'll get caught up in the frenzy of finding placement elsewhere should the building be closed. And if that isn't bad enough, there's watching our population of residents who don't have families to look out for them, most of which are very much aware of the seriousness of our situation. Where will they end up?

Mr. Levy has started laying off our employees while others are being forced into retirement for fear of losing their medical benefits. I know there are no easy solutions, but again, I believe compromise is the key. One possibility brought forward by Kate Browning was the public/private entity; part of the building would be privately run while part would remain County. That could very well be a compromise we all could live with, and with proper management I believe we can begin to generate a profit or at least break even. You have the ability to help us to make this a reality.

Please don't allow John J. Foley to be within -- please don't allow John J. Foley and those within to become the County's sacrificial lamb. When we all work together for a just cause, we believe in all things are possible. Thank you.

Applause

P.O. LINDSAY:

Thank you very much. Who's up, Peter?

D.P.O. VILORIA-FISHER:

Peter Mastando.

P.O. LINDSAY:

Peter Mastando followed by Karan Cooney. Karan, if you could just come up and sit up here so we can speed this up a little bit. We have an awful lot of cards.

MR. MASTANDO:

Good evening. If there was ever a meeting I wanted to be at, it was here today, Mr. Lindsay. I wouldn't miss this for the world; Kate, also you. I'm the person that had the heart attack here. You all witnessed what John J. Foley can do. This is what they were trained to do, this is what they love to do.

As far as what I heard today, selling John J -- oh, first, if my union representative don't apologize to you, Kate, for that letter, I am apologizing for that letter. You do a great job.

Applause

If they want to get on the bandwagon, they've got a lot to prove to us yet. And we can't cut them out altogether. We've been knocking them, let's see if they can produce anything here in the future for us if they want to get on the bandwagon. You want to give them one more chance?

UNKNOWN AUDIENCE MEMBER:

No.

MR. MASTANDO:

We'll see. Anyway, this is a worldwide problem with layoffs, you could see that. It goes global. People writing, writing; for what? Unemployment. They can't buy food, they can't feed their families; it's crazy. Do you want to see that here? Of course not. Will I see it in my time? I hope not.

Also, with the sale of John J. Foley, I'm getting kind of confused here. I hear you's talking about back and forth, you're going to do this or you're going to do that. They also had it that they wouldn't want to be over staffed if they did inherent the people from John J. Foley. You people on the panel here, all of you have heart, most of you have heart. We're trying to convince the people that don't have heart to take our side. This goes deeper than the dollar you put on a person's head. They're worth millions of dollars, trillions of dollars. Don't give up on us, help us. Help them.

We don't want to lose our jobs. The purpose of us being here, the purpose of our fund-raisers is to stay County, continue our pensions, feed our families, save our homes. The people that come here to talk about Foley to shut it down, they haven't been there to even see what goes on. How can they talk like that? Stars? Stars are for Hollywood. This is a place that comes from the heart, not from the stars. That rating stinks. Stay with us, help us.

Applause

We depend on you. We know you've got the power. Levy's got the push, but he don't have the power. He says he makes the hard decisions; he don't make the hard decisions, you make the hard decisions. You can veto, you can overthrow, you can help us stay County. Thank you very much.

Applause

P.O. LINDSAY:

Karan Cooney and Nancy Dellaire. If Karan could -- is Karan here, Karan Cooney?

UNKNOWN AUDIENCE MEMBER:

Nancy is.

P.O. LINDSAY:

Karan Cooney?

UNKNOWN AUDIENCE MEMBER:

She's not here.

P.O. LINDSAY:

Okay. How about Nancy? Come on forward, Nancy. And followed -- Pat Rollins. Did we have Pat already?

D.P.O. VILORIA-FISHER:

She might have spoken at the Public Portion.

P.O. LINDSAY:

Go ahead.

MS. DALLAIRE:

Okay. Good afternoon. I come before you to express my concerns and my fears for any sale or closure of the John J. Foley Skilled Nursing Facility.

In the three year battle to preserve our historic health care center, we may have lost site of the true mission of this not-for-profit institution. This facility has been a major part of the Health Center Network strategically located throughout Suffolk County. What are the plans for that network now? My fear is that network is to be abolished. Who made the evaluation that these services were no longer required? How is it determined that this facility is no longer necessary? Who will make this ultimate decision for our community.

I question the plans to transfer 200 residents from their home by March 31st. I have not seen one planned course of action in this entire process. The promise of a seamless transition is impossible to accomplish. There has not been anything seamless about any of the actions taken except cold-hearted and cruel, not seamless. Actions such as putting a hold on admissions that has damaged this facility, and every time those orders are lifted we have new admits waiting to come in. You will never convince me that this facility is no longer needed in our community.

One man cannot dictate this County's decision, a man that has not visited this establishment. His actions have damaged the successful day-care program, his premature layoffs have cost this County more than filling those positions with higher paid personnel, overtime and agency workers. And with business tactics such as these, it is no surprise we could not survey. So resurrect the sale? I've watched millions of dollars in upgrades and improvements invested in our facility. I've watched as they made renovations, installed brand new doors, all just to close; was that the plan? Was there really any other plan ever to -- than to sell to Mr. Rozenberg? How can that deal still be an option? How do you hold \$2 million for two months after a contract, that never should have existed, expires? Where is this money? Please, someone explain this to me.

The dysfunction allowed to continue at the expense of this County facility should cause us all to pause. We never stood a chance and now innocent citizens will not have a choice. I cannot get past the fact that these vital services are negotiable, abolished or sold, but here we are. The upheaval forced upon residents has been heart-breaking. Proverb 1513 clearly states, "A happy heart makes a face cheerful, but heartache crushes the spirit." It's true. I've watched fragile lives uprooted, their world as they know it turned upside down. There's been plenty of chaos, confusion and anxiety, but no plans and no answers, and I want answers. I've had to helplessly watch as taxpaying citizens are evicted, dedicated employees fired, and we all have to work as they continue to construct the Taj Mahal for convicts. Our poor economy didn't disrupt that project to protect the criminals; where is our protection?

Operating John J. Foley inefficiently is what cost this County, and sadly we're not willing to answer? What if we continue maximizing day care? What if we utilize the rehab? What if we worked with just one student nursing program? These what-ifs that should haunt us all. Our mission should be to protect and improve these services, not to sell and abolish when our economy suffers, especially when our County military men and women are coming back from war who may need our services. Give this institution the opportunity it has not been given. Give it the fair chance it does deserve. And I implore you not only to restore our right, but secure our rights to these public services. Thank you.

Applause & Cheers From Audience

P.O. LINDSAY:

Linda Ogno followed by Susan Schlomann.

MS. OGNO:

I don't know, I don't really have much to say after that speech. We've come here many times to speak in front of this legislation. What has happened in John J. Foley is not only a crime, it is a sin against us. What these employees and residents have had to endure for these last three years, and we have sat here time and time again. You have sat here, 17 members of this legislation (sic), and has let this go on.

We are just victims at Foley; us, the employees and the residents. You hold the power, the union holds the power, Mr. Levy holds the power. We are powerless. But that time is coming to an end. People are no longer sitting back and letting this government run the way they want. We are going to be in an uprising, and it's only the beginning that is happening

and we are watching.

I've raised my children to believe in a higher power, and that's how I've tried to live my life. I've cared for people. I could have done anything in this lifetime. My choice was to care for people and I've raised my family to be that way. You have all taken that oath to care for people that are under you, and this is what you need to do. Thank you.

Applause

P.O. LINDSAY:

Susan?

MS. SCHLOMANN:

Hi. I'm really kind of surprised at myself. I have been encouraging you all along over the last few months to vote to sell the Foley home so that the patients could stay and the staff could stay. And at this point, I'm not going to do that any more. I say vote your conscience; if your conscience says don't sell, well do that.

I really think that we might -- we are at a point right now that we're beyond that point where we're going to hit the wall, just go hit it. Let the pieces fall where they fall, let the County take the hit, face the crisis. That may be what God wants, I don't know. I've seen the work involved, the patients, the studying, the back and forth. I've seen the plans, I've heard what was laid out for the staff, it was put on the table again in December of 20 -- last year, 2010; if the vote to sell went through it would be back on the table, I thought that was amazing. You know, forget it. Do what you want, vote not to sell. Let it hit the wall, let it hit the fan. Thanks.

Applause

P.O. LINDSAY:

Okay. Michael Sheehan. After Michael is Dominick Ogno.

MR. SHEEHAN:

There's been a lot of things said, so let's come down to it. You know, it's supposed to be about money, that's probably what it's about. You're going to sell to this guy, supposedly it's 36, 37 million.

He himself said it would cost him 69 million to build a facility like that, and you're just going to give it away? Well, he says, well, he knows how to fill out paperwork better than the people running it right now. Well, if that's the case, why can't you hire somebody that can do the same paperwork and make the money that he says he can make and turn it around. If that's -- this whole deal is about money, then hire somebody to do exactly what he says he's going to do. And then this whole thing, you'd be making money, then you don't have to worry about laying off all these people or getting rid of all the residents. Thank you.

Applause

P.O. LINDSAY:

Dominick Ogno followed by Madeline Barone.

MR. DOMINICK OGNO:

Good afternoon. My name is Dominick Ogno and I've been a County employee for five years. I've lived in Suffolk County my whole life.

I read somewhere, "The ultimate measure of a person is not where he stands in a moment of confront and convenience, but where he stands at a time of challenge and controversies." This is why we put you in office. This is why we voted you in office, to make tough decisions at a time of need. My parents have taught me to pay taxes, work hard. My answer is now why? Why, so I can get screwed, pardon my French, in the long run, like what's happening to the people at John J Foley, the taxpayers of Suffolk County? Is that fair, to work your whole life in a County you love and pay taxes and not to have a place to go if you're stricken with an illness or in an accident? Something is wrong with the picture here. Because if someone committed a crime in this County that I love, we'll have three hots-in-a-cot. So you'll take care of your convicts but not your taxpayers? It seems a little weird to me.

Well, I learned life isn't about waiting for a storm to pass, it's about learning to dance in the rain. Because every passing minute is another chance to turn it around. My parents have taught me to do good to my fellow man. In the Bible it goes, *"Ezekiel 25: 17, "The path of the righteous man is beset on all sides of the tyranny and the equalities and the selfish of evil men. And blessed is he who, in the name of good will and charity, shepherds the weak through the valley of the darkness, and for he is truly his brother's keeper and the finder of lost children. And I shall strike down upon thee with great vengeance and furious anger for those who attempt to poison or destroy my brothers. And you will know my name is the Lord is when I lay my vengeance upon me."*

I'm going to be fine when I go to meet my maker, because what we do in life will echo an eternity. Thank you.

Applause

P.O. LINDSAY:

Madeline Barone followed by Jen Tay.

MS. BARONE:

Hello, again. I guess I signed up again, but that's okay because for 25 years, I probably have a lot more to say than just --

P.O. LINDSAY:

Madeline, you spoke under Public Portion before.

MS. BARONE:

Oh, Public Portion? All right.

P.O. LINDSAY:

Yeah, this is a Public Hearing, so you have a right to speak twice.

MR. BARONE:

Oh, good. Thank you, Mr. Lindsay. Well, anyway, I think my passion for Mr. -- for John J. Foley goes way beyond deeper than an employee. I'm also a daughter of a father who was up on five tower on the rehab. My father went to a rehab facility who's supposed to be the best in our County, and I visited him for like three months there. I found my father sitting in a dark room, just newly -- had a new stroke, and nobody there. Aides are cross-trained to do a lot of things that nurses have no time to do, like blood sugars and blood pressures.

They had no time to change him, teach him how to toilet. We got him over to John J. Foley after they wanted to put him in another facility and we put up a big stink. We managed to get him over there and he was happy there, I was happy there, my family was happy there. And, you know, now I see a lot of our family members are freaking, trying to get our patients out to local areas.

Now, that perimeter of nursing homes that are around ours is getting bigger and bigger now, and the now the patients who are now going to be positioned are going further and further. Now, I have family members that are here every single time that we are at one of these meetings, and I remember when she was admitted she was like 36, she's getting close to her 50's now, I don't want to say her age; you know how women are, modest. Well, anyway, what about those families who are getting older? They come on a daily basis to visit their daughter. And what about them, when they come to visit, now they have to go 90 miles out of the way? You know, and I know that she's been on a waiting list to get into another facility closer to them, and it's been three years and you have not succeeded. John J. Foley has become their home and Debbie's home.

You know, I hear a lot of things like going back of how much do you think \$2 million is going to get a patient at 39 years old who's got a lifetime in that facility? And a million dollars for people here? You know, I heard yesterday something was posted on our bulletin board. When we punch in, all these things are all posted, and something about our union is going to send union members to Wisconsin to help out over there. Now, who's money is that coming from? I don't quite understand that yet, but I've got to read more on that because there's a lot -- there's like a stack of papers that we have to catch up on these news reports that are building up on my desk in my room.

You know, I've been there for 25 years and I've never ever -- it's a shame that we're in this position. I know that this building can probably generate money for us and it's a unique building, it really is. You know, the population there is, what, 60% over the age of 40, in between 40 and 50, and they have a long way to go and they need -- they're local. They're actually your constituents. We're all Mr. Levy's constituents, why isn't he protecting us? But yet we have Kate Browning who is there when we're freaking out, and she came and she consoles us. She tries to keep our spirits up.

And, you know, Nancy had said something. And I know a lot of you's don't know, but I also won an award for an "Innovative Practice Program for the Happy Hearts for the Alzheimer's unit and, you know, my spirits are breaking. I've been here 25 years and I've had as high spirits as I have the day I walked in and this last couple of months has been -- it's wearing on me. It's wearing on my family, it's wearing on me, it's wearing on a new marriage that I just had, and it's a lot. It's a lot. I wouldn't -- I wish nobody to be in this position, nobody. To be faced up against a Civil Service job when I'm losing because of what, money? I mean, I don't make much and I own a little postage stamp house that I would like to have added to, but not anymore. I'm scared to spend money. I'm scared to do anything because I don't know what my fate here at my job is. So follow your conscience, follow your heart.

P.O. LINDSAY:

Thank you.

MS. BARONE:

Think the right thing. Because goodness prevails and evil is a short-term fix, it really is. Goodness lasts forever, but when you do something evil it's a quick fix. And fixing a County budget for selling a nursing home that has been here without any advertisement for a hundred years has to speak volumes on its own.

P.O. LINDSAY:

Thank you, Madeline.

MS. BARONE:

You're welcome. Thank you.

P.O. LINDSAY:

Jen Tay followed by Maddy Lizzol.

MS. BARONE:

Oh, that's me.

D.P.O. VILORIA-FISHER:

That was her.

P.O. LINDSAY:

Oh, you're Jen Tay. I'm sorry.

MS. BARONE:

I'm Maddy Lizzol.

LEG. ROMAINE:

She's Maddy.

P.O. LINDSAY:

You're Maddy.

D.P.O. VILORIA-FISHER:

You're going in the wrong direction.

P.O. LINDSAY:

Oh, I'm going in the wrong direction. Did we hear from Jen Tay?
Jen Tay, are you here; no.

UNKNOWN AUDIENCE MEMBER:

She's not here.

P.O. LINDSAY:

Not here. And Maddy just spoke, right? I'm getting confused here.

LEG. VILORIA -- FISHER:

A lot of cards.

P.O. LINDSAY:

Did we hear from Madeline Barone?

MS. BARONE:

Yes.

P.O. LINDSAY:

Yeah, we did.

*(*Laughter*)*

LEG. ROMAINE:

That was Maddy.

P.O. LINDSAY:

That was her. Oh, okay. Oh, so she filled out two different cards under two different names.

*(*Laughter*)*

D.P.O. VILORIA-FISHER:

We did Chris Ogno, didn't we?

P.O. LINDSAY:

No, Chris Ogno didn't speak. All the other Ognos spoke, but Chris didn't, right? Where's Chris?

MR. DOMINICK OGNO:

He's in the bathroom, he's coming.

*(*Laughter*)*

D.P.O. VILORIA-FISHER:

We'll hold him off.

P.O. LINDSAY:

Are you going in and changing your shirt to come out and say you're going to be Chris?

*(*Laughter*)*

P.O. LINDSAY:

Okay. Cheryl Felice.

Boos From Audience

No, none of that. Come on. Everybody has a right to talk.

MS. FELICE:

Thank you, Presiding Officer Lindsay, and to the various Legislators around this horseshoe. This is not an easy day. This is not an easy day for AME. And the four years, the four years that this Legislature and the County has battled the issue over JJ Foley is what brought us here today.

I've served as President for this union for over eight years, and I would just like to say -- to speak to a few of the issues that were raised already today. And I say that with all due respect, because it's very easy to point fingers in the worst economic time we have ever seen.

Everyone around this horseshoe was responsible for this budget, and everyone around this horseshoe failed to override the County Executive veto that would have restored the funding for the members at Foley. That's what happened. Not everybody, the overall vote did not happen and that's why we're in the situation that we're in. There's many reasons why we're in the situation we're in. But from the union, we sent a letter to the Legislature back in July when this union was asked to give concession on behalf of the Foley folks, and we made a decision. We deliberated long and hard at our Board of Directors Meeting and the vote was unanimous; it was unanimous not to give concessions and not part-out one segment of our population. And we came to the Legislature and the County Executive with the hope that we could work to get every position accounted for.

The truth of the matter is the discussions that have taken place over placing individuals back into County positions, if in the event the facility is sold, we did go one step further with Civil Service. Civil Service is required to create a priority list, a preferred hiring list for competitive positions only. It was the union that appealed to Civil Service to include non-competitive positions. So the positions you're talking about today who were displaced, and displaced because there's no funding in the budget as we speak for the John J. Foley Skilled Nursing Facility; if that funding is there, I'd like you to share that with the people here.

It is not the intention of this union to leave out any of our members. We made the appeal to Civil Service, we made that appeal through Labor Relations which is our designated contact person under the Taylor Law, and that request was honored. The fact that people were displaced and not laid off is because of the request that the union made.

Deputy Presiding Officer Fisher, I would just like to comment to the issues that you raised earlier, and with all due respect, when you referred to the member who had been displaced; that member would have been on the street had it not been for the actions of their union. That member was contacted by this union when the layoff notice and the demotion notice went out, but there are two parallel issues happening here. The parallel issue is what's happening now, because of the layoff, has to do directly with the bump-and-retreat. If our negotiations were allowed to continue on placing members into various jobs, we may have -- we may be having a different conversation today. But those conversations had to stop because of the lawsuit that was out there. We were sitting with Labor Relations, our legally obligated entity that the union has to negotiate with. We cannot negotiate directly with the Legislature, we could only come to you for funding. And we were negotiating that very deal. You heard me testify to this body that we had merely 127 positions out of the 240 positions already accounted for.

As to the CNA's, they have no comparable position in the County. There are other titles that they qualify for and those conversations were taking place. The fact that we're here today is because nothing has happened and the clock, I believe was referred to before as stopped, it stops on March 31st. The way the budget is structured --

*(*Beeper Sounded*)*

May I continue?

P.O. LINDSAY:
Go ahead.

MS. FELICE:

The way the budget is structured, there's no funding left for the Foley facility. Now, let's put the lawsuit aside right now. But our negotiating team has been negotiating for well over two-and-a-half years. We were prevented from negotiating and concluding those -- continuing those negotiations because we had a de-cert attempt made against this union; and under the Taylor Law, we're prohibited from bargaining when a de-cert attempt is made. It took the union six months to fight that de-cert and we won that de-cert and were able to resume contract negotiations.

Fast forward another 14 months, here we are today, no contract for 6,800 people, no resolution for people at JJ Foley, and a stalemate between the Legislative and the Executive Branch. So this union and our negotiating team took the issue on themselves and said, "Let's get the dialogue moving." And if the funding mechanism for Foley has to be addressed by advocating for the sale to get a contract and we can continue talking about moving our members into other positions, then let's do it. Because the contract will benefit everyone. The contract will benefit anyone who is affected by bump-and-retreat. And I'm sorry that the County Executive's Office before wasn't -- perhaps they misremembered, but we had these conversations.

But I think what's happening here is too much -- too much anger is being exchanged across the street between the respective branches of government. And we don't envy your position. I've said to you before, I envy the work that goes into evaluating a budget and evaluating a portion of the tax bill that represents the lowest portion of property taxes in the County. If the other subdivisions in the property tax bill took as much time to go through the budget as this esteemed body does, I don't think we would be having a conversation about taxes either.

I'd also like to address the fact that when I came into office in 2003, I reached out to everyone who ran against us, to everyone who lost against us, to everyone who campaigned against us, to join forces and put the election behind us; I think you can see that didn't always happen. I reached out to members of the JJ Foley membership, and I asked them to come up to the union on full-time release to advocate for this very position; those people, many of whom spoke today, and every one of them refused. I believe so strongly in JJ Foley that I appealed to one of the JJ Foley members to be a part of our board, and Dottie Kerrigan has served that position admirably. But we are in a position right now and at a point of no return.

By supporting the sale, which is something that we didn't think we'd ever have to do, it's going to help everyone in the long run. Because if the new owner offers jobs and those members decide to take those jobs, they'll have the opportunity for a job. If they decide they don't want to, the conversations that have happened, and they have happened, between myself and Labor Relations, then we would work to get those people in other positions, but that conversation was stopped dead in its track because of this lawsuit.

So we bring to you today a series of solutions that we feel proud of. We feel proud of the fact that while people are trying to make it out that we are trying to put one union member against another, that's the furthest thing from the truth. We have met with members of JJ Foley endlessly over strategies that they didn't agree with, and some of them took actions on their own. And yet, those actions still have not materialized in money in the budget for the facility. And I ask you, what are we going to do? So we came to you with a reasonable solution and our commitment, because every one of my negotiating team members heard me say across the table to Labor Relations, "Our commitment is to make sure no one loses their job. No one loses their job" --

Applause

-- "in this effort to bring a contract home," and that's what we have before you. You've seen the terms and conditions of the contract. I'll gladly answer any questions, if you have them.

***(*The Following Was Taken and Transcribed by
Lucia Braaten - Court Reporter*)***

P.O. LINDSAY:

There is some questions, Cheryl. Legislator Browning.

LEG. BROWNING:

You know, we had Alan Schneider, came to Health and Human Services Committee, and specifically, they asked the questions about job titles. And you heard Ed Dumas did say that there are no other jobs for CNAs in Suffolk County other than John J. Foley. You mentioned that there's comparable jobs for CNAs. Could you tell me what those titles are?

MS. FELICE:

What I said, what I believe I said was there's other jobs they would qualify for.

LEG. BROWNING:

And could you tell me what they are?

MS. FELICE:

Sure. Custodial positions, many of the blue collar positions, Labor positions, there are several community service aides that don't have education requirements or schooling requirements, but there's many, many titles that they would qualify for, and those were the conversations that were taking place.

I'd also like to just clarify another point, too, if I may. The issue was asked about if AME would be in a position to represent the workers at a new facility, and I believe that question was being asked because of the public sector/private sector issue. And, Legislator Browning, you may recall that AME did have to make a provision in its constitution and by-laws to accommodate for private sector workers. We had once under our jurisdiction a private -- a public sector school called the William Floyd School Bus Drivers.

LEG. BROWNING:

I'm very familiar.

MS. FELICE:

And when William Floyd was privatized to Laidlaw, AME had to make an amendment to its constitution to cover those workers. Those workers are no longer with us, but at the time we made the provision in the constitution and bylaws and we never changed that constitution and bylaws. So the constitution and bylaws stands, that AME is in the position to represent both public and private sector workers.

LEG. BROWNING:

And, well, what I'm trying to understand is, because Alan said you can't change from one job title to another, there are no comparables, and that in order to -- if they wanted to take another job, they would be required to take a Civil Service test. And, also, I believe he said there was about maybe a total of 30 jobs that would be able to transfer over to elsewhere in the County. So I'm trying to figure out, you know, where all of these people -- we have many LPNs and CNAs; that I can tell you I fully believe that if Mr. Rozenberg buys John J. Foley, he will not keep every single worker. One of the first things that he's going to want to do, so that he can make his profit, is get rid of many workers. And so I'm very concerned that while you're telling me that you will find them comparable jobs, that I don't think that can truly happen, and, you know, there's a preferred list being put together, and do a preferred list for every single one of those workers after four years, that list is gone. So somebody could possibly sit for four years waiting to get a possible job; am I correct.

MS. FELICE:

We had layoffs back in '91 and all of those workers got right back on to the County payrolls because of the preferred list. But what you're talking about, and this also references what Legislator Fisher was referring to before, you're talking about two parallel issues here. The one issue is the bump-and-retreat and the preferred list, that's one issue. And so you're absolutely right when you asked the question comparable jobs. And you're talking about bumping back job titles that are of like. That's not what we're talking about here. We're talking about another parallel track that's happening, you know, simultaneously to find other jobs that workers will qualify for. I have asked for resumes and have received a number of resumes, so that we can look at the qualifications and see where else they can be placed throughout the County. There's two tracks happening right now and those are the two that are I think being confused, with all due respect, but those are the two tracks that are being confused.

LEG. BROWNING:

I'm done.

D.P.O. VILORIA-FISHER:

Are there any other Legislators with questions? No? Okay.

LEG. BARRAGA:

I have a question.

D.P.O. VILORIA-FISHER:

Oh, Legislator Barraga.

LEG. BARRAGA:

The track that involves the possibility of them getting comparable types of jobs, those jobs could well pay less than they're currently making at Foley?

MS. FELICE:

When our conversations took place, they were for the same grade and --

LEG. BARRAGA:

Same grade, same salary?

MS. FELICE:

Same grade, yes.

LEG. BARRAGA:

Okay. What happened with Mr. Chris Destio, that he accepted accepted a position? I guess he was Grade 14, he went to a Grade 8, had to take a rather cut in pay. All right? Is that an anomaly, or do you expect that to happen in other areas?

MS. FELICE:

No, sir, that's not an anomaly. What happened in that particular case was because of bump-and-retreat, because a layoff letter was issued. So he was able to retreat back to his previously held position. And again, he was able to do that because of the request the union made of Civil Service to include non -- noncompetitive positions. The preferred list is usually only to the competitive positions, those in which have to take a test. And, actually, that brings up another point that I need to clarify, when Legislator Browning asked the question of Civil Service and Civil Service said people would have to take a test. Tests are only required on a competitive positions. On noncompetitive positions, there are no tests, and that's why I asked the Legislature to just pause and realize the two separate tracks that are taking place. The the incident that had happened with the gentleman you mentioned happened because a layoff notice was issued and bump-and-retreat occurred, and where he was able to retain a job and still have benefits, and will be able to get back to another job of a higher grade because of the request the union made of Civil Service and was able to get a preferred list established for noncompetitive positions.

LEG. BARRAGA:

Do you have any idea of how many employees at John J. Foley would believe to participate in the bump-and-retreat if the facility is sold?

MS. FELICE:

Well, the analysis was complete, so it may not only affect workers at John J. Foley. It will affect workers throughout the County.

LEG. BARRAGA:

Well, I understand that, but I'm just sort of keying in on the Foley people at this point. You have 250 employees. How many of those -- you may not have the answer -- could participate in bump-and-retreat.

MS. FELICE:

Well, we have the -- we have the entire analysis back at the office, but virtually anybody who held a job previously. I don't have that exact number off the top of my head, but anyone who had another job in the County would be entitle to the bump-and-retreat process.

LEG. BARRAGA:

But you really don't know how many would participate in that. You might have a situation, if it's sold, where a large number wind up working for the new employer, the private employer, and pick up the differential and the salary. You really --

MS. FELICE:

Well, the differential, as was referred to earlier today, and that money is a matter that would have to be negotiated. I can tell you that we have not had talks about that at this point, because the money was taken out of the budget. So the money wasn't there for those -- that conversation. If you restore the money for that purpose, then we would be obligated to sit down and discuss it.

LEG. BARRAGA:

Because the only reason I bring it up, when I take a look at bump-and-retreat, I don't have any idea how many people who really participate in that, and I don't have any idea how many would go the other scenario, where it be a parallel type of position, where something would be made available to them. If it's large numbers, then my premise is wrong, because as I speak, you know, this is -- this bill is still being negotiated. That's one of the advantages of speaking on a bill when the negotiations are going on. And I'm just wondering if the transaction aid could work one way, can it work the other. If, for example, you've got two million dollars in there to -- as a supplement for the Foley employees, if it's sold, for those who go with the new employer to make up the difference in the salary, can something be done, for example, if they go the other way? And there's room at the in at the County, but they go back and they take a position that pays less, can the County make up the difference with part of that two million, flipping it the other way for a period of one year, so at least the employee, who's still working with the County, but maybe in a different job, maybe bump-and-retreat, is still making the same salary he or she made when she worked with Foley as a County employee. I don't know if the pot is big enough. It may well not be big enough, because you might have a huge number of people doing this, but I don't have any idea how many people would be involved. If there aren't too many, I can't see why the transitional can't swing both ways.

MS. FELICE:

Yeah. I believe what you're referring to for County employees, if they were to remain County, there would be some prohibition against that. The transition money was for people who were going to accept jobs at other facilities and if it wasn't the same. But I would say, if we have the power to -- you know, one of the advantages we have as public sector employees is we get to be at the table, and we need to be at the table and let cooler heads prevail so that a reasonable solution can be reached. It's fair to say that we've been debating this issue now for four years. We've been -- actually, we've been debating it probably a lot longer than that. When I first got on the board, we were tying yellow ribbons around telephone poles to save the Infirmary at the time, and the issue really never has gone away. So the -- you know, with respect to your -- with respect to your question, we weren't able to conclude those conversations about the other positions because of the lawsuit. Now, if we are given the opportunity to finish those discussions --

LEG. BARRAGA:

I understand. No, I certainly understand your comment with reference to the lawsuit.

MS. FELICE:

I would that we would have much, much success, because I have been -- I have been met with very good -- you know, a very good dialogue on getting that job done.

LEG. BARRAGA:

Yeah. I guess, if we wind up with a situation excluding, you know, the lawsuit where only 25 individuals were to bump-and-receipt and maybe another 25 were parallel to get another job, what would be the cost factor? Could we take some of that transitional aid and make up the differential,

if there's any lawsuit and pay for those positions, the new positions that they take? Again, you know, if I'm working at the -- for the County and I'm at Foley and I just -- and I do a bump, and I wind up taking a position at 40,000 for one year, I get the differential, just as I would have gotten it if I went with the private sector on the other side. If the numbers aren't too great, I'm not sure why that couldn't be worked out, if we're working within the parameters, the fiscal parameters of the two million.

MS. FELICE:

Well, certainly, we would be open to that discussion, by all means.

LEG. BARRAGA:

All right. Thank you.

P.O. LINDSAY:

Okay. Thank you very much, Cheryl. Anton Borovina has been waiting patiently.

*(*Applause*)*

MR. BOROVINA:

Thank you for the opportunity to speak. Thank you for the opportunity to address the Legislature. When I received word several days ago that a Special Meeting of the Legislature had been scheduled, it was not my intention to speak, but really to listen.

I represent the plaintiffs in the action, which has been referenced several times in today's proceedings. The reason why I've decided to speak today, and I am compelled to speak today, is because just prior to the convening of this proceeding, I received word that a communication was drafted by defendants counsel, given to the County Executive, which, in turn, was released to the members of the Legislature, which in the opinion of counsel states that it is perfectly okay to sell the facility, and that doing so would not be a violation of the preliminary injunction that was issued by the Appellate Division. I am here to tell you emphatically, in no uncertain terms, that the sale of the facility would represent a violation of the order of the Appellate Division.

The letter, I will not quote portions of it, but you can read it for yourself, it's nicely worded, but wrong, the letter states that it is perfectly okay to engage in a sale, since that is a privatization of the facility. Well, Ladies and Gentlemen, that is the precise issue that the Appellate Division decided two days ago. They looked at the Mary Hibberd Law and said that the Hibberd procedures are triggered in instances where there is a proposal to transfer services or to close it, including, but not limited to, and certainly inclusive of a sale.

There's another reference where my lawsuit is mischaracterized as merely challenging the County Legislature's adoption of the budget. I don't have to tell you all here that, in my opinion and the opinion of others, the Legislature was effectively ambushed as a result of the inclusion of an initiative in a recommended budget for which the County Legislature had no choice but to respond by way of a budget amendment which required the Legislature to override a veto and it failed by one vote. That is not the contemplation of the framers of the Mary Hibberd Law when they adopted the statute in 1997. They said, in no uncertain terms, that the -- it's the law today, that the budget procedures of the Suffolk County government may not be used as a mechanism to initiate or adopt or implement a plan that results in the transfer of services. In any event, not only is that true, but I also want to, as you read the letter and you take it, and you deliberate today with respect to the issues that are in front of you, that you take into account that my lawsuit is not challenging the budget. My lawsuit concerns an effort to implement an initiative that did not comply with the Hibberd procedures. And it is indisputable, no one argues, the lower court determined and the Appellate Division determined that the Hibberd procedures were not followed in connection with the

closure of the facility. To the extent that you now seek to sell the facility, they're not followed either, because the sale of the facility itself results in the transfer of the rendition of services to non-County personnel. And that's a violation not only of the Mary Hibberd Law, but as I stand here today, it is a violation of the order issued by the Appellate Division, and that's what I want to reaffirm today in no uncertain terms. Thank you, Mr. Presiding Officer, for speaking.

*(*Applause*)*

P.O. LINDSAY:

Hold on, Mr. Borovina. I have a couple of questions. Legislator Montano, and then Kennedy. Okay.

MR. BOROVINA:

Yes, sir.

LEG. MONTANO:

Who do you want -- oh, you want me to go? Good evening, sir. I just want to speak to you lawyer to lawyer, actually. I have a copy of the decision, an order on motion, the injunction, and I also have a copy of the letter that was circulated by the counsel for the County. You know, I just want to be clear on this. I'm reading the injunction, and when when you get to the body of it, it says, "Respondents are stayed from taking action," blah, blah, blah, blah, blah, blah, and it says, "Or to terminate nursing services at the facility." Do you recall that in the injunction?

MR. BOROVINA:

I wrote it, yes.

LEG. MONTANO:

Okay, you wrote it. Now, I'm looking at the letter that was written by counsel, saying that a sale would be -- would not violate the injunction. And in the second page, there seems to be a misquote to me, because it says that the County is enjoined from terminating the provision of nursing services," and that's quite different from terminating nursing services. The way I read this is that if we -- and I just want to get your -- I want to be clear as to what your opinion is. If the County were to sell the facility today, even though nursing services would technically continue under a different entity, would it not be that we, as respondents, the County and the County Executive that are enjoined, would, in essence, have terminated nursing services? Do you follow my question?

MR. BOROVINA:

Well, you not only -- I do, not only have --

LEG. MONTANO:

You've got to speak into the mic.

MR. BOROVINA:

Not only have you terminated nursing services, but you have transferred services in connection with your initiative to close the facility. That triggers the Mary Hibberd Law. You know, know --

LEG. MONTANO:

Well, I don't want to -- yeah, but I don't want to get into the Mary Hibberd Law quite yet, I just want to look at the injunction on its face.

MR. BOROVINA:

Well, then let's -- well, one of the concepts -- you can't differentiate the two, but let me approach it from a different perspective.

LEG. MONTANO:

Go ahead.

MR. BOROVIKA:

And this is how I think the Appellate Division understands it, and they've -- I've been to the Appellate Division five times, and in five separate times, they've sustained my view and others' views of the Mary Hibberd Law. The fallacy that's being made is that you're treating -- not you.

LEG. MONTANO:

I understand.

MR. BOROVIKA:

You're treating this as if, as I call it, as a landlord-tenant relationship, that is when the tenancy comes to an end, the landlord there -- well, therefore, has no further legal obligation to deal with the tenant. The tenant could be -- the landlord has no obligation to provide a home, alternative residence. As far as the landlord is concerned, the tenant can be thrown on the street. That's what the law of landlord/tenant provides. This is not a landlord-tenant relationship.

Therefore, when you, when we decide to evict a resident of the facility, as opposed to to evicting a tenant from a leasehold, the statute and codes and State rules say that we have to plan for the transfer of the services that were then being provided to that resident to other entities, in this case, non-County entities. That's a -- that plan to transfer was something that the State -- that the County Legislature considered when it adopted the Mary Hibberd Law in 1997, and here's what it said. I didn't write the law, you didn't write the law, but this is what it said and this is the law of the land, that when you ever start -- when you think of initiating, let alone adopting, initiating a plan to effect a transfer of services to non-County employees, there are certain multi-step procedures that must be implemented, including input by the public at public hearings, a detailed written report. That has to be prepared prior to the public hearing, not after. By the way, that has not happened at all as of today. There has to be, as I indicated, resolutions. There has to be a thorough analysis by the Budget Review Office, and it has to be considered action by other entities, including that by the State, all of which has to be fed into and made a product of and produced at public hearings. Those procedures were designed to ensure public and governmental input before making the decision about the transfer of the facilities.

So I want to focus on your question. The transfer of the patient necessarily as a result of the closure, which is the result of the sale, necessarily means that you have to transfer the services. And the Mary Hibberd Law says, most emphatically, you have to initiate the Hibberd procedures. And may I say, there's an argument, there's another position you have to take into act, too, and the Court picked up on this. If you read the Mary Hibberd Law, the Mary Hibberd Law says clearly that the -- that it is of vital public importance that the County continue to renter health services and have, quote, a skilled nursing facility, closed quote. So not only is it important under the Mary Hibberd Law that you have services, but it is also important that you have a skilled nursing facility. Once you get rid of this facility, there are no other skilled nursing facilities that Suffolk County owns or operates, it's the end of discussion. It's not that we are consolidating a skilled nursing facility, bringing it someplace else, or that we have two skilled nursing facilities, we're simply getting rid of one; you have none. And under the Mary Hibberd Law, that's -- and it was noted that that was a -- only facility identified in the Mary Hibberd Law as being specifically mentioned as worthy of being maintained and operated.

So you have two separate components of the Mary Hibberd Law, both of them are in play today. Both of them are adversely effected by a sale of the facility. Both impacts will have occurred without compliance of the Mary Hibberd Law. More importantly, that's why I'm here now, doing -- acting in that fashion would represent a violation of the Appellate Division's order. If there

are any -- yes, sir.

LEG. MONTANO:

One quick question. I don't want to turn this into a law school class, but based on what --

MR. BOROVIINA:

I hope it wasn't, but go ahead.

LEG. MONTANO:

What was that?

MR. BOROVIINA:

I hope it wasn't, but go ahead.

LEG. MONTANO:

No. It was very interesting, but let's cut to the chase. One of the arguments that was raised at some point with respect to -- and I didn't hear your arguments at the Appellate Division or see the papers, but one of the arguments or points that was made, that if we vote to sell today, we have somehow cured whatever defects you were arguing at the Appellate Division; is that accurate?

MR. BOROVIINA:

No, it's not accurate. You -- under that theory, think of it logically, you don't have to be a lawyer to figure this out. You adopt the --

LEG. MONTANO:

I just want this on the record.

MR. BOROVIINA:

I hear you. You adopt the Mary -- the Mary Hibberd Law is adopted that prescribes procedures before you sell. Hypothetically, there are five separate procedures you have to follow. You simply -- you don't circumvent that process by the Legislature deciding to meet, even unanimously, by the way. It's not a question of whether or not -- what votes we have, I'm going to the assumption that it's unanimous action by the Legislature. It still would be unlawful, because the Legislature is required to act in -- if the Legislature -- stated differently, if the Legislature, simply by meeting, can effect the transfer of the services, then why did you have the Mary Hibberd procedures at all, which, by the way, are directed in part to the Legislature. The Legislature itself has to do certain things, and before it does certain things, the Hibberd procedures themselves had to be followed. It would make it silly to adopt a Local Law, the Mary Hibberd Law, which says that before the Legislature may act, certain procedures must be implemented. And no sooner is the ink dry, the Legislature decides to convene and adopt a resolution to sell it without invoking or complying with those procedures, it doesn't work -- it just doesn't work that way.

LEG. MONTANO:

So, in a nutshell, what you're saying is that if we took a vote to pass this resolution, we would be in violation of the Court --

MR. BOROVIINA:

My opinion, you're in violation of the order.

LEG. MONTANO:

Thank you very much.

*(*Applause*)*

P.O. LINDSAY:

Mr. Borovina. Mr. Borovina. Mr. Borovina, yeah.

MR. BOROVINA:

I'm sorry.

P.O. LINDSAY:

I'm not a lawyer, so just for us laymen, we're in a mess here in that we have a facility that we can't get enough votes to fund, and we can't get enough votes to sell, and we're in -- as you just explained, we would be enjoined from selling it. There is some other potential solutions that have been introduced in different Legislative forms to downsize the nursing home, to lease some of the assets that are connected with the nursing home to come up with the money. Does that violate the court order? And my question is how do we remedy the court order from here? Because, eventually, we have to figure out what we're going to do with this facility, because it's been going on for four years. And it isn't fair to any of these people in the audience, it isn't fair to the residence, the uncertainty isn't fair to me. I wake up in the middle of the night thinking about this issue. So how do we get out of this? How do we -- where do we go from here?

MR. BOROVINA:

Well, let me parse your question into three separate concepts. You said can the Legislature downsize? Well, downsizing is itself not the closure of the facility, nor is it the termination of the rendition of skilled nursing services at the facility. Leasing, which is another comment you raised, Mr. Presiding Officer, would be a violation, because leasing, in effect, means that you are transferring the rendition of skilled nursing services to non-County entities. That's a violation.

P.O. LINDSAY:

No, not leasing it for the purpose of a nursing home, for another purpose, another health-related purpose.

MR. BOROVINA:

Well, let me get back to what I said to Legislator Montano, is that you can lease it, frankly, to make it into a library, if that's what you wanted to do. You could sell it to make a library. In normal circumstances and dealing with a normal governmental building, you have that authority under State Law, provided you conform with state and local law with respect to sale of surplus property, you can do that. The issue in this case, however, Mr. Presiding Officer, is that this facility is cloaked with the protection that was put in place in 1997 called the Hibberd Law. That Hibberd Law says we view that building and the services being performed in that building to be so important that we don't even want the Legislature, this body, to meet to effect a termination of services until the Hibberd procedures are fulfilled. That's how clear the Local Law is. The framers were so concerned about circumventing the Hibberd procedures and depriving the public of proper and meaningful input, that the Hibberd procedures went on to say you can't even utilize the budgetary process to implement a transfer of the facility. That's what the statute also clearly says as well.

So now let me follow through and what -- the reality is as follows: The government, the County is required to keep the facility open, it is required by court order. It is not -- that court order is not dependent on a date, that is it does not expire -- the court order does not expire on April the 1st. To the -- the government is required to fund the skilled nursing facility and to maintain services at that facility and without terminating those services. It means, therefore, that funds would have to be provided beyond March the 31st. I'm advised by my consultation, I'm not a -- I don't -- you have your own staff for this, and I'm advised by talking to others, that there are numerous ways by which that money can be obtained. It is not as -- it is not as Armageddon-like as being suggested by the Administration, but that's something for you and the Budget Review Office to assess. I can just say, though, that after March the 31st, there is a continued obligation to fund the facility, you

may not close it, it may not be leased, it may not be sold. And, you know, the quality of services is something for this body to consider, but it may not terminate or close those services.

P.O. LINDSAY:

Okay. That really makes things clear. Legislator Kennedy.

*(*Laughter and Applause*)*

LEG. KENNEDY:

Most of the questions I was going to ask, Mr. Borovina I guess have already been asked, Mr. Chair. But, Anton, let me just try to go one more swipe at this regarding Hibberd. With Hibberd in place, you're basically saying to us what's being put before us regarding sale, we can't make a motion on, we can't consider, we can't entertain at all based on what the injunction is at this point?

MR. BOROVINA:

That is correct. You better have, and I say not you personally, but your Legislature and the government better have had complied with the Hibberd procedures, which includes a detailed plan, where are the patients going? What is -- not only where they're going, what's the quality of services they're getting at the admitting facility as compared to the quality of services they're getting now, and that study has to be in place before you may even vote. Now, I'm not aware of that document or that study ever being undertaken to date. It's now March 3rd, 2011. It is no question in my mind, you vote for the transfer of services in the absence of that kind of information, you act in violation of the Appellate Division's order.

LEG. KENNEDY:

Based on what the order is saying at this point, the facility has to continue in operation?

MR. BOROVINA:

Yes.

LEG. KENNEDY:

Okay. Does that also include admissions to the facility?

MR. BOROVINA:

I think it's in the -- well, the Appellate Division's order doesn't address admissions. I think that any responsible organization, the entity responsible for owning and operating it, knowing that they have to keep it in play and in service to the residents of the community as -- and to the County, as well as to the residents, it's in their interest to do that, to -- that way they have additional funds. It's incongruous for me to argue, if I were on the other say, for me to say there's not enough money, but, meanwhile, I'm going out of my way to make absolutely certain that there's no new admissions to make sure we can make even less money. It just doesn't -- I just -- the logic escapes me, but they should be admitting it. But, Mr. Kennedy, if you're asking me, does the order require the admission --

LEG. KENNEDY:

It speaks to it in general terms, I guess.

MR. BOROVINA:

Okay.

LEG. KENNEDY:

Okay. One last thing, and I think you're aware of this. You are aware that we passed a procedural resolution as a body to join in this matter as plaintiffs?

MR. BOROVIINA:

Yes, sir.

LEG. KENNEDY:

Okay. Good. Thank you.

MR. BOROVIINA:

Well, may I say, by the way, consistent with that, and thank you for reminding of that, I asked the Legislators, I mean, that resolution stated the public interests that are at stake in having a facility and providing services at the facility, and not having those services transferred to non-entity -- non-governmental entities. That resolution was adopted by this Legislature, I believe, on February the 1st. If there's any doubt about what the public interests are and the interests of this Legislature in making sure that those services are not transferred willy-nilly, and that's why we have the Mary Hibberd Law, I invite the Legislature to reread the resolution. But the Legislature did adopt a resolution authorizing intervention as a co-plaintiff in this action.

LEG. KENNEDY:

Great. Thank you very much. Thank you, Mr. Chair.

*(*Applause*)*

P.O. LINDSAY:

Hold on. Legislator Viloría-Fisher. No, wait a minute.

D.P.O. VILORIA-FISHER:

You're not off the hook, Anton.

P.O. LINDSAY:

Please, come back.

D.P.O. VILORIA-FISHER:

Come back. I just have questions about actions that are violative of this stay; okay? The first actions that might be in violation, is this meeting in -- to consider this in violation, the fact that we're meeting to discuss the sale; is this considered an action?

MR. BOROVIINA:

I think -- I believe a Legislative Body can always meet.

D.P.O. VILORIA-FISHER:

Okay.

MR. BOROVIINA:

Okay.

D.P.O. VILORIA-FISHER:

All right.

MR. BOROVIINA:

Now the question becomes, as -- can the Legislature entertain --

D.P.O. VILORIA-FISHER:

A motion to table?

*(*Laughter*)*

MR. BOROVINA:

Well, no. That's -- no. Let me just go more basic.

D.P.O. VILORIA-FISHER:

I'm sorry.

MR. BOROVINA:

And then you decide if you want to go to second, but let me get to first base, and that is, can the Legislature entertain in a meeting an initiative to effect the transfer of services without having complied with the Mary Hibberd Law? The answer is no, you act unlawfully by doing that.

D.P.O. VILORIA-FISHER:

So the actions that we can entertain would be a motion to table or not consider it at all?

MR. BOROVINA:

Well, either way, right, as long as -- if you have tabled it or not considered it, you've effectively avoided disobedience to the Appellate Division's order, that's correct.

D.P.O. VILORIA-FISHER:

Another question. Cheryl Felice stated, and I don't want to put words in your mouth, Cheryl, so let me know if I'm making an error in how I interpreted what you were saying, that there were discussions and negotiations that were going on between AME and Labor Relations regarding placement of workers, and that those discussions had to stop and the unions representations of -- representing of those workers and how bump-and-retreat would be handled had to stop because of the stay, okay? Is this still prohibited by the opinion that was recently rendered?

MR. BOROVINA:

The most recent Appellate Division decision is actually far more -- it's actually more reaching than what was the subject of my initial preliminary injunction way back in December and then again in January. The Appellate Division actually expanded on the scope of injunctive relief from its initial decision on January 25th to include any action taken to implement the New York State approval plan, which is -- which is a document, as you all know, that details a plan by which the government, this government, is to effect a transfer. The Appellate Division said you can't -- you cannot take any action to implement that plan. It means, by the way, that, well, action is action. You take action to implement any component of the New York State approval plan, that's a violation of the temporary -- of the preliminary injunction.

D.P.O. VILORIA-FISHER:

Okay. Then there was recently a draft of an agreement that might be occurring between the union, AME, and the County Executive regarding their contract, which had as a contingency the closing of the nursing home. So that's also in violation?

MR. BOROVINA:

A contract negotiated by the defendant, in this case the County Executive and the County, which provides for or is in furtherance of an implementation to close the facility is a violation of the preliminary injunction. Therefore, if the contract, proposed contract is -- contains language that is designed to accomplish that purpose, that's an action taken in furtherance of a plan to close the facility. That's in violation.

*(*Applause*)*

D.P.O. VILORIA-FISHER:

Thank you, Anton.

P.O. LINDSAY:

Okay.

LEG. COOPER:

Bill. Bill.

P.O. LINDSAY:

Yeah. I have a long list. Legislator Gregory.

LEG. GREGORY:

Thank you, Mr. Chair. Mr. Borovina, right here.

MR. BOROVINA:

Oh, there you are, I'm sorry.

LEG. GREGORY:

Thank you. I really resent being in this position, but I have some questions about the Mary Hibberd Law. Now, does the law state that there has to be an affirmative vote of the majority for closure or sale, or does the failure of the ability of the Legislature to override a veto suffice to meet a requirement?

MR. BOROVINA:

The failure of the Legislature to override a veto does not meet the requirement. In fact, the Mary Hibberd Law foresaw that circumstance in 1997 and said -- intending to avoid the precise predicament that confronted this Legislature, by the way, on November 17th, 2010, where you were forced to adopt the budget amendment in response to a recommended Operating Budget, it was subject, as all budget amendments are, to a veto. The Executive vetoed it, and then it went back to this body and you were required now by a two-thirds vote to override the veto. That scenario was contemplated in 1997 and they said you can't do it. You cannot use the budgetary process for that purpose.

LEG. GREGORY:

So even if -- I'm confused with that. So even if we approve the sale, you're saying that prior to the budget process, we couldn't put it in the budget?

MR. BOROVINA:

That's -- by the way, the statute actually says you can't even put it in the -- let alone -- you can't even put it in the recommended budget, let alone the actual adopted budget until all, all, not some, all of the Hibberd procedures have been complied with, it's that clear. So the answer is you cannot do it.

You asked -- another part of your question was, can the Legislature, which I think the Presiding Officer also asked that similar question, but I'll answer it again, can the Legislature meet at any time it wants to adopt -- to consider and then adopt and ultimately cause to be implemented a plan to transfer services at the facility to non-County entities? The answer is no. That's exactly what the Hibberd procedure said. It said before the Legislature sits down and actually starts talking about this, you have to invoke the Hibberd procedures. It includes, by the way, a detailed report -- I know I'm repeating myself -- a detailed report that identifies the quality of services that are being offered at the admitting facility as compared to the quality of services that we now have, a bunch of other information in a detailed report. Now, what do you do with it? You don't use it as wallpaper.

You give that document to members of the public prior to public hearings. Only when those public hearings have taken place with that document already in existence, and other State approvals in place, may this body then sit down and then say, "Let's now vote on the merits." Shall we -- do we agree that we should transfer services and that we don't. Please let me tell you, the Mary Hibberd Law does not prohibit, does not -- at the end of the day, you can do whatever you want with the facility. It just said, however, that before you do something with it, we want -- we want an electron microscope to be used. We want to study this, because the residents of Suffolk County would be adversely affected if they lost the only facility that performs this kind of service. It says yes, you can close it, but you've got to follow procedures, and this case is about the failure to follow procedures.

LEG. GREGORY:

And it's -- and just so that I'm clear, it's your position or opinion that considering the sale would be in violation of the TRO, because whether it's a vote for sale or closure, a sale is, in effect, a closure, because you're saying there's a closure of services provided by the County in transferring those services to a private vendor?

MR. BOROVIKA:

Of course it is. The answer is yes. But let me give it once -- that's true in and of itself. You could stop right there, period, and that's a violation of the Mary Hibberd Law, that's true. Let me take it -- there's a thought --

LEG. GREGORY:

No, the TRO.

MR. BOROVIKA:

Or the violation of the preliminary injunction.

LEG. GREGORY:

Right, injunction, right.

MR. BOROVIKA:

A preliminary injunction, that's true, and of the Mary Hibberd Law. But there's another component, which is also very important. When you -- this is what I said a few seconds ago when I talked about analogizing this to a landlord-tenant a relationship, where I evict you and I have no obligation, I don't care what happens to you, frankly. You're a former tenant of mine, you can sleep on the streets, I don't care what happens to you, I have no further obligation to you. That's true under the law of landlord-tenant. When I am a health care provider, when we are health care providers and we bring in residents at our facility, we have a statutory obligation, independent -- put aside moral, by the way, but just a statutory obligation that when that patient walks out of the building and still in need of skilled nursing services, we are required to transfer the services that were being given to that resident and transfer it to the other facility. The act of planning that transfer, the quality, is it a good idea? What transfer is being made? By the way, does that facility really have all of the bells and whistles that we had in Facility A? Maybe it does, maybe it doesn't.

It may very well be, by the way, this body, after all the Hibberd procedures have been followed, that you look at the admitting facility, this hypothetical admitting facility, and you conclude, rightly so, that that facility actually provides better services than what we currently have, I'm voting in favor of it. You can do that, as long as you obey the Hibberd procedures, which includes a public discussion, not a private one, not a secret negotiation, by the way, which excluded members of the public, between members of the union and the Administration, about terms, none of which certainly my clients are not familiar with, I'm not familiar with, let alone this body, let alone the members of the public. The Hibberd procedures were designed to bring all that out in the light at the right time, not

through the budget or not now, when you are all being blind-sided, not knowing where the residents are going.

And I'm listening to a few of these comments here. Some of these -- the people that are speaking, they're telling you, we don't know where the residents are going. The Administration effectively says we really don't know where these residents are going. When the Executive gave his narrative on September -- on September -- in September of 2010, that accompanied the recommended Operating Budget, he said, I believe at Page 32 of his narrative, regarding, if we close the facility, he really doesn't know where the people are going. It all depends on where they're admitted. And there's a study, a 2008 study that says approximately 20 to 25% of the residents would not find alternative -- alternative placement. That's a substantial -- that's a substantial number. So you're throwing -- you're rolling dice. You're having the 260 residents go out, you don't -- number one, you do not know what services they're going to get; number two, you do not know if all or some of them will even get any services at all; and number three, you will have made your decision without undertaking any kind of analysis as prescribed by the Hibberd Law.

LEG. GREGORY:

Okay. Thank you.

P.O. LINDSAY:

Legislator D'Amaro.

LEG. D'AMARO:

Thank you. Mr. Borovina, good afternoon, or good evening, rather. Nice to see you. And I want to start by complimenting you on your effective advocacy, it's very impressive. I have a copy of the Appellate Division decision in front of me. And just before I get to that, I just want to ask you, what's the relief or the basis of the lawsuit for the plaintiffs that you represent?

MR. BOROVINA:

The basis of the lawsuit is a judgment declaring that a -- any plan to transfer services at the facility or to close the facility required implementation of the Hibberd procedures, that's number one. Number two, the inclusion of such a plan as part of a recommended Operating Budget in 2010 by the County Executive was unlawful, because the -- that plan, before you even included it in the recommended budget, you had to comply with the Hibberd procedures. So the inclusion of that was unlawful.

LEG. D'AMARO:

All right. Let me ask you this.

MR. BOROVINA:

And also an injunctive relief, if I've answered your question.

LEG. D'AMARO:

So the lawsuit, and I just want to understand the lawsuit before I get to my quick questions, and I appreciate your time, the lawsuit grew out of the County budget that was recently adopted for this Year, 2011, that closed the facility; is that correct?

MR. BOROVINA:

The lawsuit develops out of the Administration's view that they have the legal authority, as we speak, or at least as of December, .

LEG. D'AMARO:

Right.

MR. BOROVINA:

That they have the legal authority to effect a transfer of services. I don't care how you get to that by the adoption of the budget or anything else. If you tell me that an Executive has that authority, I look at it and say, okay, was the Hibberd procedures followed, yay or nay.

LEG. D'AMARO:

Okay. So let's -- okay. All right.

MR. BOROVINA:

So it doesn't depend -- it really doesn't depend on whether or not there's a budget, but it turns out, coincidentally, may I say.

LEG. D'AMARO:

Well, in my mind --

MR. BOROVINA:

Hold on. Just let me, please.

LEG. D'AMARO:

In my mind, it grew out of the budget, which defunded facility starting April 1.

MR. BOROVINA:

That's what makes this all the more the killer, by the way, because it turns out the precise circumstance by which the claim -- the assertion of Executive authority is being made, coincidentally, the precise circumstance is the very circumstance that is forbidden by the Hibberd Law, you couldn't be clearer. You couldn't be clearer.

LEG. D'AMARO:

All right. Now, the Mary Hibberd Law, the lawsuit is claiming for the Plaintiffs that in order to close the facility through our budget, you must comply with that particular legislation. Has a court made a decision on the merits on that issue?

MR. BOROVINA:

When they decided -- let me ask -- I'm going to answer generally and specifically to your question. On five separate occasions, I indicated earlier, every time the Appellate Division had the opportunity to review whether or not the case -- the case should -- injunctive relief should be granted, the Appellate Division at all times said the preliminary injunction should be granted.

LEG. D'AMARO:

Right. But is that a decision on the merits?

MR. BOROVINA:

Well, one of the -- the answer I can tell you is they necessarily decided, they -- I can talk legalese here, but when you seek a preliminary injunction, you may know this, one of the critical elements of the -- of a person seeking an injunctive relief is you have to demonstrate a likelihood of ultimate success. When we went to the Appellate Division, it was -- he argued, my adversary effectively argued to the contrary saying this is a privatization, Mary Hibberd Law doesn't apply to a closure, that's the result of a budget, only applies to the context of a privatization. I made the arguments that I'm now raising here, as well as --

LEG. D'AMARO:

Right. I don't -- I understand all of that.

MR. BOROVIINA:

The Appellate Division by the way -- to answer your question, the Appellate Division necessarily had to agree on the merits with the legal interpretation of the Mary Hibberd Law.

LEG. D'AMARO:

A likelihood of success on the merits is not a decision on the merits.

MR. BOROVIINA:

It is a --

LEG. D'AMARO:

So my point is --

LEG. D'AMARO:

Well, I don't agree with that assessment, but go ahead.

LEG. D'AMARO:

Okay. Well, there was a lower court decision on the injunction relief that effectively ruled that there is a -- there is not a likelihood of success on the merits. And what the Appellate Division in my mind is saying with the injunction that I have in front of me, and I'll get to that in a minute, is that until that decision against your client's interests is appealed and finally decided, there'll be no further steps taken towards closure. That's what I see in this order that I'm looking at.

So, first of all, there hasn't been a decision on whether or not the Mary Hibberd Law applies even to a closure. And second of all, the relief -- and let me get to the order. The order says, "Motion by the appellants to stay the respondents from taking any further action to close the John J. Foley Nursing Facility." Well, we're not trying to close it here, we're trying to sell it. "Or to terminate nursing services." Well, if we sell it, we're not terminating services, they're continuing, so --

MR. BOROVIINA:

No, no, no, no, no, no. I don't agree with that.

LEG. D'AMARO:

Well, no, no, no, I'm not saying you have to agree. I'm just -- all I'm saying to you --

MR. BOROVIINA:

Well, I'm disagreeing with your interpretation of what you think the Mary Hibberd Law is saying.

LEG. D'AMARO:

Right, but you're not judge and jury here. The point I'm trying to make, okay? The point?

MR. BOROVIINA:

I'm listening, go ahead. Go ahead.

LEG. D'AMARO:

Okay. Well, I'm not trying to offend you, but the fact of the matter is --

MR. BOROVIINA:

I'm not offended, no. I think -- no, I understand your question.

LEG. D'AMARO:

A court -- a court is going to ultimately decide if the Mary Hibberd Law applies to a closure through our budget. That's the issue pending in the lawsuit. What we're doing today doesn't even relate to

that. What we're doing today is we're not taking any further action to close this facility, and we're not taking any action to terminate nursing services. Can you --

MR. BOROVIINA:

May I --

LEG. D'AMARO:

Let me put it another way. Can you show me in the order where it says this Legislature cannot meet and vote to sell or even consider the sale of this facility? I don't see it.

MR. BOROVIINA:

When you close -- when you sell the facility, and if it is the only facility that performs these kinds of services, you have necessarily terminated services at that facility. You have done that automatically. They go hand in hand. They are --

LEG. D'AMARO:

By voting today, everyone goes to work tomorrow and those services continue.

MR. BOROVIINA:

No, sir. No, that's not true. If you close the facility --

LEG. D'AMARO:

Oh, it is true.

MR. BOROVIINA:

If you close the, hypothetically --

LEG. D'AMARO:

This is only a Legislative vote, this is not a closing of that contract, sir.

MR. BOROVIINA:

Well, I know that if you vote today --

LEG. D'AMARO:

Right.

MR. BOROVIINA:

-- it doesn't result in the closure today, but it is an act in furtherance of the closure, and the closure would result in the transfer of services, and that -- and the closure --

LEG. D'AMARO:

We're not closing it, we're selling it.

MR. BOROVIINA:

The sale of the facility necessarily -- it's not an empty building. We're just selling -- I'm selling surplus property, which you can do, you can do any time you want to.

LEG. D'AMARO:

Right.

MR. BOROVIINA:

In that building, in that building -- coincidentally, which is rather important, you have a -- it's being operated as a skilled nursing facility, the only one of its kind, that's in number one, and number two,

there are services that will -- two residents that necessarily have to be transferred to non-County entities. That's all triggered as a --

LEG. D'AMARO:

Right, but the the only issue here today for myself and I believe my colleagues, and the Legislature as a body, is whether or not this order from the Appellate Division, Second Department, says we can't vote today. All right? And, you know, again looking at the express language of the court, it doesn't even address the scenario of a sale, it was issued in the context of closure through a budget. Nowhere does it affirmatively say that we can't meet and vote to sell the facility. And, you know, there's no decision on the merits whether the Hibberd Law even applies to the closure through the budget. That all still needs to be decided by a court. So I really beg to differ with your expansion of the reading of this order.

MR. BOROVIINA:

Well, I am one familiar with the basis upon which the lawsuit was brought. The lawsuit seeks to enjoin the transfer of services. The fact that it was performed or is occurring by operation of a budget doesn't alter the object of the lawsuit. And the object of the lawsuit is to enjoin the transfer of services, unless and until the Hibberd procedures have been complied with. That -- and you do not need in any Appellate Division order, by the way --

LEG. D'AMARO:

The lawsuit has nothing to do with transferring services, it has everything to do with closing the facility, because there's no money for it on April 1st.

MR. BOROVIINA:

The closing of the facility by -- which results from the sale --

LEG. D'AMARO:

Mr. Borovina, you have to concede that this lawsuit has nothing to do with selling the facility, it has everything to do with the fact that it was defunded in the County budget process.

MR. BOROVIINA:

And you have to concede -- I respect your opinion, and you have to concede that when you close the facility for purposes of selling it, which is your object --

LEG. D'AMARO:

How could you close a facility for purposes of selling it?

MR. BOROVIINA:

Because, when you sell it --

LEG. D'AMARO:

That's an oxy-moron.

MR. BOROVIINA:

-- unless you're going to create a mirror image of the building someplace else --

LEG. D'AMARO:

That doesn't make any sense.

MR. BOROVIINA:

I'm sorry, what?

LEG. D'AMARO:

Close the facility for purposes of selling it?

MR. BOROVIINA:

Because as a result --

LEG. D'AMARO:

Either we're closing it because we didn't fund it or we're selling it.

MR. BOROVIINA:

The County, the County itself is closing its facility, its facility, not a facility, but its facility --

LEG. D'AMARO:

No, we're not, we're selling it, sir.

MR. BOROVIINA:

And as a result of selling it --

LEG. D'AMARO:

I mean, let's -- you know, let's -- you know, let's keep it real here.

MR. BOROVIINA:

Well, you are --

LEG. D'AMARO:

The fact of the matter is that we're selling the facility.

P.O. LINDSAY:

Guys. Guys, I think you got to beg to disagree. All right?

LEG. D'AMARO:

That's fair enough, Mr. Presiding Officer.

P.O. LINDSAY:

All right?

MR. BOROVIINA:

Thank you Mr. Presiding Officer.

LEG. D'AMARO:

But I just -- you know, again, before I relinquish, and I'm not -- you know, look, we're both lawyers and we can take our positions and it's not meant, you know, in any other way. The way I read this order, and I just want to say to my colleagues, is that this order was issued in the context of a lawsuit about closing the facility through the budget process. Can we continue along that path? No. We would be violating this order. This has -- this order has nothing to do with us meeting here today to talk about a potential sale. And if you look at the plain letter of the decision itself, we can't take any further action to close the facility. Well, I know I'm not doing that today. Or we can't terminate nursing services. Well, a sale doesn't terminate those services. So again, I just urge my colleagues to take Mr. Borovina's very effective advocacy in context. He's an advocate, and, of course, he's going to take that position, but I urge you to read the order yourself.

P.O. LINDSAY:

Okay. Legislator Stern.

LEG. STERN:

It has been answered. Thank you.

P.O. LINDSAY:

Okay. Legislator Eddington.

LEG. EDDINGTON:

Yes. Well, the last exchange was a perfect example of why I try to deal with lawyers as little as possible, because the more involved, the more {ossicated}. Yeah, you should. But I want to thank you, because I think you've been very clear. You've said it in a language that we can understand, even if you don't want to listen, and I do appreciate it, and you built the case. And what I'd like to do, though, is to -- with the permission of the Presiding Officer, to ask, I believe, our attorney is in agreement; is that correct?

P.O. LINDSAY:

We're still under public hearings and I'm trying to get through that.

LEG. EDDINGTON:

Oh, okay. Okay.

P.O. LINDSAY:

And when we start to --

LEG. EDDINGTON:

No. I guess what I'm saying is that if this gentlemen, who's an attorney, is saying that we can't really consider this without breaking the law, and our attorney is saying the same thing, then maybe we should stop considering the issue.

D.P.O. VILORIA-FISHER:

And go home.

LEG. EDDINGTON:

And go home.

*(*Applause*)*

LEG. EDDINGTON:

And because when I hear two attorneys arguing over this, then let's take a break. You know, let's have a time out --

D.P.O. VILORIA-FISHER:

It's dinner time.

LEG. EDDINGTON:

-- and come back another day and get this resolved, because we could talk all night and it's not going to change anything. We've got attorneys disagreeing and I don't want to do anything until I know what the legalities are.

*(*Applause*)*

P.O. LINDSAY:

But could I just -- I mean, if you want, I'll get an opinion. We're in the Public Hearing sector. I'm very, very reluctant to not allow anybody who wants to talk on this very important issue that they

be heard, no matter how long it takes. I didn't hear that we have violated any law by the process that we went through so far. And I'd like to finish that process. Okay. Legislator Cooper. These are questions for Mr. Borovina.

LEG. COOPER:

Mr. Borovina, if, indeed, there is a court injunction prohibiting us from voting to either sell or close the nursing home, do you offhand know what, if any, potential penalties could be imposed on an individual Legislator who violates that injunction?

MR. BOROVIINA:

You can be held, as well as -- you can be held in contempt of court.

LEG. COOPER:

But what does that translate to?

MR. BOROVIINA:

Well, that could involve something as basic -- in addition to being -- suffering just the sanction of being held -- found in contempt of court, a fine and potential imprisonment. Potential imprisonment.

LEG. COOPER:

George. George, if I could just ask you could, would you concur with that.

P.O. LINDSAY:

Again, could we just finish the Public Hearing? No, let's just finish the Public Hearing. When we debate the bill, you can ask our Counsel. All right? I mean, everybody has a right to talk. We've established we're not doing anything wrong by hearing everybody's opinion on this.

MR. BOROVIINA:

I believe the fine is about 200 -- I recall about \$250 under the Judiciary Act where there is a -- where there is a contempt. Suffice it to say, that when you were in judicial contempt, the court does not treat it lightly, and they simply don't say, "Oh, never mind, let's meet again tomorrow, they take action, and the action is something designed to make sure you don't do it again.

P.O. LINDSAY:

Okay. Legislator Browning, and then Cilmi.

*(*The following testimony was taken & transcribed by
Alison Mahoney - Court Reporter*)*

LEG. BROWNING:

Okay. Mr. Borovina, I'm not sure if this is an answer (sic) that I should be asking of you, but I'm going to ask it anyway. We had a number of employees, I think approximately 16, that were laid off on the holiday weekend, on the Sunday. There were some that were laid off, some that were bumped into other positions. Were we in violation -- I shouldn't say we, I didn't do it. But was the County Executive in violation of a court order by laying people off on Sunday? You know, it's a holiday weekend. Wouldn't that layoff have not been effective until Tuesday, which means the injunction was upheld on the Tuesday?

MR. BOROVIINA:

Well, the action was taken on the Sunday. There was no injunctive relief. The County Executive would not have been in violation at that time. The little glitch is there is a statute that says that where an act is required to be performed, the day of that act happens to be a weekend, the Statute

says -- for example, we inadvertently schedule a closing, a real estate closing, I'm selling my home to you and time is of the essence and the day happens to be a Sunday. The law says that you go to the next business day. Now, the next business day in this case happened -- was Tuesday because Monday was a public holiday.

By the time the action, therefore, should have been taken in conformity with the General Construction Law, which would have been at the close of business day on Tuesday, the Appellate Division's order was in effect, because the Appellate Division rendered its decision some time I think early afternoon, I think, 12, 12:30 as I recall. So by that time, the injunction was in effect. Action taken thereafter to layoff and to implement the closure of the facility would have been a violation.

P.O. LINDSAY:

Okay? He answered.

LEG. BROWNING:

Okay. And basically, so you're telling us that, you know, based on the court order, that this Legislature can legally -- can we legally take up the County Executive's resolution here today?

P.O. LINDSAY:

Kate, he said it five times; Jesus.

*(*Laughter*)*

LEG. BROWNING:

I want an answer yes or no. Is that a yes or no? See, I'm not a lawyer.

P.O. LINDSAY:

You still have six cards and we still have a list of people that have questions.

LEG. BROWNING:

Yes or no? Yes or no?

MR. BOROVIKA:

No.

P.O. LINDSAY:

Legislator Cilmi.

LEG. CILMI:

Thank you. Just a couple of questions, just to piggy-back on the fifth or sixth time you've answered the question that Legislator Browning asked. In your opinion -- and again, this is -- I want to make sure that we -- I mean, we all should understand, this is opinion, correct? I mean, you're an attorney, you're rendering an opinion on many of these things that we're talking about. And there are -- could be opposing opinions, correct?

P.O. LINDSAY:

And there is, coming up.

LEG. CILMI:

And there is, right. So does entertaining a motion to table on this resolution, does that constitute action on the resolution, in your opinion?

MR. BOROVIKA:

No.

LEG. CILMI:

Okay.

MR. BOROVIKA:

Why would it? Because you have not entertained the proposal, the underlying merits with respect -- to initiate, adopt or implement a transfer plan. A tabling does not accomplish any of those objectives. You can table until the cows come home, that's okay.

LEG. CILMI:

Okay. Second question; going back to earlier, you were describing the requirements of the Mary Hibberd Law. Can you just reiterate what you said in terms of -- you said that there has to be a plan in place, a very specific plan as to where the residents would go, etcetera. Could you just reiterate what you said?

MR. BOROVIKA:

Yes. The Mary Hibberd Law talks about a plan and talks about it in two different contexts for purposes of this Legislature assessing for itself whether or not it makes sense. The two different contexts are what is the quality of services that will be provided by the admitting facility as compared to the quality of services now being provided and how does that make practical sense? You may decide, after you hear that the services are either de minimus or not as good, you may say, "You know something? Don't confuse me with any more facts, I'm not voting for this."

LEG. CILMI:

Okay, let me just interrupt you for a moment. So in order to do that, the County would literally have to know, in advance of some of the other steps that are necessary, where each of the residents, literally where they would be going, which nursing homes they would be transferred to so that we can ensure that they are being provided with the same services that are being provided currently at the Foley Nursing Home? We would have to know in advance where they're going; yes or no?

MR. BOROVIKA:

You have to know the -- where is the admitting facility, the services that they perform, do they perform the services that are currently being provided; maybe they do, maybe they don't. Maybe it's better than what we're currently providing for them, maybe it's not.

LEG. CILMI:

So you would agree that we would have to know what facilities they were going to.

MR. BOROVIKA:

That's one of the many aspects of the Mary Hibberd Law. That's one of several, yes.

LEG. CILMI:

For all intents and purposes, is that even possible?

MR. BOROVIKA:

It's possible if you provide a detailed -- in this case, it's not even an effort. Before we talk about what is possible in its abstract, we haven't even done the initial by doing it at all.

LEG. CILMI:

I just what to know if it's possible.

MR. BOROVINA:

I submit it is, yes.

LEG. CILMI:

Because, I mean, for practical purposes, for us to say, or for the County, rather, to provide a plan or to present a plan that includes very specific direction in terms of where the residents would be transferred, if we were to approve a sale of the facility; for us to do that prior to even entertaining the sale of the facility seems to me to be impossible.

MR. BOROVINA:

No, I don't agree with that. There are many ways in which you can come up with -- not you, a detailed plan can be prepared which enable -- which, when Legislators and others ask questions about the admitting facilities, the detailed plan would tell not only the Legislators but members of the public, at public hearings, what kind of services are being provided at that facility and that the facility is in a position to admit the kind of patients that are currently admitted at the Foley center. So it's possible. If you're asking -- the detailed plan does not require, for example, an actual Memorandum of Agreement between the resident and the admitting facility.

LEG. CILMI:

I'm not suggesting that. What I'm saying is we have many nursing homes throughout Suffolk County on Long Island. Clearly, all the residents from the facility would not, in almost any case, be transferred to one of those nursing homes.

MR. BOROVINA:

For sure.

LEG. CILMI:

There would be a variety of nursing homes.

MR. BOROVINA:

Right.

LEG. CILMI:

And clearly, each of the patients, or each of the residents, rather, requires different medical care; you know, many are the same, but there are differences of level of care that are necessary.

MR. BOROVINA:

Also true. That's why the Mary Hibberd -- you're exactly right, I agree with that.

LEG. CILMI:

Okay. So to follow along those lines, how in the world would it be possible to say -- pick ABC Nursing Home in Islip, for example -- "John Smith is going to be going to ABC Nursing Home in Islip because they're able to provide the similar level of care." Would you have to literally do that for each and every resident of the nursing home prior to even discussing a plan, prior to public hearings, what have you? And then what happens over the course of time when the patient population -- when the resident population changes; how do you deal with that? I mean, it seems to me like it's practically impossible, in your characterization of the Mary Hibberd Law, to comply with it.

UNKNOWN AUDIENCE MEMBER:

Yep.

MR. BOROVIKA:

No, it's not, and may I tell you why that is so? The Legislature -- a detailed plan is provided to the Legislature that talks, using your example, about a facility in Islip, and there's a facility -- and facilities located in other places. The detailed plan specifies to the services to be provided at the admitting facility. The detailed plan specifies that the resident and the nature of services that are currently being -- existing and being provided at the facility.

The detailed plan specifies that if and to what extent the residents now at the facility would be serviced at the admitting facilities. Those findings -- there's no conclusion made because that's for this body to make. Those findings are then submitted to the Legislature, also at public hearings.

The Legislature then says to itself, "Are we prepared" -- your eyes are open, you're not blind-sided, like I think is happening today. You say to yourself at that time, "Are we prepared to close the facility and transfer services knowing that at the Islip" -- using your example, "that at the Islip facility there will be a degradation of services to the tune of 10%"? Maybe if I'm a Legislator, maybe the answer is yes. But you know something? I now know, as a result of my effort to sell the facility and closing the facility and transferring services, including, among other places, the Islip place, I happen to know that the Islip, that some of my residents will be adversely impacted to the tune of 10%; whatever that may be. I as a Legislator vote on it; I have the God given right to vote on it, I can do it. I cannot vote on it, however, prior to me knowing what those kinds of impacts are and that's exactly what the Mary Hibberd Law was designed to foresee and to take into account.

LEG. CILMI:

Thank you. That answers my question. Thanks.

P.O. LINDSAY:

That's the end of my list. You better get out of here quick before somebody else comes up with a question for you, all right?

*(*Laughter*)*

Applause

Okay. Did Christopher Ogno come back in the room? Come on, let's go. We're getting tired.

D.P.O. VILORIA-FISHER:

And hungry.

P.O. LINDSAY:

Followed by Margaret Bolton.

UNKNOWN AUDIENCE MEMBER:

She had to leave.

MR. CHRISTOPHER OGNO:

Yes, Margaret had to leave, she's no longer here. Thank you for giving me a chance to speak in front of you, as I understand. It's probably been a long day, there's been a lot of good people up here speaking.

Somehow I just feel that there's something deeply wrong with this entire situation. It's like -- it's great, too, because universities have done studies on this. You know how when a tornado is coming or an earthquake, animals start to get real frisky, they start running, hours, sometimes even days ahead of time? It's called that sixth sense that they have, that they have been able to obtain. And

every single one of us here has that sixth sense that something is not right, something is wrong. If it's a sweetheart deal for Mr. Rozenberg, not being able to sell it, closing it. We're told not to trust management, and then now we have a deal that if we sell it, we'll talk about jobs afterwards.

I don't know, but Mr. Levy is not an honorable man. If he gets the sale, what makes us think that he'll talk about giving people jobs after that? If I was Mr. Levy and I got the approval to sell the building, I wouldn't care one bit about the workers or the residents after that deal was made. And I can't possibly fathom how anyone could not understand that.

Applause

D.P.O. VILORIA-FISHER:

Our next speaker I believe is Linda McGregor.

LEG. NOWICK:

She was just up.

D.P.O. VILORIA-FISHER:

Was she just up? Maybe these are the other way around. No, she was up earlier. Linda McGregor, you had spoken at the Public Portion, right?

MS. MCGREGOR:

Yes.

D.P.O. VILORIA-FISHER:

Okay, you can speak. It's been a long day, I wasn't sure whether you had just spoken here or earlier.

MS. MCGREGOR:

My thank you's to the Suffolk County Legislature for allowing me to speak a second time. Linda McGregor, Registered Nurse, Suffolk County Department of Health Services, member of Suffolk County Association of Municipal Employees and a Suffolk County taxpayer.

First, I would just like to say, when you find out someone lies to you, you catch someone in a lie, you don't believe anything else they have to say and you don't believe in anything they do. When you find out that somebody violates the laws or bylaws, you don't believe anything else that person has to say or anything they do. That is the case with our Suffolk County Executive Steve Levy and with our Union President, Cheryl Felice. Suffolk County --

Applause

Suffolk County Steve Levy -- Suffolk County Executive Steve Levy has violated the Taylor law of New York State more than once. Our union President, Cheryl Felice, has repeatedly violated the Constitution and Bylaws of our union and all those Unit Presidents you see surrounding her condone it and endorse it. And all the evidence of all the corruption in our union can be downloaded from my website, www.lindamcgregor.com.

Secondly, many people speaking here today are speaking on this issue as it affects them personally. I come from a place, I have three children in the Service. I have two children who just completed Tours of Duty in Iraq. My son-in-law got the Commendation Medal, my daughter prevented a fellow soldier from committing suicide. My daughter, because she's -- because what she does is very specialized, had to do 12-hour days, over 180 days in a row without a day off. I refuse to believe that our loved ones are in the Service fighting for our country so that these people here in Suffolk

County can violate our rights and take them away; I refuse to believe that.

Second, there's been a flurry of All-Points Bulletin, APB's from our Union President, there's a tentative contract but it's contingent on the sale of John J. Foley. One word comes to mind; coercion. We're not going to have a contract unless you vote for to sell the John J. Foley. She's trying to convince the members, support the conduct, and I have -- this is the memo that went out to all the Unit Presidents and members of our union today, and I quote, "Help in lobbying your Legislator to support the sale today." This is coercion that our contract between us and the County can be contingent on the sale of John J. Foley.

Third, to Legislator Kate Browning, there she is. Legislator Browning, our Union President doesn't speak on behalf of the good, honest, hard working people of this County and of the members of the Suffolk County Association of Municipal Employees. My apology for her horrible letter to you.

Applause

Also, please don't consider this as condescending or incidence, but the whole time I sat here listening I couldn't help but think of proposals, and I would like to make some proposals. I've been informed that the Suffolk County Legislator can amend -- Legislature can amend the operating budget three times a year and that you have the ability --

P.O. LINDSAY:

(Held up four fingers).

MS. MCGREGOR:

Four times a year. And that you have the ability to amend the Operating Budget come April. I implore you to consider restoring funding to the facility until such time that this matter is resolved; the sale, the closure or the retaining of the facility.

My second proposal is, after listening to Attorney Borovina, that you restart the process following the Mary Hibberd Law one step at a time, from step number one; work with the attorneys, your attorneys, Attorney Borovina, Mr. Paul Sabatino and also the attorneys that sit on your Legislature. Start over, do it right, start with step number one and continue these public hearings so there can be transparency that the Mary Hibberd Law is being followed.

My third proposal is in regards to Chris Destio. There is a solution to restoring him to his salary that he had. I've been FOILING all the changes to our benefits, Memorandums of Agreements and Labor Relations. Our Union President, Cheryl Felice, has the power to sign an MRI restoring Chris Destio's salary to what it was with Labor Relations, she has that power. And I don't think Mr. Destio should be punished for all of his efforts and advocacy on behalf of the employees and residents of John J. Foley, he should be rewarded.

Applause

Lastly, I would like to thank Mr. Tempera for honoring my FOIL request. There's been a lot of things we found out that our Union President is doing and not telling us about it. Our Union President does not have any credibility. Thank you.

Applause

P.O. LINDSAY:

Thank you. Okay, our last card is Joseph Macy. Hello, Mr. Macy.

MR. MACY:

Good evening, Mr. Presiding Officer.

LEG. COOPER:

You have to hold the button.

P.O. LINDSAY:

Could you hold your finger on the button?

MR. MACY:

Good evening, Presiding Officer Lindsay. Good evening, Members of the Legislature. How am I doing; am I holding it hard enough at this point?

P.O. LINDSAY:

Well, no, but you're too tall.

*(*Laughter*)*

Why don't you sit at the table here, you'll be more comfortable talking into the microphone.

MR. MACY:

Thank you, Presiding Officer. I will do so.

P.O. LINDSAY:

I have a feeling there's going to be a lot of questions from your presentation, so you might as well have a seat.

MR. MACY:

Presiding Officer, thank you for offering me the opportunity to be seated. I just hope that it is not the electric chair that I'm seated in.

P.O. LINDSAY:

Is the mic on?

MR. LAUBE:

It's on.

MR. MACY:

Is that better? No one has ever accused me of not having sufficient volume; this has got to be a first.

Thank you, first off, for the opportunity to speak to you tonight.

I want to speak to you on a number of issues raised by Mr. Borovina in his comments. I'd like to comment most specifically on the applicability of the injunction, or stay I believe is the more appropriate term, issued by the Appellate Division to the actions you take, because there's obviously a great deal of concern and confusion regarding that.

I listened with great interest to Mr. Borovina's comments, and I fear that rather than answering the questions posed to him by this body, he's delivering an Appellate argument to you. The question that is really germane to your inquiry tonight, in my view, is the question that I think was most appropriately and quite properly posed to him by Legislator D'Amaro regarding the applicability of this injunction. I think we need to start, first and foremost, with the basic premise that injunctions are very, very strictly construed and they are construed to govern specific conduct, and if that

conduct is not governed by the -- the language of the law is the unequivocal mandate of the injunction, then the conduct is not prohibited.

By way of review, I think it's very important that we read into the record tonight the specific language of the decision in order of the Appellate Division, 2nd Department. The Court directed, and I quote, "Ordered that the motion is granted and that the respondents are stayed from taking any further action to close the John J. Foley Nursing Facility or to terminate nursing services at that facility, including implementation of a New York State Health Approval of Closure Plan dated January 21st, 2011, pending hearing and determination of the appeal on condition that the record or appendix", and then it goes on to detail the requirements for the filing of the briefs in that appeal.

I think it's worth noting, particularly in reference to Mr. Borovina's comments, that the Court has granted a preliminary injunction and, therefore, in some manner, shape or form ruled on the merits of this case that that is not only incorrect, but it is, in fact, refuted by the specific language of the court's order. Let me see if I can explain that a bit further.

Preliminary injunctions are governed under Article 63 of the Civil Practice Law and Rules. And very specifically, as relates to those injunctions, "The law provides that a preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do or is doing or procuring or suffering to be done," and this is the operative language, "in action or violation of the plaintiff's rights respecting the subject of the action." The subject matter of Mr. Borovina's action is spelled out in the complaint filed in the litigation pending before the Suffolk County Supreme Court. It relates exclusively to the contention that the adoption of the budget in this -- by the County of Suffolk, the approved Operating Budget, was improper and illegal for lack of compliance with Administrative Code Section A-96 which has been referred to here repeatedly as the Mary Hibberd Law. It does not, as Mr. Borovina would suggest to you, expand this into the applicability of A-96 to all circumstances which might come before this body, particularly the proposal that is under consideration by this body to sell the facility. Nowhere in the underlying litigation is the sale of the facility referenced in the complaint or contemplated, and that governs, in large part, how the Court must interpret the injunction before it.

Secondly, the question was posed, hasn't the Court already decided this? And as Legislator D'Amato pointed out correctly, a decision on an injunction does not determine the merits. It looks to three factors; one, is there a likelihood of success on the merits; two, do the balance of equities favor that; and third, will the applicants suffer irreparable harm absent the granting of injunctive relief.

I mention that for the following reason. In the instant case, the application made by Mr. Borovina was for an injunction under CPLR 5518 which are the provisions governing injunctions before the Appellate Divisions. 5518 requires that the same standards be applied to a preliminary injunction issued by the Appellate Division, as would otherwise be issued by the Supreme Court. The Appellate Division, nowhere in its decision, uses the word "injunction", it uses the word "stayed"; that is an important and essential distinction. Because a stay in the Appellate Division is granted under 5519 of the Civil Practice Law and Rules, and the purpose of a stay is to maintain the status quo in those instances where the Court determines that if actions were permitted to be taken and no stay was to issue without it, that the appeal would be rendered moot. It is a different standard.

In assessing a stay, the Court looks only to the question as to whether or not the ultimate relief would be rendered moot without the issuance of that stay. It does not look to whether or not there has been a showing of success on the merits, and the Court, nowhere in its decision, utilizes the word "injunction". So it is unreasonable for any of us to assume that the Court, in issuing this stay, made any determination as to the likelihood of the ultimate success in this action; it did not. Its decision nowhere talks about the likelihood of success in this action. It refers only to a stay.

In fact, as was correctly pointed out in the earlier comments, the only ruling which has come down from any Court regarding the applicability of A-96 to the budget process, or to the proposals that have been put forth, has come from the Supreme Court of Suffolk County and Justice Baisley's decision, and Justice Baisley has ruled unequivocally that A-96 does not apply. That is the only law of the case in this respect at this time.

I think that's important as an overall context in evaluating what you can do. Because the deeper question now is whether or not this action that you propose to take or that you have under consideration, the proposal for the potential sale of Foley would run afoul of the stay issued by the Appellate Division. The stay prohibits three things; it prohibits the closure of John J. Foley, it prohibits the termination of nursing services, and it prohibits implementation, pardon me, of the closure plan. None of the actions that this body proposes to take are covered by any of those three provisions. I cannot stress that clearly enough.

Again, unless there is an unequivocal mandate from the Court that prohibits the action, and the action that we have on question before us is the closure of Foley, we have to look -- then that action is permitted. And in this case, the injunction issued by the Appellate Division does not unequivocally mandate that this Court take action to prevent the sale. Your actions here tonight are permitted under the terms of the stay. And that is furthered, as I mentioned earlier, by the underlying relief and the underlying causes of action set forth in Mr. Borovina's complaint.

P.O. LINDSAY:

Okay. Are you done, Mr. Macy?

MR. MACY:

I can address other things. There's one other thing, Mr. Lindsay, that I think perhaps I should address.

P.O. LINDSAY:

Go ahead, because there's some questions about it. Go ahead.

MR. MACY:

Mr. Borovina went to great length in his remarks -- and there were a lot of them and I'm sure there will be specific questions, so I won't belabor them to you at this point -- about how there had been no compliance with A-96 as regard to your proposal here today; that is, to my understanding, also inaccurate.

Under Resolution 1474 of 2010 that was filed and adopted in April of last year, the -- there was submitted to the Legislature procedures for the review of privatization initiatives in compliance with A-96 that evaluated all of the standards that were required to be evaluated under that section of the Administrative Code, including the quality and availability of alternative services as compared to the Foley health care facility. So Mr. Borovina's statements are simply belied by the record here, they are not supported by the preliminary injunction. And your action in considering a resolution to sell the facility would not be prohibited under the terms of the Appellate Division's order. Now, I'm sorry, I did not mean to interrupt. I know you had questions, Mr. Lindsay.

P.O. LINDSAY:

Well, I just have two real quick ones, and then I know some of my colleagues have a question. The documentation that you just pointed to, that had to do with the sale.

MR. MACY:

Yes, it did.

P.O. LINDSAY:

Yes, okay.

MR. MACY:

Yes.

P.O. LINDSAY:

Not the closure.

MR. MACY:

Not the closure.

P.O. LINDSAY:

Okay. Okay.

MR. MACY:

And in fact, Mr. Borovina spoke at great length about the applicability of A-96 to closures and alternative facilities; that's not what we have before us. And that qualitative evaluation did occur in the context of the sale proposal that is being considered here tonight.

P.O. LINDSAY:

The other question I have is that we've just heard two very convincing arguments from two very distinguished attorneys that are totally opposite from each other. Is there any way that we could get a quick clarification from the courts on what the stay means?

MR. MACY:

I can't speak for any court, and I certainly would have to ask what you mean by a clarification.

P.O. LINDSAY:

Can we sell the place?

*(*Laughter*)*

MR. MACY:

No, I knew the underlying relief that you were asking for. Courts will clarify their junctions upon request, yes.

P.O. LINDSAY:

Well, I think that's something that's pretty important.

LEG. MONTANO:

Right.

P.O. LINDSAY:

Okay. Legislator Viloría-Fisher has a question.

LEG. STERN:

Bill?

D.P.O. VILORIA-FISHER:

Okay. I'm not an attorney, so you have confused me, because --

MR. MACY:

I just act as one on TV, so it's all right.

D.P.O. VILORIA-FISHER:

Okay, good. I'm going to ask my question in reverse order, because I believe you said there's a big difference between an injunction and a stay and this is a stay.

MR. MACY:

Yes.

D.P.O. VILORIA-FISHER:

And a stay requires that no action be taken that would render a future decision moot.

MR. MACY:

Perhaps I could be more specific.

D.P.O. VILORIA-FISHER:

But that's basically what you said, right?

MR. MACY:

The standard for granting the two is the distinction that I am drawing. Mr. Borovina, in his comments, attempted to argue before this body that by issuing the order which it did just this week, yesterday, it effectively ruled on the merits of his claim. And his argument is based upon the standards that would issue in the case of a preliminary injunction where one --

D.P.O. VILORIA-FISHER:

Can I go back? Because that's not what I was asking.

MR. MACY:

Okay.

D.P.O. VILORIA-FISHER:

What I was asking was not about what Mr. Borovina said but what you said.

MR. MACY:

Right.

D.P.O. VILORIA-FISHER:

And the way you -- and you said the purpose of a stay is -- and I'm not talking about the merits, okay, so erase -- I'm not referring to what he said because I understood your argument.

MR. MACY:

Uh-huh.

D.P.O. VILORIA-FISHER:

You're saying that the purpose of a stay -- we don't know what the ultimate decision is going to be, we don't know what the ultimate opinion is going to be, and so we're not basing this on the merits. But rather it's a stay that will not -- will not allow any action that would render the final decision moot.

MR. MACY:

I think the best -- I'm sorry, I didn't mean to interrupt you.

D.P.O. VILORIA-FISHER:

So -- just let me finish the whole question.

MR. MACY:

Sure.

D.P.O. VILORIA-FISHER:

Closing the nursing home would render that relief, that final determination moot. But wouldn't terminating or selling also render it moot?

MR. MACY:

No. No, because you must look at the stay in the context of the action. The action seeks to declare -- and, in fact, it is a complaint for declaratory judgment. That in adopting the budget, this -- the budget was illegally or improperly adopted for lack of compliance with A-96, okay? That budget, in essence, defunded the Foley Nursing Facility. Okay? That is not the issue that is before you tonight. The issue is a completely distinct and separate issue; the issue here is can you sell that facility. All right? The stay --

D.P.O. VILORIA-FISHER:

Well, I think they're intimately related. Because he took -- he did not provide funding in the budget because he was unilaterally deciding that we were not going to have to support the John J. Foley Nursing Facility because we would close it or sell it. This Legislature had not voted to close the budget -- to close the John J. Foley Nursing Facility or sell it, and he unilaterally removed the funding from it. So if we were to sell it, it would seem to me that that would affect the final declarative judgment, based on the Mary Hibberd Law, which is that he, without Legislative approval, did a kind of de facto omission of the nursing home, or sale of it, closure.

MR. MACY:

Two points. First off, the sale is not the equivalent of a closure. And secondly, as I understand it, and I don't believe there's been any contention by Mr. Borovina or anyone else in the pending litigation, there is no contention that the budget was not properly adopted. Under the procedures set forth in the Charter, Mr. -- under the procedures set forth in the Charter, Mr. Levy, as the County Executive, submits the budget to this body for consideration. The body then voted to amend that budget, and under the procedures of the Charter, it goes back to Mr. Foley. He then vetoed those changes.

P.O. LINDSAY:

No, no, Levy.

D.P.O. VILORIA-FISHER:

Mr. Levy, to Mr. Levy.

MR. MACY:

I'm sorry. Pardon me, too many names. Thank you very much. Mr. Levy then vetoed the changes made by the Legislative body to the budget and there was insufficient votes to override it. The budget then becomes the budget of the County in accordance with the lawful procedures as set forth in the Charter. So there is no question, as I understand it, that the budget was properly adopted.

D.P.O. VILORIA-FISHER:

Okay.

LEG. HORSLEY:

Improperly.

LEG. NOWICK:

No, properly.

D.P.O. VILORIA-FISHER:

I disagree with you, but we'll move on to another question.

MR. MACY:

Okay.

P.O. LINDSAY:

Okay. Legislator Montano.

LEG. MONTANO:

Hold on, we're conducting business. Pizza. How are you, Mr. Macy? It's good seeing you again.

MR. MACY:

Good seeing you, Mr. Montano.

LEG. MONTANO:

Just a couple of very quick questions, because we obviously have two distinguished attorneys who made opposing arguments on the same issue. Both of you referred to the underlying action and the pleadings, neither which any of us here, or at least I can speak for myself, have not seen; so it really is your interpretation and his interpretation. Now, with respect to the order --

MR. MACY:

That's all right, Mr. Montano, I'm listening. I wanted to get a copy of the complaint for you so that I could refer specifically to it.

LEG. MONTANO:

Okay, and I wasn't going to ask questions about the complaint. What I was going to ask is what Mr. Lindsay alluded to. We obviously have two differing opinions about an order of the Court, so my question is what is the procedure that either yourself or Mr. Borovina or jointly can undertake to go back to the Court and get a clarification on this particular issue, and that is whether or not a sale of the facility violates either the order or the intent of the stay that the Court has instituted. Can you go back there on Monday and make application and say, "Your Honor, we have an issue that is pending before the Legislature. There's a stay in effect. Certain members of the Legislature are uncomfortable with making a decision unless we get clarification." Can that be done and how long would that take to do?

MR. MACY:

The answer is it can be done. It's simply an Order to Show Cause to be submitted to the Appellate Division. Requests --

LEG. MONTANO:

And it takes one day to do it.

MR. MACY:

One day.

LEG. MONTANO:

Okay. So --

MR. MACY:

With the caveat, of course, that one can't govern how long it would take the Appellate Division to then rule on the application. It may or may not rule that day.

LEG. MONTANO:

Right, but in some cases they do.

MR. MACY:

In some cases they do.

LEG. MONTANO:

Right. The order could be signed there, it could be signed at two o'clock on Monday, as a matter of fact.

MR. MACY:

Or it could take two weeks or three weeks or two months; there's simply no telling.

LEG. MONTANO:

Now, with respect -- and I really don't want to argue the issue.

But with respect to the order or the stay, and I know that you made the distinction between the preliminary injunction and the stay under Section 5519 which doesn't deal with the likelihood to prevail on the merits, etcetera, etcetera.

MR. MACY:

Yes, sir.

LEG. MONTANO:

And I'm not very familiar with 5519. But as I read the order, it -- part of it says that the respondents, being the County Executive and the County of Suffolk, are stayed from taking certain actions. And one of the actions, in plain English, says, "Or to terminate nursing services." Now, if we were -- it's my feeling, the way I read this and my interpretation, if we sell the facility, even though theoretically nursing services would continue theoretically under a new owner, in any event the respondent, being the County Executive and being the Legislature, has, in essence, terminating -- terminated nursing services at the facility because we are no longer providing it, it's being provided by someone else. So that's where I'm unclear in terms of whether or not we actually do have the authority to go ahead with this sale. Can you simply address that? Because Mr. Mr. Borovina took a position that I think is contrary to what you're going to say.

MR. MACY:

The order of the Appellate Division does not speak in the minute detail that you're asking the question. I'm constrained to interpret, under the precise language of the order issued by the court, what the scope and reach of their relief was.

In this particular case, I believe that there is a significant difference between termination of nursing services and the transfer from one party who will be rendering those services to another. Services are not going to be transferred, they are going to continue to be performed for all the same patients by all the same people. There will be no termination of services. Therefore, under what I believe is the reasonable ruling -- and again, I would refer you to the specific language of the case law which is an unequivocal mandate; that's not my language, that's the language of the courts. The unequivocal mandate does not prohibit the transfer, it merely prohibits termination; you're not

terminating services.

LEG. MONTANO:

That's where I think I differ with you as I read the order. And that is why -- as an officer of the court. And, you know, one of the issues is that, number one, as an officer of the court, I'm an attorney; and number two, my role here is as a Legislator. But my concern is as an officer of the court, as an attorney -- go ahead.

*(*Side conversation between Mr. Macy & Ms. Corso*)*

MR. MACY:

I'm sorry, Mr. Montano.

LEG. MONTANO:

No, it's all right. There's a lot going on on all levels. I am particularly concerned with the prospect or the possibility of being forced to decide a decision where there is a court stay in effect that is, in many ways, unclear. And I would like to see some clarification from the Court as to this particular issue, and that is whether or not a sale either violates or does not violate the stay.

So what I would ask is that -- I think that today I will probably not vote. I would ask either to adjourn or to table and ask you to come back. We have a meeting scheduled for Tuesday. So in theory, this issue can remain open a little longer to get a clarification on whether or not a sale falls within the confines of the stay.

MR. MACY:

Legislator Montano --

LEG. MONTANO:

And I know that you take one position, but you're an advocate and you represent your party, Mr. Borovina represents his parties and he takes a different position. But we also have our own Counsel and we will be asking our Counsel what his advice is, and I think that, you know, before we render a decision, we have to hear from our Counsel. I appreciate your being here, but your position runs contrary to what Mr. Borovina said, clearly.

MR. MACY:

It does run contrary to Mr. Borovina's position, I believe for the reasons that I've set forth, that I act here -- you talked about our respective clients and your respective Counsel; I'd like to think that I am the respective Counsel for the County of Suffolk of which this body represents that County and, therefore, the advice that I am giving you is the best possible advice that I can give you for the County of Suffolk, in partial of any particular client or agenda that I might be representing. I think --

LEG. MONTANO:

Right, but we also have -- we also have, independently as a Legislature, a Motion to Intervene.

MR. MACY:

Yes, you do.

LEG. MONTANO:

So that motion, I believe, is pending before the Court.

MR. MACY:

It is before the Supreme Court, yes.

LEG. MONTANO:

So if, in fact, we are allowed to intervene as a Legislative body, you would not be our Counsel, you would be the Counsel for the Executive Branch; am I correct in that?

MR. MACY:

Interesting paradox.

LEG. MONTANO:

Yeah, I know.

MR. MACY:

That the County of Suffolk might exist as a party and its duly elected representatives as a distinct and separate party.

LEG. MONTANO:

We've had that situation before, if I recall, Joe. So I want to thank you very much and we'll leave it at that.

MR. MACY:

I do want to point out one last thing in response to your questions, and I think --

LEG. MONTANO:

Go ahead.

MR. MACY:

-- it's important and it was pointed out to me as you were speaking, which is that I've been advised that the escrow that was deposited under the contract would have to be released tomorrow. So how that factors into your consideration I leave to you, that's a Legislative determination, not for me. I just feel that that is important to point out.

LEG. MONTANO:

No, we are aware of that, and to be quite frank with you, that is a major concern. But that is strictly a policy issue and has nothing to do with the legality of whether or not we would be in violation of the court order by voting one way -- by voting period or by voting one way or the other.

MR. MACY:

Absolutely. And it would be both presumptuous and arrogant of me to suggest an answer to that, I merely felt it was essential to point out that that is an issue before you.

LEG. MONTANO:

No, we appreciate that. Thank you very much.

P.O. LINDSAY:

Legislator Stern.

LEG. STERN:

Yes. Thank you, Mr. Presiding Officer. You know, it turns on the language really. And the first time that I had taken a look at the language, it mentions three elements that are prohibited here: The first is that the Legislature is prohibited from taking any action to close the facility; two, terminating the provision of nursing services at the facility; and three, taking any action to

implement the closure plan approved by the Department of Health. One and three are pretty clear, it turns on the second element, really the whole discussion turns on the meaning of the second element.

So at first you say, okay, you're looking at the second element and what does that really mean? If the Appellate Division meant to prohibit both a sale and/or a closure, wouldn't the Appellate Division have said that what is prohibited is both a sale and the closure. They did not do that. Did they choose to do that on purpose? We don't know. But it really turns, then, on the meaning of a termination in the second clause.

And it could be ambiguous until you continue the conversation. Basically what you are saying here is that you have to both read the order in conjunction with the underlying action; you can't look at one without the other. And since the underlying action is clearly about closure and not sale, then the order of the court then cannot apply to sale. And you can read it any way you want, you can even say that the Court is ambiguous, but when you read the two together, if the lawsuit isn't about a sale, then the injunction or the stay cannot be about a sale.

MR. MACY:

That is exactly the point, Legislator Stern. Well said.

LEG. STERN:

Thank you.

LEG. MONTANO:

If I may, Bill? If I may? Can I just --

P.O. LINDSAY:

I still have people on the list, okay?

LEG. MONTANO:

Okay.

P.O. LINDSAY:

Legislator D'Amaro.

LEG. D'AMARO:

Thank you, Mr. Presiding Officer. And Mr. Macy, good evening to you.

MR. MACY:

Good evening.

LEG. D'AMARO:

And also, I want to just -- I've never had the opportunity to see you in action and it's quite impressive, and I appreciate your efforts on behalf of the County in defending our duly adopted budget. Speaking for myself, as an elected official and a Legislator, I think that's exactly the position we should be taking.

MR. MACY:

Thank you, sir.

LEG. D'AMARO:

But in any event, I just want to ask one question, and I just want to understand this point. I agree that perhaps we need a clarification, perhaps. But although listening to the discussion or your

position with respect to a stay versus injunction, which every time I talked about this I always said the word "injunction", but you're absolutely correct and it's a different standard.

MR. MACY:

Yes.

LEG. D'AMARO:

An Appellate Division is not even coming close to those merits, they're just giving you a stay, and those are the words, to preserve the status quo in the underlying action which is about the closure and the budget and the Mary Hibberd Law. So thank you for clarifying that.

But if you did go for a clarification, as has been suggested, would that request for a clarification be rendered moot if the buyer of the facility was refunded and handed a check tomorrow and the contract canceled?

MR. MACY:

It probably would. There would be no actual issue that would require the determination of the Court in that case. Courts don't issue advisory opinions, there must be an actual controversy in existence. So were we to be in that position where the escrow was refunded and the contract canceled, there would be no reason for the Appellate Division to opine on that issue.

LEG. D'AMARO:

Okay. Thank you, sir. I appreciate that.

P.O. LINDSAY:

Okay. Legislator Kennedy.

LEG. KENNEDY:

Hi, Joe.

MR. MACY:

Good evening, Mr. Kennedy.

LEG. KENNEDY:

Nice to see you again. How are you?

MR. MACY:

Very well, thank you. And you?

LEG. KENNEDY:

Good. I'll keep it real simple. I appreciate your laying the perspective and the statute out to us. I don't know if I necessarily agree with the way that you parse the word "stay" as opposed to "injunction". But nevertheless, let me get to something more basic. Are you my lawyer?

MR. MACY:

I'm the lawyer for the County. And as much as the County acts through its Legislative and Executive Branches, the answer to that would be implicitly yes.

LEG. KENNEDY:

Okay. Did you put in our position papers to this body becoming a plaintiff to this suit?

MR. MACY:

I did, sir.

LEG. KENNEDY:

Okay. So how can you be my lawyer if you opposed my joining the suit?

Applause

MR. MACY:

Because --

P.O. LINDSAY:

Hold it down, come on.

MR. MACY:

Because it's strictly a legal issue, Legislator Kennedy. The issue is that a municipal corporation such as the County of Suffolk can only act through its Legislative bodies. They are, in effect, one in the same, they cannot be separated. That is the fundamental premise of the opposition that we put in, that by representing the County, we necessarily represent the Legislature because the County can only act through its Legislature. The two cannot be separated as a matter of law. The rights and interests of the Legislature are protected by the defense of the County.

LEG. KENNEDY:

Thank you for articulating that explanation, I appreciate it. I'll respectfully disagree. When I ask about whether or not I'm going to be in contempt, I'll be asking George Nolan.

But I will also say that I think your interpretation or perspective is on the statute, but I don't think that we are a harmonious clientele the way you've characterized. You came into the matter as a result of this body joining the suit, the County Attorney defended or appeared prior to our entering, and so now you're following in the perspective from the Executive's side.

I also think at its essence, while we really are talking about is compliance with Hibberd and the submission of the budget. I don't want to argue the merits, the merits are before a court; people far more intelligent and smarter than me. But the budget as submitted referenced revenue from a sale without ever having had the compliance with Hibberd prior to its characterization. That's the essence if you can put it in a nutshell. And so we'll go forward from there.

MR. MACY:

I assume there's no question before me, or is there? I'm sorry.

LEG. KENNEDY:

All I really wanted to be able to establish is where we are as far as your advising us. And I respect your role as an attorney, but it's also important that for those of my colleagues who may not be as familiar with the many facets of the suit, where, in fact, we are at this point. Thank you.

MR. MACY:

Okay.

P.O. LINDSAY:

I have another question for you, but Legislator Kennedy, I just have to put -- point out something to you. That the revenue that was put in the budget wasn't from the sale, it was from the closure.

LEG. KENNEDY:

Oh, I'm sorry. Okay, I misspoke.

P.O. LINDSAY:

Okay? Legislator Gregory.

LEG. GREGORY:

Okay. Thank you, Mr. Chair. Thank you, sir. I know there's been much questioning about the intent of the Appellate Court about the wording in the stay. And just correct me if I'm wrong, and I'm sure you will, but my interpretation could mean -- could be, I think my interpretation of the wording could mean because the closure is an open question, the wording in -- or I guess the sale is an open question or the procedures for the sale is an open question in the Court. The Court is prohibiting closure or a transfer of services. It's naturally assumed that the sale cannot be contemplated or any action could be done with that because it's still an open question before the Court, or am I wrong? What's your response to that?

MR. MACY:

Legislator Gregory, in your question to me, you used the word "could". Could the injunction mean closure? Could it mean transfer? Could it mean sale? I can only answer that by turning back to the language of the law which says that if there were to ever be a violation of the Court's order, it would have to be a violation of an unequivocal mandate. Now, the fact that we stand here saying "could it mean this" or "could it mean that" implicitly tells us that the order issued by the Appellate Division not containing the word "sell", talking merely about closure and termination of nursing services and implementation of the closure plan, does not unequivocally mandate or prohibit you from acting as a Legislative body to sell the facility.

LEG. GREGORY:

And I -- and I don't understand that. Because if -- the way I understand, the lawsuit is questioning whether -- or part of the lawsuit is questioning whether the provisions of the Mary Hibberd Law have been followed, which will have to be done if we were to follow through with the sale. Right? So the Court --

MR. MACY:

I'm sorry, I'll let you finish your question.

LEG. GREGORY:

So the Court will say, "Well, the sale is an open question. But while we decide that, you can't do this or this." Is that -- I mean, is that a possibility? I mean, I'm sure -- go ahead.

MR. MACY:

I think Legislator Montano raised the point before that perhaps certain members of the Legislature have not actually seen the complaint in the underlying lawsuit, and that is unfortunately a bit of a handicap we operate under tonight. Because I think that you need to look very closely at that lawsuit.

I'm going to read to you -- and I'm sorry, it's a bit lengthy, I'll try to read as quickly and clearly as I can -- from the Addendum Clause in the lawsuit which is the provision as to the relief that is being requested by the plaintiffs. And it asks for a declaratory judgment that, and I quote, "The rights of the parties, that Levy did not have the authority to include the Levy proposal as part of the 2001 Recommended Operating Budget or to submit the Recommended 2011 Operating Budget to the Legislature," that includes the Levy proposal prior to compliance with the Mary Hibberd law. "Three, that the recommended 2011 Operating Budget submitted to the Legislature on September 17th, 2010, to be null and void to the extent it included the Levy proposal. Four, that the 2011 Adopted Operating Budget is null and void to the extent it included the Levy proposal." And if you'd like, I'll read the remainder of it.

The point I'm trying to make to you is the lawsuit speaks only to the question of whether or not, in adopting the budget which defunded the John J. Foley Facility, there had to be compliance with A-96. It does not speak in any manner, shape or form, to the question as to whether or not you could sell the facility. It refers only to the legality of the budget based upon what the board did or did not do, the Legislature did or did not do in compliance with A-96.

LEG. GREGORY:

Right. And in order to be in compliance, we would have had to abide by the provisions in the Mary Hibberd Law.

MR. MACY:

That's the contentions in the lawsuit; I disagree with that, but that is the contention that is made by the plaintiffs.

LEG. GREGORY:

Okay. But it's an open question nonetheless.

P.O. LINDSAY:

It isn't an open question, it's a subject of disagreement. You have one distinguished lawyer telling you one thing, the other one told you at length the other thing.

LEG. GREGORY:

But it's my understanding that that's been part of the argument before the Appellate Court, that they -- that they're outlining what steps haven't been applied.

MR. MACY:

As relates to the budget; you have to continue to go back to that. And if I could just add one thing to what the Presiding Officer said which is --

P.O. LINDSAY:

You're not going to get an answer.

LEG. GREGORY:

I know, obviously not.

MR. MACY:

-- it's not simply two lawyers. There's two lawyers and a Judge who have ruled on this question, and the Justice of the Supreme Court has said unequivocally, "It does not apply to the Operating Budget." All of that begs the question here before us because we're not talking about the Operating Budget tonight, we're talking about a potential resolution to sell the facility and whether the stay implemented by the Appellate Division would be violated by your considering a resolution to sell.

LEG. GREGORY:

Okay. All right. Thank you.

P.O. LINDSAY:

Legislator Montano.

LEG. MONTANO:

Yeah, I'm sorry, I thought I was done. Just a couple of quick points. You keep referring to Judge Baisley's decision, but isn't -- isn't Judge Baisley's decision going to be reviewed? Isn't that what the Appellate Division is going to review as to whether or not he was correct in his analysis?

MR. MACY:

Absolutely.

LEG. MONTANO:

All right. So you're relying on something that really, while it may have been decided at the lower level, can easily be reversed at the Appellate Division, and that remains to be decided.

MR. MACY:

The Appellate Division always has the authority to reverse, but as you know as an attorney, Legislator Montano, until such time as reversed, that is the law of the case.

LEG. MONTANO:

Except that we have a stay in effect right now.

MR. MACY:

The stay prohibits certain actions, yes.

LEG. MONTANO:

Exactly. Now, I just want to follow-up on what Legislator Kennedy stated with respect to your representation of the Legislature. I have to be honest with you, Mr. Macy, I didn't know that you were my attorney. But you also indicated that because we are the Legislature, you stand as the attorney for the County of Suffolk and we're a municipal corporation. But aren't there many cases where the Executive and the Legislative Branch are actually suing each other and they would have their own attorneys?

MR. MACY:

There are.

LEG. MONTANO:

All right. So in reality, while you at this point say that you do represent us, because we have a motion to intervene and we have filed papers and you have filed motion -- papers in opposition, it seems kind of -- it seems almost to be not per se a conflict, but certainly as a member of the Legislature, I was not aware you were my attorney, we didn't speak about this case, you didn't discuss your filing of papers with me, but we'll leave that as it may. Just --

MR. MACY:

That's twice I've surprised you, Legislator Montano, on that issue (Laughter).

LEG. MONTANO:

Yeah, and I'm sure I've given you a couple of surprises. One last thing. With respect to the -- with respect to the order, is it your intent to go back -- is it your intent to go back to the Court, assuming that we don't approve this sale today, will you be back in court asking for clarification on the sale?

MR. MACY:

It is my intent to do as my client instructs. Once I --

LEG. MONTANO:

Well, we're your client.

*(*Laughter*)*

MR. MACY:

I think that's implicit in my statement, isn't it, Legislator Montano?

LEG. MONTANO:

Well, no. Because if we tell you not to and the County Executive tells you to file, who are you going to listen to? And I don't want to get into that. What I really want to do is forget this, forget all of this, Joe. Do me a favor, do you have the record that we are talking about in front of you?

MR. MACY:

I'm sorry.

LEG. MONTANO:

Do you have the record of the proceedings that are the underlying action in this case that we are talking about? Could you just hold that up for a second so I could see how thick it is?

MR. MACY:

When you're referring to the record, you're talking about the transcript of the oral argument? What portion are --

LEG. MONTANO:

I'm talking about the -- we keep talking about the order that was issued, the stay that was issued by the Appellate Division and how it has to refer back to the record. Just let me see the extent of the record. You read part of it, but could you just hold it up so we could see how thick it is?

MR. MACY:

The record to which you're referring to and to which I've been referring is the complaint in this action.

LEG. MONTANO:

Well, that's not the record, that's just part of the record.

MR. MACY:

No, the record is far greater.

LEG. MONTANO:

The record -- exactly. The record at the pleadings, the -- just hold up what you've got there. Is that the record of the proceedings before the Appellate Division?

MR. MACY:

No, sir. These are only certain exhibits.

LEG. MONTANO:

Are there more?

MR. MACY:

Yes, there are.

LEG. MONTANO:

So how thick is that pile?

MR. MACY:

I couldn't give you an estimate on that.

LEG. MONTANO:

Well, here's my point, Mr. Macy. You're asking us to make a decision on a record that probably is six inches thick and all we have before us is two pages of a stay and two interpretations from two opposing counsels that says we can and cannot do something; that's a very difficult decision to be placed in, don't you agree?

MR. MACY:

Legislator Montano, you refer to the record. I refer merely to the complaint which is the operative document under Article 63 of the Civil Practice Law and Rules, specifically Section 6301 which says that the context of the injunction has to be governed by the relief sought in the action. That's contained merely in the complaint; that document consists of 17 or 18 pages.

LEG. MONTANO:

I won't argue. I won't argue the law with you, but the reality is that what I'm looking at is the entire record, the complaint, the answer, the reply, the sur reply, the Court's decision, the motion on appeal, etcetera, etcetera, etcetera, and that is a very extensive document which I don't think any of us have been privy to.

MR. MACY:

I --

LEG. MONTANO:

And yet we're being asked to make a decision on two pages that refer to probably 6,000 pages.

MR. MACY:

There were extensive exhibits submitted by the parties in the litigation which would constitute the Appellate record, as that term is used. Yes, that's a fairly significant number of pages, yes.

LEG. MONTANO:

And that's why there's a stay in effect, because they haven't made a decision on that, correct?

P.O. LINDSAY:

Could we --

LEG. MONTANO:

And I'm done, Mr. Lindsay. Thank you.

P.O. LINDSAY:

Thank you. Thank you. Aren't we glad we only have four lawyers up here?

*(*Laughter*)*

Legislator Cilmi.

*(*The Following was Taken and Transcribed by
Lucia Braaten - Court Reporter*)*

LEG. CILMI:

Thanks. Just very briefly, to Legislator Montano's point, and it's I think point well taken, none of us, from what I can see, is wearing a robe tonight. And, I mean, isn't it true ultimately that whatever we decide tonight, what we do, whatever action we take or don't take, that one side or the other may bring action in court as to that action or inaction?

MR. MACY:

As a lawyer, I don't profess to speak to what Mr. Borovina might do. As a layperson and common sense, I think that that's probably a fair analysis.

LEG. CILMI:

It's conceivable that it could happen. I mean, if we decide to -- if we decide to vote to table, if we decide to vote to approve, if we decide not to do anything, it's conceivable that one side or the other may sue the other side.

MR. MACY:

Anything is conceivable, yes.

LEG. CILMI:

Okay. Could you just for me, I'm not an attorney, could you define for me the difference between summary judgment and declaratory judgment?

MR. MACY:

Sure. Declaratory judgment is relief sought in the context of a legal action. It is where you are asking the court to declare the rights of the parties in a particular dispute. There is a current and pending controversy between the parties that requires resolution, and you ask the court to declare the rights of the parties. That is a declaratory judgment. Summary judgment is a procedural mechanism whereby a party moves for judgment essentially on the pleadings, exhibits, and whatever deposition testimony or other evidence might exist in the lawsuit without the necessity of the trial. The standard on a motion for summary judgment would be that there is no factual issue to be tried, that the matter is resolved based upon simply questions of law. So summary judgment is a procedural remedy, whereas a declaratory judgment is the ultimate relief sought by the parties.

LEG. CILMI:

And who does -- does the Appellate Court issue the summary judgment?

MR. MACY:

No, summary judgment would have to be granted by the trial court. It would then be reviewed on an appeal by an Appellate Court, but summary judgment itself would be granted by the Appellate -- by the trial court, pardon me.

LEG. CILMI:

Okay.

MR. MACY:

Think of it this way, if I may in simplest terms.

LEG. CILMI:

Yep.

MR. MACY:

Judgment is effectively a trial on paper without the necessity of calling witnesses, in which the court says there are no factual issues, the facts are not in dispute, it is only for me as the judge to determine what the law is as applied to those facts and render judgement.

LEG. CILMI:

So are we awaiting a summary judgment or a declaratory judgment, or both?

MR. MACY:

The plaintiff has moved and we have cross-moved, both for summary judgment. Plaintiff has moved for summary judgment granting the declaratory relief that he seeks, and we have cross-moved to dismiss his complaint. I know it's convoluted. I hope that answered the question. If it didn't, I'm sorry, I'll try to clarify it.

LEG. CILMI:

Clear as a whistle.

MR. MACY:

Yeah, I know.

LEG. CILMI:

Thank you.

MR. MACY:

There's a reason we go to school for this nonsense, right?

P.O. LINDSAY:

Thank you very much, Mr. Macy. And if I was you, I'd give you the same advice I gave Mr. Borovina. Get the hell out of here before somebody asks you another question.

MR. MACY:

Thank you, Mr. Lindsay, Members of the Legislature.

P.O. LINDSAY:

You're welcome.

MR. MACY:

It's always a pleasure to be before you.

P.O. LINDSAY:

Thank you.

D.P.O. VILORIA-FISHER:

Can we close the public hearing?

P.O. LINDSAY:

Yes. I'll accept a motion to close the Public Hearing --

D.P.O. VILORIA-FISHER:

So moved.

P.O. LINDSAY:

-- by Legislator Nowick, seconded by Legislator Viloría-Fisher. All in favor? Opposed? Abstentions?

LEG. KENNEDY:

Mr. Chair.

MR. LAUBE:

Sixteen.

P.O. LINDSAY:
Fifteen.

MR. LAUBE:
Seventeen.

*(*The following testimony was taken by Lucia Braaten
& transcribed by Alison Mahoney - Court Reporters*)*

P.O. LINDSAY:
I recognize Legislator Kennedy.

LEG. KENNEDY:
Okay. We've heard from speakers and lawyers and many, many folks for quite some time to finally get to the question, which I think some of us tried to ask earlier. Legislator Eddington attempted to pose it, so I'm going to pose it to our Counsel now. George, can we vote on this?

LEG. HORSLEY:
The real lawyer.

D.P.O. VILORIA-FISHER:
Our lawyer.

MR. NOLAN:
Yeah, let's go. Good arguments from both sides, but my opinion is that the stay does apply to us selling the facility, taking any action to sell the facility. You know, we have probably five or six lawyers on this horseshoe. But when I read it, it seems fairly clear to me that it states that we cannot take any action to terminate nursing services at that facility, and when that phrase is used it means the County providing those services. So when I read this order, that's what it means to me.

LEG. KENNEDY:
Okay. Thank you.

P.O. LINDSAY:
Okay.

LEG. KENNEDY:
All right, Mr. Chair.

LEG. D'AMARO:
Bill?

LEG. KENNEDY:
All right, Mr. Chair.

P.O. LINDSAY:
Okay. I -- go ahead, Legislator D'Amaro. I didn't want to debate this any further. I was just going to call for a short recess for us to digest all of this, but go ahead.

LEG. D'AMARO:
I appreciate that answer. It's very narrow and directly on point to what Legislator Kennedy just asked to our Counsel. George, just if you could respond to one side of the argument that says although it may stay any further action with respect to terminating nursing services, that has to be

taken in the context of the underlying lawsuit. And what's at issue is closure through the budget and not contemplating a contract of sale and this other procedure that we're considering tonight. I mean, how do you -- how do you have this entire court decision and order for the Appellate Division even apply if the underlying merits of the action really just go to the closure through the budget and challenging the budget?

MR. NOLAN:

Well, I think what the case -- the lawsuit is trying to do is to have the County continue to provide nursing services at that facility; to me, that's what the case is about. I understand that it's arisen in the context of the closure, but I don't see how we can read this and say that we can go ahead and move ahead with the sale of the facility which will mean that the County will not be providing those services anymore. I wish, you know, the order was clearer, more definitive, because it's hanging on one phrase and people can interpret it differently. But when I read that, that's where I come down on it.

LEG. D'AMARO:

So you would go beyond the underlying merits with respect to closure. It applies with any action, whether it's about a closure or a sale or whatever else we might come up with.

MR. NOLAN:

I think the case is about whether the County is providing the services or not, Lou, Legislator D'Amaro.

LEG. D'AMARO:

Well, but the complaint doesn't say that.

P.O. LINDSAY:

But aren't we arguing, you know --

LEG. ROMAINE:

Arguing the merits of the case.

P.O. LINDSAY:

I mean, I think we need -- well, I don't know. But Legislator Romaine, did you want --

LEG. ROMAINE:

We did the resolutions, we --

P.O. LINDSAY:

Microphone, microphone.

LEG. ROMAINE:

We did the resolutions, we had the Public Hearing, we had the Public Portion, and all that remains before us are the two resolutions regarding the nursing home that the County Executive has presented us. Counsel has ruled -- whether we accept that ruling or not, I mean, that would be a debate -- that these -- that we can't vote on these. I think a motion for adjournment is in order.

LEG. EDDINGTON:

I'll second it.

P.O. LINDSAY:

Well, I would really like us to recess for a few minutes to talk about it, in respective caucuses, and we have some pizza in the back room and I'm hungry.

*(*Laughter*)*

LEG. ROMAINE:

I will withdraw my motion to -- and move to recess. A five minute recess, sir?

P.O. LINDSAY:

Okay. I'll try and make it as short as possible because --

LEG. ROMAINE:

Five minutes.

P.O. LINDSAY:

-- I'm as tired as everybody else.

*(*The meeting was recessed at 8:15 P.M. and reconvened at 8:46 P.M. *)*

P.O. LINDSAY:

Okay. Mr. Clerk, would you call the role, please?

MR. LAUBE:

Will do.

(Roll Called by Mr. Laube, Clerk)

LEG. ROMAINE:

Present.

LEG. SCHNEIDERMAN:

Here.

LEG. BROWNING:

Here.

LEG. MURATORE:

(Not Present).

LEG. EDDINGTON:

Here.

LEG. MONTANO:

Here.

LEG. CILMI:

Yes.

LEG. BARRAGA:

Here.

LEG. KENNEDY:

Yes.

LEG. NOWICK:

Here.

LEG. HORSLEY:

Here.

LEG. GREGORY:

Here.

LEG. STERN:

Here.

LEG. D'AMARO:

Here.

LEG. COOPER:

Here.

D.P.O. VILORIA-FISHER:

Here.

P.O. LINDSAY:

Yes, here.

LEG. MURATORE:

Here.

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. Anybody want to make a motion?

LEG. KENNEDY:

Yes, Mr. Chair. I'd like to make a motion to swallow. No -- I think that we need to continue the dialogue and I'm going to make a motion to adjourn to one o'clock tomorrow afternoon.

LEG. BARRAGA:

I second the motion.

LEG. COOPER:

I'd like to make a motion to table until Tuesday's meeting.

D.P.O. VILORIA-FISHER:

I second that motion.

LEG. D'AMARO:

On the motion?

LEG. NOWICK:

Which one?

P.O. LINDSAY:

Okay, we have two motions to table, one till tomorrow and one till Tuesday.

LEG. MONTANO:

It's to recess the meeting.

P.O. LINDSAY:

No, I believe the motion is to table the resolution until a time certain.

LEG. MONTANO:

No, no, what is it? I'm sorry, I misunderstood it then. Tim, what is the motion?

MR. LAUBE:

We have one motion to adjourn till tomorrow at 1PM.

P.O. LINDSAY:

Oh, I'm sorry.

LEG. MONTANO:

Right, and then one motion to adjourn --

MR. LAUBE:

Till Tuesday.

LEG. MONTANO:

Okay.

LEG. NOWICK:

To adjourn till Tuesday?

P.O. LINDSAY:

To table, to table.

MR. LAUBE:

Well, to table. Table to the date certain.

LEG. MONTANO:

Adjourn or recess, whatever.

LEG. KENNEDY:

Can we get a couple of legal interpretations on that?

MR. LAUBE:

Just a second.

D.P.O. VILORIA-FISHER:

George is going to get the rules.

MR. LAUBE:

Just a second, I'll get somebody.

LEG. D'AMARO:

I would --

D.P.O. VILORIA-FISHER:

Maybe we'll be here till 1 PM tomorrow.

LEG. KENNEDY:

Could be. Could be.

P.O. LINDSAY:

Okay. We have a discussion on which goes first, and rather than go get the rules and delay this any further, I'm going to take the first motion that was made, to adjourn till tomorrow at one o'clock.

D.P.O. VILORIA-FISHER:

On the motion.

P.O. LINDSAY:

On the motion, Legislator Viloría-Fisher.

D.P.O. VILORIA-FISHER:

Well, we've been here about ten hours, 12 hours.

LEG. HORSLEY:

No.

D.P.O. VILORIA-FISHER:

When did we start this? Oh, that's right.

MR. LAUBE:

Three thirty.

D.P.O. VILORIA-FISHER:

That's right. It only seems like 12 hours.

LEG. KENNEDY:

Some of us have been here since Public Safety, though.

D.P.O. VILORIA-FISHER:

We are looking at a tabling motion because, based on the testimony of the attorneys who were here, we haven't reached any kind of conclusion as to whether or not we would be violating a stay. And there's no indication that we're going to have an answer by one o'clock tomorrow afternoon, no guarantee. And so at least we're going to be here on Tuesday, let's adjourn it or table this until Tuesday and when we're --

LEG. MONTANO:

We're not tabling it, we're just recessing the meeting.

D.P.O. VILORIA-FISHER:

I'm talking about the motion that I seconded.

LEG. MONTANO:

Which is to recess.

D.P.O. VILORIA-FISHER:

No, the motion that I seconded was to table this particular --

LEG. MONTANO:

No.

D.P.O. VILORIA-FISHER:

Table the sale.

P.O. LINDSAY:

We're on the motion to recess tomorrow til one o'clock.

D.P.O. VILORIA-FISHER:

Right. But I'm saying that --

LEG. MONTANO:

Right, but that's not a tabling.

D.P.O. VILORIA-FISHER:

But I'm saying that it's a better motion to table it.

LEG. MONTANO:

So you're making a new motion.

LEG. COOPER:

No, no.

D.P.O. VILORIA-FISHER:

I already made it.

P.O. LINDSAY:

She already made it. We have two motions before us.

D.P.O. VILORIA-FISHER:

We have two motions before us.

P.O. LINDSAY:

One to recess til tomorrow, one to table it until Tuesday.

D.P.O. VILORIA-FISHER:

Keep up, Ric. Come on.

LEG. MONTANO:

I thought your motion was to recess till Tuesday.

LEG. COOPER:

No, mine was to table.

P.O. LINDSAY:

No, table.

D.P.O. VILORIA-FISHER:

Table.

LEG. MONTANO:

Okay, now --

P.O. LINDSAY:

We just went through that.

LEG. MONTANO:

You've got to talk louder, Jon.

D.P.O. VILORIA-FISHER:

Okay. So I'm saying that is the better motion. We're going to be here on Tuesday, we will --

P.O. LINDSAY:

Okay.

D.P.O. VILORIA-FISHER:

There's a better chance that we're going to have some kind of clarification by the courts before then. I don't believe we're going to have it by tomorrow.

P.O. LINDSAY:

Okay. Legislator D'Amaro.

LEG. D'AMARO:

Thank you. I have two questions. One, to Legislator Kennedy; what's the purpose for adjourning until one o'clock tomorrow? And the other would be to anyone who's left here from the Administration to talk about whether or not there will be anything to talk about tomorrow if we don't vote tonight.

LEG. KENNEDY:

It's a reflection of a will of the Republican caucus to want to continue some of the dialogue that's been going on, and in an effort to work towards something concrete that may be a reflection for the other side. We're looking to a specific time tomorrow. As I pointed out before, Legislator D'Amaro --

LEG. D'AMARO:

John, can I just interrupt you for one moment? The reason why I asked that question is let's say that a satisfact -- a resolution of the issue to your satisfaction, then would you be comfortable voting tomorrow without a clarification? Because I believe you were making some arguments that you were not comfortable with that.

LEG. KENNEDY:

Well, you see, now that's where a Minority Leader or a Majority Leader sometimes articulates a more global position, but nevertheless --

*(*Laughter*)*

-- might also have some more --

LEG. D'AMARO:

Sorry, but, you know, I have to ask these questions.

LEG. KENNEDY:

That's quite all right. As a matter of fact, I'm transparent here, you know? And as a matter of fact, I can be asked anything at any time.

As to my own personal concerns, they remain the same that they've been throughout and as a matter of fact, I think I've probably been pretty consistent. And I respect each and every one of my colleagues around this horseshoe who have articulated on this, and we've articulated quite a bit.

LEG. D'AMARO:

All right. And --

LEG. KENNEDY:

Nevertheless, I'm representing what the desire of the caucus is at this point to keep dialogue in earnest, and perhaps there may be a way to obtain some clarification.

LEG. D'AMARO:

All right, thank you.

LEG. KENNEDY:

You're welcome.

LEG. D'AMARO:

And through the Chair, if I may just very briefly ask the Administration. You know, we're debating various motions that would bring us back here tomorrow at one o'clock, or perhaps we'll discuss this again on Tuesday if we table. One of the things in my mind is we run a risk, of course, of what's happening in the real world with the contract and refunding the deposit. You know, where do we stand with that?

MR. CRANNELL:

First off, thank you very much, Legislator D'Amaro. First of all, Presiding Officer Lindsay, I want to thank you for your efforts today. There's been a lot of back and forth. We've acted in good faith. We believe we've provided everything that's been asked of us; a substantive package in writing for the employees. We provided a package for patients. We actually put forward, looking towards some of the other ideas about public/private partnership, looking at services in a non-traditional setting, looking at needs in our community partnering and working together; that is in this package. That RFP is in this package. Unfortunately, this is tonight. This is -- I implore you to take a vote on this tonight. This deal is done tonight. We are -- we have been -- the vendor who is seeking this sale unequivocally wants his money back first thing in the morning. We have no ability to stop that.

We also have an agreement with AME for a four-year contract. We acted with them in good faith. We have a very strong contract. That terminates; without this sale, there is not the money to fund this contract. We -- if this -- if we do not vote to sell this facility tonight, agree on a compromise that addresses the needs of the patients, the employees of servant delivery in this County, we will reach a place that I don't think any of us want to go. Please take a vote on this tonight. Do not table this.

LEG. D'AMARO:

So just to follow up very briefly. If the -- if the Legislature gets a clarification quickly and it turns out that we could, in fact, vote on the sale, which is what we've been talking about all day, but we don't have that vote until Tuesday, are you convinced that there's -- it's a moot issue at that point, because the deal would not -- could not be revived? I mean, how definitive is that? I mean, I'm sure you would make an attempt to try and revive it, you know, because that looks like what we're talking about here.

MR. CRANNELL:

Well, tonight is the night. The vote has to happen tonight. We did make an offer through Counsel for a vote contingency upon an outreach -- Joe, you want to speak to it for a minute?

MR. MACY:

Sure. Members of the Legislature, a few moments -- a few minutes earlier I had a conversation with Counsel to the Legislature suggesting that perhaps one way to address your concerns would be to vote on the resolution tonight and make it contingent upon a directive to Counsel to appear back before the Appellate Division, either tomorrow or Monday, to obtain a clarification of the order. If the Appellate Division, in its order -- I'm sorry. If the Appellate Division were to rule that the order did, in fact, bar the sale, then that resolution would, by its own terms, become a nullity. Whereas, if you were to approve the sale subject to that caveat and the Appellate Division suggested that the stay did not govern the sale of the premises, you could then proceed pursuant to that resolution. That's sort of a middle ground.

LEG. D'AMARO:

Could I just ask you on that? If the Appellate Division ruled that the vote violates, or the action violates the stay, and the underlying resolution would become a nullity, would we be in contempt?

MR. MACY:

You personally would not be in contempt. You have a --

LEG. D'AMARO:

Would anyone be in contempt?

MR. MACY:

No, no, absolutely not. First off, you have Legislative immunity for the acts you take in your Legislative capacity.

LEG. D'AMARO:

Thank you. I was waiting for that.

P.O. LINDSAY:

Legislator Nowick.

LEG. NOWICK:

Actually, that suggestion I was thinking about earlier, but it doesn't sound like it's going to happen. But here's why we were talking about, I guess, adjourning it to tomorrow. Possibly, just possibly, and maybe I'm wrong, if we wait til Tuesday, I know the buyer's walking away. But if we continue the meeting, that would sound to me like a more logical way to present this. And we have four thousand million attorneys here. We can't get an attorney to go find a judge that represents our County to give us a decision early tomorrow? And perhaps, perhaps if we do that, we could come back here at one o'clock, we could take this vote.

Look, the stakes are high. The stakes are high here. There's a chance of seven, 800 people losing jobs. There's also a very good possibility that everybody keeps their jobs and that perhaps there's a contract. And now I'm not saying one is contingent upon the other, but if you -- if we don't have money to pay for a nursing home and we keep the nursing home open, well, we sure as hell don't have money to do contracts and raise salaries.

I think -- I think the stakes are too high to leave this. If Mr. Rozenberg walks away tonight, well, there's no sense in having a meeting tomorrow at one o'clock. However, if we can continue this meeting till one o'clock tomorrow, in the interim, there must be an attorney of ours that could go represent us in the morning and say, "The County of Suffolk, the municipal County of Suffolk needs a clarification." That's all we want, a clarification. That would maybe enable us to vote at one o'clock and to go one way or the other. I just think it's just too important to take the chance of waiting for Tuesday. And by the way, did I mention we're in Riverhead Tuesday?

MR. CRANNELL:

Legislator Nowick, if I could just add to that a little bit. The vote has to happen tonight. We've been negotiating with this vendor, the Presiding Officer has presented us with some hurdles to overcome today as part of this negotiation. We've been with that vendor all day back and forth. We have given everything that was asked today. But he has been very clear to us. He is being devastated by Medicaid cuts coming from the State of New York. The economics of this deal has changed, he has to have certainty now. This cannot wait til tomorrow.

LEG. NOWICK:

But here's the thing; it's not going to be voted on tonight.

MR. CRANNELL:

Okay.

LEG. NOWICK:

So the choices are maybe we'll table it til Tuesday or we'll give it a shot for tomorrow and just maybe he gets it, it's a few more hours. It's 12, 24, I can't do the hours.

LEG. BARRAGA:

Sixteen hours.

LEG. NOWICK:

Sixteen hours away, 16 hours. He's got months and money invested in this, as we all do, as all of these people do. You mean to tell me we can't talk -- because it's not going to happen tonight.

MR. CRANNELL:

I know, and that's unfortunate. I want everyone to appreciate what's going to happen. He made his formal request earlier in the week for his money back. We have five days to return the money, tomorrow morning is it. And in fact, the attorneys holding his money have no choice, they can't delay. It's not like we're writing the check. This is over. So thank you for your time.

Applause

P.O. LINDSAY:

Legislator Barraga.

LEG. BARRAGA:

Well, I certainly support tabling or recessing until one o'clock tomorrow afternoon, it's only an additional 16 hours. And the reason I support such a short timeframe is because I think it continues the intensity associated with the negotiations on this issue, between the Executive Branch and the Legislative Branch. All during the course of the day, different talks back and forth to see if we can come to some sort of an agreement or finalization on a sale, because the other options are no damn good. I didn't come here to lay off 250 people and have 250 people dispossessed all over the County to try to find new nursing homes for them. Or did I come here, and I haven't done so far, to find myself in a situation where we're laying off seven or 800 people.

Now, let me make a couple of points. I'm a Legislator and I have something those attorneys don't have; I have the power of the vote. They're entitled to come down here and give their opinion and I will listen. But for a Legislature to sit back and say, "You know, we ought to wait for the courts. We ought to wait for this and that and this and that," you should be concentrating on the merits of the bill before you. Is the bill here legitimately and legally? The answer is yes, cast your vote accordingly.

If we paid attention to every attorney and every special interest group that had an opinion on a bill, we would never get anything done here. And yes, Mr. Cilmi is absolutely correct, whatever decision we make, someone can run to the courts. Let them, they've been doing it for hundreds of years. But the Legislature has a right to act because we are a Legislative Body.

And to postpone this session til next Tuesday, we'll come back Tuesday, Ladies and Gentlemen, and you'll get a dose of what you've been put through for the last four years, we start all over again. Everybody's up at the Public Portion, everybody's doing this and that and sooner or later another excuse comes along to kick this can right down the road. And as the weeks and the months and the years have gone by, this situation has deteriorated. Take a look. You know, not too long ago, if this deal had gone through, 40 or 50 of you would have had an early retirement incentive and if you had gone to work with the new owner, you would have gotten your pension check and a new salary. That's all gone. Some people have been notified they've lost their jobs. This is not getting any better. You deserve, all of us deserve a decision.

And yes, I am for the sale because the other options stink. And all I'm saying is that 16 hours the world isn't going to come to an end. If Rozenberg has waited all this time, he can wait another 16 hours, and you know it and I know it. If, after the 16 hours, Mr. Lindsay and Mr. Levy don't come together on an agreement of sale, we come in here and do what we've got to do and end it.

MR. CRANNELL:

Legislator Barraga, everything we've been asked to do today we did. There's not one item on that list that we didn't -- we tried everything.

P.O. LINDSAY:

Mr. Crannell, we're tired. We heard you say that.

MR. CRANNELL:

Thank you, Mr. Presiding Officer. Thank you for your help today.

P.O. LINDSAY:

All right, thank you. Legislator Eddington.

LEG. EDDINGTON:

Yes, I just wanted to verbalize that the Independence Party caucus has asked that we vote today on the issue.

P.O. LINDSAY:

Legislator Browning.

LEG. BROWNING:

Yeah, I've got a question for George. Mr. Crannell said that the vote is also a link to the bargaining unit and their agreement. Does that prohibit certain members of the Legislature who have family members who are part of the bargaining unit to be able to vote?

MR. NOLAN:

No, I don't think it would. Because there's going to be a separate vote on the contract, and if people have any conflict issues then they would resolve it at that point.

P.O. LINDSAY:

Okay. Legislator Stern.

LEG. SCHNEIDERMAN:

Thank you, Mr. Presiding Officer. You know, Legislator Barraga is absolutely correct, this has been an excruciating issue for all of us, regardless of where you are on the ultimate disposition of the facility. And because it is, I wouldn't even be willing to wait 16 hours from now to pick it up. I think we should be working the next 16 hours starting from now to go back and forth and do what we need to do to come to a resolution. So I'm not going to support waiting until Tuesday. I'm not going to support waiting until one o'clock tomorrow. I don't believe we should adjourn, we're here for a purpose. As excruciating as this decision is, it's one that we need to make.

P.O. LINDSAY:

Well, make a motion. I've got two motions, I've got one to recess and one to table.

LEG. EDDINGTON:

Motion right now.

LEG. NOWICK:

Motion to what?

LEG. SCHNEIDERMAN:

Well, a motion -- what's your motion, to approve for the purpose of discussion?

LEG. EDDINGTON:

Yeah, all right. Yeah.

P.O. LINDSAY:

Motion to approve. Do I have a second?

LEG. CILMI:

But the tabling motion goes first.

MR. NOLAN:

Well, let's get a second.

P.O. LINDSAY:

I have no motion -- second to approval.

LEG. D'AMARO:

Absolutely. For purposes of getting everything on the table, yes, I will second the motion.

P.O. LINDSAY:

Okay. Okay, we're still on the motion to recess until tomorrow. If everybody's spoken on that, let's take a vote on that. Motion to recess til one o'clock tomorrow. All in favor? Opposed? I'm opposed.

LEG. COOPER:

Opposed.

LEG. D'AMARO:

Opposed.

LEG. GREGORY:

Opposed.

("Opposed" said in unison by various Legislators)*

MR. LAUBE:

Hold them up, please. Hold on.

P.O. LINDSAY:

Okay, roll call.

(Roll Called by Mr. Laube, Clerk)

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

Yes.

LEG. ROMAINE:

Abstain.

LEG. SCHNEIDERMAN:

No.

LEG. BROWNING:

No.

LEG. MURATORE:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MONTANO:

No.

LEG. CILMI:

Yes.

LEG. BARRAGA:

I already voted.

P.O. LINDSAY:

He already voted.

MR. LAUBE:

Sorry.

LEG. BARRAGA:

I'd be willing to again, though.

MR. LAUBE:

No, no, sorry about that. Nowick? I had marked some down already and I was just going through the list again.

(Roll Call Continued by Mr. Laube, Clerk)

LEG. NOWICK:

Yes.

LEG. HORSLEY:

In deference if it makes a difference, I'll vote yes.

LEG. GREGORY:

This is -- no, no.

LEG. STERN:

No.

LEG. D'AMARO:

I say it's dead tomorrow, so I'll vote no.

LEG. COOPER:

No.

D.P.O. VILORIA-FISHER:

No.

P.O. LINDSAY:

No. We're not going to have a court decision by tomorrow, if that's what we're trying to do. I mean, that's ridiculous.

LEG. EDDINGTON:

No.

P.O. LINDSAY:

Okay. Motion to table until --

MR. LAUBE:

That was six, by the way.

P.O. LINDSAY:

-- Tuesday. Anybody want to talk? We have a motion and a second. Roll call.

(Roll Called by Mr. Laube, Clerk)

LEG. COOPER:

Yes.

D.P.O. VILORIA-FISHER:

Yes.

LEG. ROMAINE:

Abstain.

LEG. SCHNEIDERMAN:

No.

LEG. BROWNING:

Yes.

LEG. MURATORE:

No.

LEG. EDDINGTON:

Pass.

LEG. MONTANO:

Yes.

LEG. CILMI:

No.

LEG. BARRAGA:

No.

LEG. KENNEDY:

No.

LEG. NOWICK:

No.

LEG. HORSLEY:

Yes.

LEG. GREGORY:

Yes.

LEG. STERN:

No.

LEG. D'AMARO:

No.

P.O. LINDSAY:

Yes.

MR. LAUBE:

Seven.

P.O. LINDSAY:

Okay, so that fails.

LEG. EDDINGTON:

What about me?

MR. LAUBE:

I'm sorry. Legislator Eddington?

LEG. EDDINGTON:

No.

MR. LAUBE:

That makes still seven.

P.O. LINDSAY:

Okay. Motion to approve. And it's an up or down vote, which, you know, I mean, I don't think everybody feels comfortable voting on this until we get a decision from the courts, but take the vote.

LEG. KENNEDY:

Well, Mr. Chair, before we vote on the motion there. I'm just going to ask Counsel one more time the question that I asked him at the end of the Public Portion, and if there's been any change in his position about our capacity to vote on this and whether it violates the order.

MR. NOLAN:

Well, let me just amplify it a little bit. I believe we are covered by the order, that's my opinion.

LEG. KENNEDY:

Okay.

MR. NOLAN:

Do I believe we'll be held in contempt?

LEG. KENNEDY:

No, I didn't ask you that.

MR. NOLAN:

Okay.

LEG. KENNEDY:

I didn't ask you that. I asked you --

P.O. LINDSAY:

And he answered.

LEG. KENNEDY:

Okay, thanks. Fine.

D.P.O. VILORIA-FISHER:

I have a question.

LEG. SCHNEIDERMAN:

On the motion.

P.O. LINDSAY:

On the motion, Legislator Viloría-Fisher.

D.P.O. VILORIA-FISHER:

Through the Chair, Mr. Crannell?

MR. CRANNELL:

Yes.

P.O. LINDSAY:

Who else wants to talk? Jay.

D.P.O. VILORIA-FISHER:

Mr. Crannell, here I am.

MR. CRANNELL:

Oh, I'm sorry. Yes.

D.P.O. VILORIA-FISHER:

I respect that you have been working all day.

MR. CRANNELL:

Thank you.

D.P.O. VILORIA-FISHER:

And that you've been working with the Presiding Officer and tried to accommodate. But now this vote is before us, and we don't have -- I don't believe we have a copy of what has been the result of those negotiations on which you've been working. Would it be possible to distribute?

P.O. LINDSAY:

We have it here. We have it here.

MR. CRANNELL:

Could I ask that you take a slight recess? I'd like to distribute that, also we're talking about a couple of amendments. It will just take a few minutes. We'd like to amend the bill and provide that to you.

LEG. D'AMARO:

I'll offer a motion for a recess, I think that's a great idea.

LEG. BARRAGA:

Second.

P.O. LINDSAY:

Okay. Okay.

*(*The meeting was recessed at 9:09 P.M. &
Was reconvened at 9:52 P.M.)*

*(*The following testimony was taken &
Transcribed by Alison Mahoney - Court Reporter*)*

P.O. LINDSAY:

Madam Clerk, who's going to call the roll?

*(*Roll Called by Ms. LoMoriello - Deputy Clerk*)*

LEG. ROMAINE:

Present.

LEG. SCHNEIDERMAN:

Present.

LEG. BROWNING:

(Not present).

LEG. MURATORE:

Here.

LEG. EDDINGTON:

Here.

LEG. MONTANO:

(Not present).

LEG. CILMI:

Here.

LEG. BARRAGA:

Here.

LEG. KENNEDY:

Here.

LEG. NOWICK:

Yes, here.

LEG. HORSLEY:

Here.

LEG. GREGORY:

(Not present).

LEG. STERN:

(Not present).

LEG. D'AMARO:

(Not Present).

LEG. COOPER:

(Not present).

D.P.O. VILORIA-FISHER:

(Not present).

P.O. LINDSAY:

Here.

MS. LOMORIELLO:

Ten.

P.O. LINDSAY:

Could I have all Legislators to the horseshoe, please? It's been a long day.

LEG. NOWICK:

Seven hours, seven and a half hours.

P.O. LINDSAY:

Okay. You want to note that we have more Legislators in the room, please, Mr. Clerk?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. First, we have a modified version of the resolution, and I'll ask the Counsel to put it on the record.

MR. NOLAN:

This updated version of the Foley resolution, Section 12 applicability adds a B which states that, "Legislative approval of the foregoing is contingent upon receipt of a determination from the Appellate Division, 2nd Department, that the Legislative action reflected herein does not violate the current stay issued by the Court pursuant to its order dated March 3rd, 2011, Perez v. Levy". That's the modification that was being discussed earlier, it's been now added to the law.

P.O. LINDSAY:

Okay. I believe when we recessed, we had voted on adjourning till tomorrow and then we voted on tabling, and we still have a motion to approve in front of us; am I right?

MR. LAUBE:

That's correct.

P.O. LINDSAY:

Okay.

LEG. CILMI:

On the motion?

P.O. LINDSAY:

Do we really want to talk about it? Go ahead, Legislator Cilmi.

LEG. CILMI:

Thank you, Mr. Chair. If I could just ask, through the Chair, for the County Executive's Office to sort of summarize for us the financial challenges, the significant financial challenges that we're up against as a result of --

LEG. ROMAINE:

We all know.

LEG. MONTANO:

We know that. It's on the record.

LEG. CILMI:

I'm not just talking about this resolution. You know, give me some latitude here. All of the other stuff, the Medicaid issue, the loss of Medicaid funding, all of that.

LEG. HORSLEY:

Maybe BRO should do that.

MR. CRANNELL:

Ladies and gentlemen, tomorrow morning at ten o'clock I will be meeting with the Suffolk County Senate and Assembly Delegation to discuss in detail an estimated \$45 million in annual cuts to our budget coming from Albany. It's over \$20 million for the nursing home. Governor Cuomo has proposed increasing the cost of Safety Net, that is the State only welfare program; the local share

will be 70% instead of 50. They're completely eliminating all funding for the Youth Bureau, Aging funding. Probation, it's cut a lot; there's not even the detail in the budget to be able to tell you what that cost is today. These cuts are across the board. The best of our ability, we're at \$45 million; that's just the State budget. In fact, some of that is speculative, the Legislature may act. Over 20 of that is going to happen. The delegation asked to meet with us because the numbers are so tight in Albany, they don't know what they can do for us to save some of these programs.

What's going to happen here is devastating. We need this agreement, we need the agreement with AME. If this doesn't happen, AME is not going to see an agreement. This is -- the numbers are that bad.

I won't belay the point. Legislator Cilmi, thank you for the question. Again, I want to thank the Presiding Officer for taking the recess so we can have the time to talk and work on it. Legislator Nowick commented to me earlier about the bipartisan dialogue that's been going on today. Our team has worked very hard, we've come a long way. Tell us what we need to do to make this deal happen tonight. Thank you, Legislator Cilmi.

LEG. SCHNEIDERMAN:

Bill, can I ask a question of Mr. Crannell?

P.O. LINDSAY:

We're going to have to recess again. I hate to do this to everybody, but we're going to have to recess again because there's two documents before us and I've been just told one of them wasn't filed, so it has to be filed.

LEG. COOPER:

What?

LEG. MONTANO:

What's happening, Bill? We're going to recess?

P.O. LINDSAY:

Yes.

*(*The meeting was recessed at 9:59 P.M. & was reconvened at 11:58 P.M. *)*

P.O. LINDSAY:

Okay. Mr. Clerk, would you call the roll, please?

*(*Roll Called by Mr. Laube - Clerk*)*

LEG. ROMAINE:

Present.

LEG. SCHNEIDERMAN:

Here.

LEG. BROWNING:

Here.

LEG. MURATORE:

Here.

LEG. EDDINGTON:

Here.

LEG. MONTANO:

Here.

LEG. CILMI:

Here.

LEG. BARRAGA:

Here.

LEG. KENNEDY:

Here.

LEG. NOWICK:

Here.

LEG. HORSLEY:

Here.

LEG. GREGORY:

Here.

LEG. STERN:

Here.

LEG. D'AMARO:

Here.

LEG. COOPER:

Here.

D.P.O. VILORIA-FISHER:

Here.

P.O. LINDSAY:

Here.

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. For the first time in my tenure as the Presiding Officer, I have to make a motion to extend the meeting beyond midnight.

LEG. COOPER:

Second.

D.P.O. VILORIA-FISHER:

Second.

LEG. BARRAGA:

Motion.

P.O. LINDSAY:

Motion by Legislator Barraga, second by Legislator Viloría-Fisher.
All in favor? Opposed? Abstentions?

LEG. ROMAINE:

Opposed.

LEG. KENNEDY:

Opposed.

MR. LAUBE:

Let me get a show of hands real quick? Thirteen (Opposed: Legislators Romaine, Browning, Eddington & Kennedy).

P.O. LINDSAY:

Okay. You have before you two resolutions that are linked to each other, and in the first one is a Local Law authorizing the County Executive to execute agreements for the sale of the John J. Foley Skilled Nursing Facility. There is a clause in that that this isn't effective unless the second resolution, 1234, is passed as well.

I would just want to say to all of the audience and all the people that have been with us for years and months, that this is probably the hardest vote for me personally and for many of my colleagues that we'll be taking tonight. We have tried to stave off the inevitable for many, many years here. The second resolution has added -- this is really what I've been working on for the last two days, is as many safeguards as I could get to protect the employees and the patients of J.J. Foley. It includes \$2.3 million in transmission money; it includes both language and money to assure that the existing patients will not be shed; it includes that all discharged and transferred employees be brought back to John J. Foley; it has a four-year preferred hiring list of the County, if this does pass and employees choose to not go to work for the new owner or does go to work for the new owner; it includes the transfer of some vacation accruals; that it makes sure that anybody that doesn't want to work for the new owner or the new owner doesn't want them, will not have any trouble collecting unemployment benefits. It's about as comprehensive as we could get without just simply to refuse to sell the place, which has become more and more apparent to many of us, that if we went down that road, more and more of you would be out of work and more and more of our patients would be displaced.

And as a result of that, I am going to take up Introductory Resolution **1230** first (***Adopting Local Law No. -2011, A Local Law authorizing the County Executive to execute agreements for the sale of the John J. Foley Skilled Nursing Facility (County Executive)***), it's the revised version as of 11:45 tonight. It has a clause in it that deals with the difference of opinions of the multiple attorneys on whether we could vote on this or not vote on it and violate the court order; if the Court finds that we violated the court order by voting on this, the agreement is null and void. I think that's about it, right, anything else.

MR. NOLAN:

You mentioned earlier about the other resolution.

P.O. LINDSAY:

Yeah, this is -- the initial resolution is contingent that the second resolution will pass as well. With that, do I have a motion?

LEG. BARRAGA:

Motion.

MR. LAUBE:

You already have a motion and a second on this.

P.O. LINDSAY:

Okay, we already have a motion and a second.

LEG. EDDINGTON:

Actually, I think I made the motion and I want to withdraw my motion to approve.

P.O. LINDSAY:

Okay.

LEG. BARRAGA:

I'll make the motion.

P.O. LINDSAY:

Okay. Motion by Legislator Barraga to approve.

LEG. CILMI:

Second.

P.O. LINDSAY:

We still have a second.

MR. LAUBE:

Yes, Legislator D'Amaro.

P.O. LINDSAY:

Okay.

LEG. EDDINGTON:

On the motion?

P.O. LINDSAY:

On the motion.

LEG. EDDINGTON:

I just want to -- based on what you just said, Mr. Presiding Officer, I want to publicly apologize to John J. Foley and the whole Foley family. I had made a commitment to them, when they asked me to run for this seat, that I would never abandon the facility. And I made a commitment six years ago, or five years ago, to the people that work there that I would never turn my back and be bought off or concede to anything but to keep that facility going the way it's been going and try to improve the management, and I apologize that it looks like it's not going to go the right way. Thank you.

P.O. LINDSAY:

Anybody else? Legislator Romaine.

LEG. ROMAINE:

Yes. I don't want to speak on the substance of this issue. I would simply remind you of the request of the Foley family to have John J. Foley's name, if this facility is sold, taken off the building.

And I would firmly request that the County request, if we do sell this building, that the seller change the name of the corporation.

Thank you.

P.O. LINDSAY:

Legislator Montano, did you want to say something?

LEG. MONTANO:

Just very quickly, I just wanted to amplify what you had said with respect to the issue of the stay. And I just wanted to read, if you would allow me, into the record what the language of the resolution says. Section 12-B says that, "Legislative approval of the foregoing is contingent upon the receipt of a determination from the Appellate Division of the Supreme Court, 2nd Department, that the Legislative action reflected herein does not violate the current stay issued by the Court pursuant to its order of March 3rd, 2011, in Perez v. Levy."

So because of that, I will, in fact, support the resolution.

P.O. LINDSAY:

Legislator Cooper, did you want to say something?

LEG. COOPER:

I just had a couple of questions about the two resolutions. I see that on IR 1234 -- it looks like a 17th RESOLVED was added and I just wanted an explanation of that, please.

LEG. MONTANO:

On which one?

LEG. COOPER:

The CN 1234.

MR. BROWN:

Yeah, I can answer that question, Mr. Presiding Officer.

P.O. LINDSAY:

Go ahead.

MR. BROWN:

The 17th RESOLVED clause was added, it tracks language that's out of the Asset Sale Agreement that helps ensure transitional payments to the employees that are hired by Rozenberg at the nursing facility. The contract provides in part that when they start, they would be getting two weeks pay, and this is -- this ensures that this will be in the resolution and approved not only when he signs the contract, but also approved as part of the sale as well. Was I clear enough on that?

LEG. COOPER:

I believe so.

MR. BROWN:

Thank you.

LEG. COOPER:

Also, another -- and maybe it's in here and I'm just too tired to see it, but we had requested that language be added to, I believe it was 1230, that the agreement would not be effective unless Rozenberg agrees to all the terms.

MR. BROWN:

It's the next to last line of the effective date section.

MR. NOLAN:

The last page.

MR. BROWN:

It says, "Not until all the terms of conditions of Introductory Resolution 1234-2011 have been accepted in writing by Kenneth Rozenberg or his designee"; that's what we added.

LEG. COOPER:

Okay, thank you.

MR. BROWN:

Thank you.

P.O. LINDSAY:

Legislator Gregory.

LEG. GREGORY:

Thank you, Mr. Chair. I stated earlier and I will state again that I truly resent being put in this position. This is certainly not an easy vote for anyone. You know, the County Executive has saw fit to find the money for positions that benefit him and when he wanted to. You know, he has several people on his campaign staff that work in the Executive Administration making lots of money. I believe if he had the will, he could have found the money to fund this facility. We shouldn't be here at this point. His press people, when we were looking at laying off people, when he decided to run for Governor, saw fit to take some of his people that were critical people, have them paid out of his campaign as we're looking at laying off workers in a facility that have been here for years; I think that's totally inappropriate. I think that politics, you know, usurped or trumped good government. I think his policies have been hypocritical.

You know, if this were the Steve Levy press operations facility, he would have found the money, we know that. You know, and it's unfortunate that these people had to deal with this turmoil for three years of their lives because a man who is hell bent on putting them out of their jobs, for personal reasons, political reasons, whatever, certainly his reasons. And we should have been able to work together at an earlier point so we could have resolved this situation so it wouldn't be as dire as it is now. We are -- you know, there's no good solutions. We're picking the best of the worst -- of all bad situations and I just resent being put in this position and, you know, it's unfortunate. That's all I have to say.

P.O. LINDSAY:

Okay. Mr. Clerk, could you call the roll on 1230?

*(*Roll Called by Mr. Laube - Clerk*)*

LEG. BARRAGA:

Yes.

LEG. D'AMARO:

Yes.

LEG. ROMAINE:

Please mark me as a recusal.

LEG. SCHNEIDERMAN:

Yes.

LEG. BROWNING:

No.

LEG. MURATORE:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MONTANO:

Yes.

LEG. CILMI:

Yes.

LEG. KENNEDY:

Absolutely not.

LEG. NOWICK:

Yes.

LEG. HORSLEY:

Yes.

LEG. GREGORY:

Yes.

LEG. STERN:

Yes.

LEG. COOPER:

Yes.

D.P.O. VILORIA-FISHER:

No.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

No.

MR. LAUBE:

Twelve.

P.O. LINDSAY:

On *IR 1234-10 - Authorizing steps to be taken to provide a severance package for John J. Foley Skilled Nursing Facility Employees and to encourage additional community based long-term health care alternatives for Suffolk County Residents (County Executive).*

Do I have a motion?

LEG. BARRAGA:

Motion.

P.O. LINDSAY:

Motion by Legislator Barraga.

LEG. D'AMARO:

Second.

P.O. LINDSAY:

Second by Legislator D'Amaro. Is there any discussion?

D.P.O. VILORIA-FISHER:

On the motion?

P.O. LINDSAY:

On the motion.

D.P.O. VILORIA-FISHER:

Although I'm not supporting these resolutions, I want to congratulate the Presiding Officer for the hard work that he's done to protect our workers and our constituents who need, by necessity, to make use of the nursing home. A few years ago I didn't -- I felt painted into a corner and I voted for the tobacco settlement and I've always been sorry that I did because it was a one-shot, it was something that I thought would bite us later on. I feel the same way about this. But I do respect the very hard work, Bill, that you've done to get to this point.

Thank you.

P.O. LINDSAY:

Roll call.

*(*Roll Called by Mr. Laube - Clerk*)*

LEG. BARRAGA:

Yes.

LEG. D'AMARO:

Yes.

LEG. ROMAINE:

Please mark me as a recusal.

LEG. SCHNEIDERMAN:

Yes.

LEG. BROWNING:

No.

LEG. MURATORE:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MONTANO:

Yes.

LEG. CILMI:

Yes.

LEG. KENNEDY:

No.

LEG. NOWICK:

Yes.

LEG. HORSLEY:

Yes.

LEG. GREGORY:

Yes.

LEG. STERN:

Yes.

LEG. COOPER:

Yes.

D.P.O. VILORIA-FISHER:

No.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

No.

MR. LAUBE:

Twelve. Thirteen, excuse me.

LEG. MONTANO:

No, twelve.

P.O. LINDSAY:

Okay, we have one other piece of business, waive the rules and, as a Late Starter, lay on the table 1233, authorizing Suffolk Regional Off-Track Betting Corporation to file a petition under Chapter 9 of the United States Bankruptcy Code.

MR. NOLAN:

Ways & Means.

P.O. LINDSAY:

It's assigned to Ways & Means. All in favor?

MR. NOLAN:

You need a second.

P.O. LINDSAY:
Do I have a second?

LEG. MONTANO:
Second.

D.P.O. VILORIA-FISHER:
Does he have to call the vote again? What was the vote?

MR. LAUBE:
The final vote was twelve.

LEG. MONTANO:
How much was the vote?

D.P.O. VILORIA-FISHER:
Twelve.

LEG. MONTANO:
Twelve, yeah. Okay.

P.O. LINDSAY:
Okay, but that's -- we're talking about two different resolutions now. Waive the rules and made a motion and we have a second to lay 1233, the bankruptcy OTB on the table. All in favor? Opposed? Abstentions?

MR. LAUBE:
Seventeen.

P.O. LINDSAY:
Can I have a motion to adjourn?

LEG. ROMAINE:
Motion to adjourn.

P.O. LINDSAY:
Motion by Legislator Romaine, I'll second it. All in favor? Opposed? Abstentions?

*(*The meeting was adjourned at 12:16 A.M. *)*