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Erie County Executive Chris Collins and his team say they will not shrink from lawsuits, or the threat of lawsuits.

Derek Gee / News file photo

It's his way or the courts as Collins doesn't flinch

'Sue me' is his style, so adversaries do

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Erie County Executive Chris Collins does what he wants and lets the people who don't like it sue him.

"I've been here 11 years, and I don't remember a time when government has been so hostile," said John A. Curr III, director of the Buffalo office of the New York Civil Liberties Union, which went to court to wrestle records from the Collins administration.

"It's not the way democracy is supposed to work," Curr said. "What they are saying is, 'It's my way or the courts.' There is no negotiating. There is no bipartisanship. It's disturbing."

Collins and his team say they will not shrink from lawsuits, or the threat of lawsuits.

"If you sit in your office and wring your hands, worried that every time you do something someone may sue you, you don't accomplish very much," spokesman Grant Loomis said.

So how is it going for Collins so far?

He doesn't win them all.

Here's a scorecard from some of the legal fronts:

Hiring "regular part-time" workers.

Early in his term, Collins had a eureka moment. To lower labor costs, he figured he would hire "regular part-time" workers for full-time jobs as much as possible.

So-called RPTs have union protection but half the paid leave of full-timers. They had typically worked about 20 hours a week. Collins figured he could work them up to 39 hours a week and still call them part time.

Local 815, Civil Service Employees Association, took the Collins policy to the New York State Public Employment Relations Board, which twice ruled against the county executive and ordered him to give dozens of regular part-timers full-time status and reimburse them for any lost wages and benefits.

Collins instead wrote a compromise into a contract he proposed to the CSEA. If the union approved a deal that offered pay raises with labor give-backs, Collins would abandon his use of RPTs and make them full-time workers -- without returning lost compensation.

Union members soundly rejected the contract for numerous reasons. Collins aides say he feels free to continue using RPTs until the State Supreme Court's Appellate Division rules on the matter. No date has been set for arguments.

"The county fully expected to lose at PERB" where "the deck is stacked against us," Loomis said. "But we are confident we will win at the appellate level."

Status: Collins losing so far.

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The workers' compensation gambit.

In his effort to rein in workers' compensation costs, Collins decided that certain injured workers should come to the workplace to receive their checks. That way, a supervisor could ask if they are willing to perform even light duty, in their departments or elsewhere in county government.

A permanently disabled Correctional Facility officer challenged the policy, and the state Workers' Compensation Board unanimously ruled that Collins was violating the

spirit and intent of the Workers' Compensation Law. The board ordered him to halt the practice. So far, Collins has refused.

Collins officials said the policy inadvertently was applied to all of the approximately 300 current or former employees, many deemed permanently disabled to some degree. In truth, Collins wants to force only recently injured workers without permanent disabilities to come in for their checks, Loomis said. That's currently a dozen people.

Of those, 10 have come in to pick up their most recently issued workers' compensation checks, and eight of those are considering returning for light duty, Loomis said. Two have not picked up those checks, and one has filed a grievance.

"We do not feel that the Workers' Compensation Board has any ability to stop our light-duty, return-to-work program absent a lawsuit," Loomis said, "which we are confident we would win."

Status: Collins losing so far.

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Day care subsidies.

Collins' Social Services Department made it more difficult for working-poor families to qualify for day care subsidies because the state was contributing less to the program.

The county had allowed benefits for families earning up to 200 percent of the poverty level. But it cut that back to no more than 125 percent, disqualifying 1,100 children from about 700 struggling households.

Would-be recipients are entitled to hearings to assert they are eligible. In a hearing that also focused on whether the county followed state law in rewriting its eligibility rules, an administrative law judge ruled in the county's favor.

When auditors from the state Office of Children and Family Services looked at the county's decisions with the program, they said the Social Services Department should have acted sooner in the face of declining state aid. If it had, it could have softened the impact on the working poor. But the auditors never said the county violated state rules in making qualification more difficult.

The Social Services Department recently let families with incomes of up to 175 percent of the poverty level receive subsidies again, after learning that this year's state budget gave Erie County \$6 million more for the program.

Status: Collins in the clear.

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County Comptroller Mark C. Poloncarz.

The Collins team has little patience for Poloncarz, a potential rival when Collins seeks re-election next year.

When Poloncarz and his auditors set out to review the functions of the county Board of Ethics -- which functions very little -- the Collins team refused to turn over a trove of personal financial-disclosure forms. Elected leaders, high-ranking county employees and appointees to various boards complete the forms to flag potential conflicts of interest.

The Collins team said Poloncarz was on a fishing expedition; he wasn't entitled to all of the information; and he had no authority to review the Ethics Board, anyway.

Poloncarz, a lawyer, went to court.

The court hearing exposed the Ethics Board as one of the tamest entities in county government, and Poloncarz won access to the disclosure forms, but with certain types of information removed. His audit, released recently, showed that the board is down to one member. Unknown to Collins, it didn't even have a chairman. His term had expired Dec. 31.

Status: A Collins loss.

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Requests for county records.

Many formal requests for county records reach the desk of the county attorney. Requests involving the jails raise special issues. Consider the Freedom of Information Law request from the New York Civil Liberties Union.

The Civil Liberties Union set out to determine how much the county has spent settling and defending civil rights lawsuits filed by inmates -- money that might have gone to fixing unconstitutional conditions.

Over the months, the county denied the Civil Liberties Union's requests and appeals filed under the sunshine law. The Law Department under Cheryl A. Green, Collins' top lawyer who left her job Friday to work for a law firm and run for State Supreme Court, said the county could not make certain records public because of privacy concerns, attorney-client privilege and other protections. Also, if the Civil Liberties Union wanted budget information, the county posts its budget at www.erie.gov, Green said.

County lawyers said the Civil Liberties Union filed an "overly broad" request, making the records difficult to cull. Further, the Civil Liberties Union wanted records going back 20 years, many of which are no longer available.

State Supreme Court Justice Timothy J. Drury recently gave the county 30 days to

turn over 10 years of records that the Civil Liberties Union sought to shed light on unconstitutional conditions, excessive force, the denials of medical or psychological care and wrongful injury or death. The Collins team is considering an appeal.

Status: Collins losing so far.

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The jail front.

Collins and Green rebuffed a U.S. Justice Department probe into conditions in the Holding Center downtown and the Correctional Facility in Alden, forcing the federal agency to sue for access to the jails. When the department took its case to federal court, Green sought to have the suit dismissed and lost. She and Collins reasoned they were protecting taxpayers from pricey improvements the Justice Department wanted to impose.

After a spate of suicides, a judge in March let the Justice Department inspect the Holding Center over three days to examine suicide-prevention methods. Green and Sheriff Timothy B. Howard called it a victory when U.S. District Judge William M. Skretny said county lawyers could be present when Justice Department lawyers interviewed county employees. The county officials said that's what they wanted all along.

But Skretny barred county lawyers from sitting in when the Justice Department's suicide-prevention consultants interviewed county employees and inmates, and he ordered the county to turn over a mountain of records.

Eventually, Collins eased off on his hard line and agreed to an inexpensive settlement to install new suicide-prevention measures. He hopes to similarly settle the Justice Department's other allegations about civil rights violations in the jails. Collins and Green claim victory, since, in their first settlement, the county admits no wrongdoing or constitutional violations -- a protection in dealing with other inmate lawsuits.

To secure it, they paid a Washington, D.C., law firm about \$160,000 for advice. They also hired the law firm of Dennis C. Vacco, the former state attorney general and U.S. attorney for Western New York, to bolster their side. Those costs have not yet been revealed.

Because of the problem the federal agency encountered in the county, Congress gave the Justice Department's Civil Rights Division subpoena power in enforcing the Civil Rights of Institutionalized Persons Act.

Status: Collins regrouping.

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Budget battle I.

Collins bristled when the County Legislature modified his first proposed budget, for 2009. He objected, for example, because the Legislature moved a \$5.2 million revenue line to another budget page and raised one of his other estimates by \$1.65 million.

Collins then set off on a hypertechnical argument about why he then must raise taxes by a combined \$6.8 million more than he had intended.

Legislature Democrats took him to court, asking a judge to rule on a dispute that has popped up over the years between county executives and legislators: Who ultimately sets the property tax rate?

While the judge took a middle-of-the-road stand on that question by deeming it a "collaborative effort," he rejected Collins' arguments about why he needed such a large property tax increase.

By taking Collins to court, Legislature Democrats were able to lower the tax rate below his original budget proposal and far below where he would have set it without the judge's order.

Today, however, Collins continues to use the decision to justify some of his other budget actions, especially the judge's statement that a county executive cannot be forced to take steps made illegal by other laws.

Status: Collins takes half a loaf.

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Budget battle II.

This year, Collins so far has refused to spend extra money the Legislature appropriated for cultural attractions and Erie Community College.

Collins could have vetoed the Legislature's additions but didn't; Legislature Democrats would have overridden those vetoes. Instead, he has not spent the money they approved, and he shows no sign he ever will -- except at the request of certain friendly lawmakers.

Just weeks ago, Legislature Democrats were about to pass a measure empowering their caucus to take Collins to court. But the Collins team then picked off two Democratic votes.

The measure failed because Democratic Legislators Christina W. Bove of West Seneca and Barbara Miller-Williams of Buffalo, both allies of Collins, abandoned the effort. While certain lawmakers may take Collins to court on their own dime, a second budget-related suit against him has failed to launch.

Status: Collins unfazed.

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Comments

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