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JEREMY A. COLBY
COUNTY ATTORNEY

COUNTY OF ERIE

CHRIS COLLINS
COUNTY EXECUTIVE

MARTIN A. POLOWY
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.
SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

MEMORANDUM

TO: Robert Graber, Clerk, Erie County Legislature

FROM: Thomas F. Kirkpatrick, Jr., ^(a) Second Assistant County Attorney

DATE: October 14, 2011

RE: Transmittal of New Claims Against Erie County

Mr. Graber:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find two (2) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Mary Holl and Richard Carr vs Christopher Collins, et al.
Brian Everts vs County of Erie, et al.

TFK/crj

Attachments

cc: Jeremy A. Colby, Erie County Attorney



COUNTY OF ERIE

JEREMY A. COLBY
ERIE COUNTY ATTORNEY

CHRIS COLLINS
COUNTY EXECUTIVE
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THOMAS F. KIRKPATRICK, JR.
SECOND ASSISTANT COUNTY ATTORNEY

October 14, 2011

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

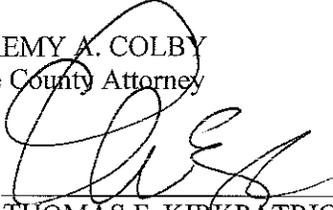
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Holl, Mary as President of Teamsters Local 264 and Carr, Richard vs Christopher Collins, County of Erie and Timothy Howard</i>
Document Received:	Verified Petition
Name of Claimant:	Mary Holl 35 Tyrol Drive Cheektowaga, New York 14227
Claimant's attorney:	Robert J. Reden, Esq. Reden & O'Donnell, LLP 135 Delaware Avenue, Suite 410 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

By: 
THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney
thomas.kirkpatrick@erie.gov

TFK/mow
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MARY HOLL, as President of Teamsters Local 264
35 Tyrol Drive
Cheektowaga, NY 14227,

and

RICHARD CARR
35 Tyrol Drive
Cheektowaga, NY 14227,

Petitioners,

PETITION

For Judgment Pursuant to Article 78

- vs -

Index No. J. 2011.004117

CHRISTOPHER COLLINS, ERIE COUNTY EXECUTIVE,
and
COUNTY OF ERIE
95 Franklin Street
Buffalo, NY 14202,

Assigned Justice
John M. Collins

and

TIMOTHY HOWARD, SHERIFF OF ERIE COUNTY
10 Delaware Avenue
Buffalo, NY 14202.

Respondents.

Plaintiffs Mary Holl and Richard Carr, by their attorneys Reden & O'Donnell, LLP, Robert J. Reden, Esq., of counsel, for their verified petition against the respondents, allege as follows:

INTRODUCTION

1. This is a special proceeding pursuant to CPLR Article 78 to compel the Respondents to comply with the Corrections Law requiring that the Respondents employ at each local correctional facility the number of persons necessary to provide care, custody,

and control for all prisoners and to perform all other necessary facility functions. 9 NYCRR 7041.1.

2. Venue is designated as Erie County, since Erie County is the county in which all events as hereinafter alleged took place, and it is the county of residence of all of the Petitioners.

PARTIES

3. Petitioner Mary Holl is President of the International Brotherhood of Teamsters Local 264 (hereinafter "Teamsters Local 264"), an employee organization within the meaning of Section 201(5) of the New York Civil Service Law. Teamsters Local 264 represents about 500 deputy sheriff officers and certain civilians employed by the Respondents in the Erie County Holding Center and in the annex of the Erie County Correctional Facility, and at other locations, with respect to their wages, hours, and other working conditions. As a labor organization, Teamsters Local 264 has as one of its primary purposes the improvement of the terms and conditions of employment for employees in its bargaining unit composed of sheriff deputies working in the Holding Center and in the Erie County Correctional Facility, and specifically in the enforcement of terms of its labor agreement with the County of Erie and the Erie County Sheriff.

4. Petitioner Richard Carr is a deputy sheriff officer employed by the County of Erie and the Erie County Sheriff and he is assigned to and works in the Erie County Holding Center. He is also a member of the bargaining unit at the Holding Center represented by co-petitioner, Teamsters Local 264.

5. Respondents Christopher Collins (County Executive) and Timothy B. Howard (Sheriff of Erie County) are charged with the responsibility of running the Erie County Holding Center.

STATEMENT OF FACTS

6. The Erie County Holding Center in Buffalo, New York, is a maximum security jail housing detainees remanded to the custody of the Sheriff of Erie County and who are classified as high risk. The Erie County Holding Center constitutes a local correctional facility as well as a correctional facility as those terms are defined by New York State Correction Law Section 40.

7. The Commission of Correction, pursuant to Correction Law Section 45(6), is charged with the duty of promulgating rules and regulations establishing minimum standards for the operation of all correctional facilities in New York State.

8. One of the rules promulgated is 9 NYCRR 7041.1(a), which reads that each "local correctional facility shall employ that number of persons necessary to provide care, custody, and control for all prisoners and to perform all other necessary facility functions. In no case shall the number of such persons be less than the minimum facility staffing requirement as determined by the State Commission of Correction in accordance with the provisions of this Part." 9 NYCRR Section 7041.2 (c) provides that the State Commission of Correction "shall determine the total number of persons necessary to perform [jail] functions during each such shift."

9. Pursuant to its mandate, in December 2004, the New York State Commission of Correction did a staffing analysis for the Erie County Holding Center. On information and belief, the 2004 staffing analysis is the last one performed by the Commission and remains generally accurate today, except that the Sheriff has added additional posts requiring additional personnel and, on information and belief, there is now a need for even additional personnel, approaching, on information and belief, 100 more deputies above and beyond what is needed using the 2004 staffing analysis as the basis for the calculation. Appended hereto as Exhibit "A" is a copy of the final staffing analysis done by the Commission in December 2004 as redacted by the Commission and provided to petitioners' attorney pursuant to a freedom of information request.

10. In the staffing analysis, the Commission determined that to properly provide for the care, custody, and control of prisoners at the Holding Center, the respondents had to employ 387.64 full time equivalent positions to work in the Holding Center for all three shifts.

11. The Respondents currently have employed and have assigned to work in the Holding Center performing duties with respect to the care, custody, and control for all prisoners incarcerated at the Holding Center location not more than 347 full-time equivalent deputies.

12. The Erie County Holding Center is accordingly 40 deputies short of the number that was needed in 2004 to provide for the care, custody, and control of all prisoners at the Holding

Center and to perform all other necessary facility functions. On information and belief, today there are significantly more posts requiring significantly more staffing than in 2004. On information and belief the Commission of Correction is in the process of conducting a new staffing analysis that is not scheduled to be released for another four or five months.

13. This shortage of staffing causes enormous amounts of forced overtime whereby some deputies are being forced to work 16 hours straight on each of three, four, or five days a week. While some forced overtime normally might occur from time to time, this situation is occurring regularly, and it is taking its toll on unit members' working conditions. It may also have a residual effect on safety in the Holding Center.

14. On information and belief, there is an existing civil service list for deputy sheriff-officer with over one thousand (1,000) eligible names from which the Respondents could immediately appoint candidates to the position of deputy sheriff officer in order to come into compliance with the COC's regulations.

15. Petitioners, through their attorneys, have sent a letter to the Respondents demanding that they comply with their duty, enjoined by law, adequately to staff the Holding Center. Appended hereto as Exhibit "B" is a true and accurate copy of the demand letter.

16. Respondent Sheriff's Department responded to the demand on August 11, 2011 by advising that the Sheriff's Department "intend[s] on filling all of our vacant positions," and that a

group of deputies were just hired and were to begin work on August 15, 2011.

17. On information and belief, only one full-time deputy sheriff officer has been hired recently, together with two part-time per diem deputies. On information and belief the Sheriff intends to hire only about eight all told by September 2011.

18. Respondent Sheriff's Department also wrote to Petitioner Holl on August 23, 2011 advising that the Sheriff's Department has requested additional positions from the Erie County Legislature and the County Executive, but that they have not approved the requests. Appended hereto as Exhibit "C" are true and accurate copies of the Sheriff Department's letters of August 11 and August 23, 2011.

19. Petitioners have no adequate remedy at law.

20. Petitioners have not made any similar application to this court for similar relief.

AS AND FOR A CAUSE OF ACTION

21. Repeat and reallege as though fully contained herein the allegations set forth in paragraphs 1 through 20 above.

22. Respondents' failure to adequately staff the Erie County Holding Center with the minimum staffing as required by the COC constitutes a failure to perform a duty enjoined upon them by law.

RELIEF REQUESTED

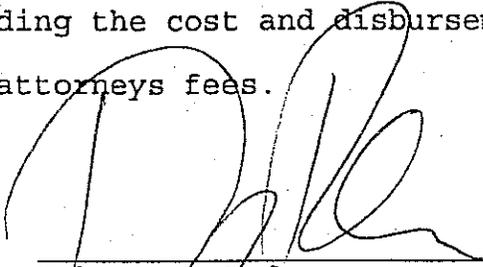
WHEREFORE, Petitioners pray that this court issue an order and judgment:

A. Declaring that the Respondents are in violation of the COC's regulations in 9 NYCRR Part 7013.

B. Ordering that the Respondents take all steps to hire with deliberate speed at least 40 new deputy sheriff officers to work in the Holding Center.

C. Ordering any other and appropriate relief as the Court may deem just and proper, including the cost and disbursements of this proceeding and reasonable attorneys fees.

Dated: Buffalo, New York
October 12, 2011

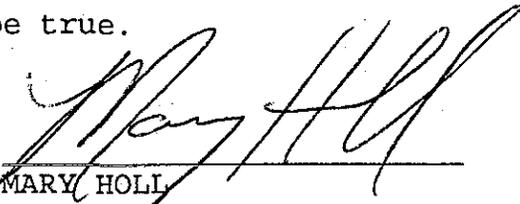


Robert J. Reden
Reden & O'Donnell, LLP
Attorneys for the Petitioners
135 Delaware Avenue, Suite 410
Buffalo, New York 14202
Telephone: 716-856-0277

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

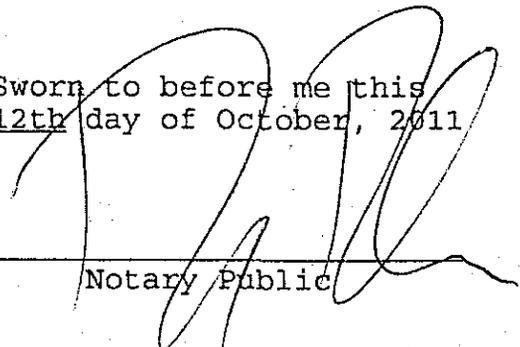
MARY HOLL, being duly sworn, deposes and says that:

Deponent is the President of Teamsters Local 264 of the International Brotherhood of Teamsters; that deponent has read the foregoing **VERIFIED PETITION FOR JUDGMENT PURSUANT TO ARTICLE 78** and knows the contents thereof; and that same is true to deponent's own knowledge; except as to matters therein stated to be alleged upon information and belief; and that as to those matters deponent believes them to be true.



MARY HOLL

Sworn to before me this
12th day of October, 2011



Notary Public

ROBERT J. REDEN
Notary Public State of New York
Reg. No. 4829470
Qualified in Erie County
My Commission Expires July 31, 2011



COUNTY OF ERIE

JEREMY A. COLBY
ERIE COUNTY ATTORNEY

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MARTIN A. POLOWY
FIRST ASSISTANT COUNTY ATTORNEY

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October 14, 2011

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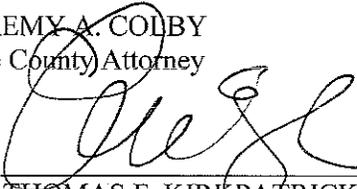
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Evarts, Brian vs County of Erie, Chris Collins, John W. Greenan, Joseph P. Dobies and Cheryl Ballard</i>
Document Received:	Verified Petition
Name of Claimant:	Brian Evarts 739 Fairmont Avenue North Tonawanda, New York 14120
Claimant's attorney:	Diane M Roberts, Esq Lipsitz Green Scime Cambria LLP 42 Delaware Avenue Suite 100 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

By: 
THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney
thomas.kirkpatrick@erie.gov

TFK/mow
Enc.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

BRIAN EVARTS
739 Fairmont Avenue
North Tonawanda, New York 14120

Petitioner,

For an Order and Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

Against

THE COUNTY OF ERIE, CHRIS COLLINS,
County Executive, JOHN W. GREENAN,
Commissioner of Personnel, Erie County, JOSEPH P.
DOBIES, Personnel Supervisor, Erie County
Department of Social Services,
95 Franklin Street
Buffalo, New York 14202

And

CHERYL BALLARD, in her capacity as Social
Services Clinical Specialist,
342 Dewey Avenue
Buffalo, New York 14214

Respondents.

The Petitioner, Brian Evarts, by his attorneys Lipsitz Green Scime Cambria LLP, Diane M. Roberts, Esq., of Counsel, as and for his Verified Petition alleges as follows:

1. At all times hereinafter mentioned, the Petitioner resided at the above referenced address and was an employee of the County of Erie, in the County of Erie, State of New York.

2. At all times hereinafter mentioned, the Respondent County of Erie ("County") was and still is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York and its charter, having its principal offices in the County of Erie and State of New York, and the Respondent Chris Collins was and is the duly elected County Executive for the County of Erie, ultimately responsible for all operational aspects of Erie County government including personnel issues.

3. At all times hereinafter mentioned, the Respondent John W. Greenan ("Greenan") was and is the duly appointed Commissioner of Personnel for the County of Erie, and is responsible for all operational aspects of the Erie County Personnel Office, including, upon information and belief, issues arising out of or associated with the New York Civil Service Law.

4. At all times hereinafter mentioned, the Respondent Joseph P. Dobies ("Dobies") was and is the duly appointed Personnel Supervisor for the County of Erie Department of Social Services, and is responsible for all personnel decisions and functions of the Erie County Department of Social Services, including, upon information and belief, either on his own or in conjunction with Greenan, issues arising out of or associated with the New York Civil Service Law.

5. At all times hereinafter mentioned, the Respondent Cheryl Ballard was employed by the County of Erie in the Department of Social Services, in various titles and/or Civil Service statuses, and upon information and belief, currently occupies a permanent position as Social Services Clinical Specialist.

6. The Petitioner is currently a Senior Caseworker, but prior to June 13, 2011 was a permanent status Social Services Clinical Specialist employed by Erie County in the Department of Social Services.

7. Petitioner was assigned on a "provisional" basis to a Social Services Clinical Specialist position on October 2, 2006.

8. As verified by the County Personnel records maintained by the Personnel Office, on June 25, 2007, Petitioner achieved permanent status in the Social Services Clinical Specialist title. (See attached **Exhibit "A"**, Personnel "roster card" for Petitioner). As of July 1, 2010, Petitioner's annual salary in the Social Services Clinical Specialist position was \$56,252.00.

9. On January 4, 2010, Respondent Ballard was promoted on a contingent-permanent basis, to a Social Services Clinical Specialist position whose availability, upon information and belief, was caused by one Leonore Olmsted-Sullivan moving into, on a provisional basis, the position of Social Services Clinical Coordinator. (See attached **Exhibit "B"**, Personnel roster card for Ballard).

10. As of January 2010, Ballard's annual salary in the Social Services Clinical Specialist contingent position was \$58,849.00; upon information and belief, Ballard's salary in the title was higher than Petitioner's because Ballard had more overall time in County service in any title than did Petitioner, and therefore received a larger amount of "longevity" pay added to the base salary for the position.

11. According to the Personnel Department roster cards for Petitioner and Ballard, simultaneously and without any written notation of explanation thereupon, on June 13, 2011,

Petitioner was stripped of his permanent status at a Social Services Clinical Specialist while Ballard was made permanent as a Social Services Clinical Specialist.

12. By letter dated June 14, 2011 (see attached **Exhibit "C"**), Respondent Dobies first advised Petitioner that Petitioner was "being reappointed due to a higher ranking/more senior employee", and that effective the day before, June 13, 2011, Petitioner's permanent Social Services Clinical Specialist position was changed to contingent permanent at the same rate of pay.

13. On the same day he wrote Petitioner (i.e., June 14, 2011), Respondent Dobies also wrote to Respondent Ballard and notified her that her status as Social Services Clinical Specialist was changed from contingent-permanent to permanent effective June 13, 2011 (see attached **Exhibit "D"**).

14. Upon information and belief, the actions on June 13 and then June 14, 2011, of the County, Dobies, and Greenan in improperly and illegally stripping Petitioner's permanent status in the Social Services Clinical Specialist position were without foundation, basis and without any due process, and were done with the knowledge and understanding that Leonore Olmsted-Sullivan would be moving back in to her permanent Social Services Clinical Specialist position, which was at that time "occupied" on a contingent basis by Respondent Ballard.

15. Had Petitioner not been stripped on June 13, 2011 of his permanent status as a Social Services Clinical Specialist, the return of Olmstead-Sullivan to her permanent position as a Social Services Clinical Specialist, would not have affected Petitioner's status as a permanent Social Services Clinical Specialist.

16. Upon information and belief, on June 15, 2011, Leonore Olmsted-Sullivan did move out of her provisional Social Services Clinical Coordinator position and went back in to her permanent Social Services Clinical Specialist position. Because of the improper and illegal actions of the County, Dobies and Greenan, in stripping Petitioner of his long-standing permanent status in the title, on June 15, 2011 it was Petitioner, and not Ballard, who was then in the Social Services Clinical Specialist position on a “contingent-permanent” basis and first in line to be displaced by Olmstead-Sullivan’s return.

17. By letter dated June 15, 2011, Respondent Dobies again wrote to Petitioner, this time to advise him that “as a result of the incumbent returning to their Social Services Clinical Specialist position, you will return to your permanent classification of Sr. Caseworker effective June 20, 2011....” (See attached **Exhibit “E”**). Petitioner’s annual salary as of June 20, 2011, because of the reduction in his title, fell to \$47,479.00.

18. The Erie County “Rules for the Classified Civil Service”, issued by Respondent Greenan and approved by the New York State Civil Service Commission (9/28/08 version, relevant sections attached as **Exhibit “F”**), specify under Rule XV (4) that a position left vacant by the leave of absence of the permanent incumbent (i.e., Olmsted-Sullivan) may be filled—as the Respondents did here in January 2010 with Respondent Ballard-- by a contingent permanent appointment. If, as Olmsted-Sullivan did here, the incumbent returns (Rule XV [4][a] [2]), persons holding positions contingent permanent *shall* be displaced before any persons holding title under permanent status, *regardless of total seniority*. If more than one person in the title is contingent permanent, displacement is based on inverse order of their contingent appointments.

19. If the return of Olmsted-Sullivan from her provisional appointment necessitated someone return to their prior permanent position, then anyone in the Social Services Clinical Specialist position on a contingent permanent basis was required under the County's own Civil Service Rules to be displaced before anyone else who was in the title with a permanent status. Until the improper and illegal actions of the County Respondents on June 13 and 14, 2011 to strip Petitioner of his permanent status and give it to Respondent Ballard, the County's own Civil Service Rules mandated that Respondent Ballard return to her last permanent position, and that Petitioner's position be unaffected.

20. Upon information and belief, the County Respondents attempted to make their actions "look" correct by creating what they termed a "re-appointment" of Evarts "because of a more senior employee". But the County's own Civil Service Rules, issued by Respondent Greenan, make no such provision for "re-appointment" of a permanent person simply because someone who has worked for the County in *some* position becomes contingent permanent at a later date in the same title as someone like Petitioner, who attained permanent status in the title first.

21. In fact, the County's Civil Service Rules, Rule XV (4)(a)(4) state that seniority in a title goes by the date of contingent appointment *after* the appointment matures into a permanent one. Therefore, even had Respondent Ballard otherwise attained permanent status in the Social Services Clinical Specialist position, because she attained that *contingent-permanent* status after Petitioner, upon information and belief, she would be displaced from the position in a reduction of force *before* Petitioner.

22. Regardless of how this situation is assessed, the County improperly and illegally played fast and loose with its own Civil Service Rules, stripping Petitioner of the permanent job status he attained, without any wrong-doing on Petitioner's part, without granting him any due process, and without any reduction in force within the job title.

WHEREFORE, Petitioner prays that this Court will enter a Judgment and Order pursuant to Article 78 of the Civil Practice Law and Rules: (a) compelling the Respondents County of Erie, Greenan and Dobies to comply with the County's Civil Services Rules; (b) reinstating Petitioner to permanent status as a Social Services Clinical Specialist as if Petitioner had never been displaced from that position; (c) restoring all salary and any other differentials to Petitioner; and (d) granting Petitioner such other and further relief as this Court may deem just and proper, including but not limited to costs and attorneys' fees.



Brian Evarts

Dated: October 13, 2011
Buffalo, New York

LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for Petitioner

By:



Diane M. Perri Roberts, Esq.
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
Telephone: 716-849-1333 ext. 465

TO: Jeremy A. Colby, County Attorney
Erie County Attorney's Office
95 Franklin, 16th Floor
Buffalo, New York 14202

The County of Erie and
Chris Collins, County Executive
95 Franklin Street
Buffalo, New York 14202

John W. Greenan, Commissioner of Personnel, Erie County
95 Franklin Street
Buffalo, New York 14202

Joseph P. Dobies, Personnel Supervisor, Erie County
95 Franklin Street
Buffalo, New York 14202

Cheryl Ballard
342 Dewey Avenue
Buffalo, New York 14214

