MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 27, 2015

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

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:	*Dziuba, Mathew v. Erie 1 BOCES and Erie County Personnel Department*
Document Received:	Verified Petition
Name of Claimant:	Mathew Dziuba 1693 Blakely Corners Road East Aurora, NY 14052
Claimant's attorney:	Richard H. Wyssling 375 Linwood Avenue Buffalo, New York 14209-1607

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enc.

SUPREME COURT
COUNTY OF ERIE

In The Matter

Of

MATHEW DZIUBA
1693 Blakely Corners Road
East Aurora, NY 14052

NOTICE OF PETITION
Index No. 800446/2015

Petitioner,

and

BOARD OF COOPERATIVE EDUCATIONAL
SERVICES ERIE 1 BOCES
355 Harlem Road
West Seneca, NY 14224
and
ERIE COUNTY PERSONNEL DEPARTMENT
Personnel Officer
County of Erie
95 Franklin St.
Buffalo, NY 14202

Respondents.

PLEASE TAKE NOTICE, that upon the annexed petition of Matthew Dziuba, an employee of Erie #1 BOCES, verified on the 26th day of December, 2014 and exhibits attached thereto, and upon all other papers and proceedings heretofore had herein an application will be made to a Term, Part 26, 4th Floor, of this Court, to be held at the courthouse thereof, located at 25 Delaware Avenue, Buffalo, New York 14202, Erie County, State of New York, on the 26th day of February, 2015 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a judgment granting the relief prayed for in the petition, and for such other and further relief as this Court may deem as just, proper and equitable.

PLEASE TAKE FURTHER NOTICE, that an answer and supporting affidavits, if any, shall be served at least seven days before the aforesaid date of hearing, since this notice is served at least 12 days before such time.

The Petitioner designates Erie County as a place of trial. The basis of venue is the place of residence of the Petitioner and principle place of business of the respondents.

Dated: January 22, 2015

RICHARD H. WYSSLING
Attorney for Petitioner
375 Linwood Avenue
Buffalo, New York 14209
716-882-2243

TO: BOARD OF COOPERATIVE EDUCATIONAL SERVICES
ERIE 1 BOCES
355 Harlem Road
West Seneca, NY 14224

Personnel Officer
County of Erie
95 Franklin St.
Buffalo, NY 14202

SUPREME COURT
COUNTY OF ERIE

In The Matter

Of

MATHEW DZIUBA
1693 Blakely Corners Road
East Aurora, NY 14052

Petitioner,

and

BOARD OF COOPERATIVE EDUCATIONAL
SERVICES ERIE 1 BOCES
355 Harlem Road
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95 Franklin St.
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Respondents.

PETITION
Index No. 800446/2015

The petition of Mathew Dziuba, by his attorney, Richard H. Wyssling, respectfully shows and alleges:

1. That at all times hereinafter mentioned the petitioner was and still is a resident of East Aurora, County of Erie, State of New York.

2. That Respondent, Erie 1 BOCES is a Board of Cooperative Educational Services established under the Education Law of the State of New York and has its principle place of business located at 355 Harlem Road, West Seneca, County of Erie, New York.

3. That the Personnel Officer of Erie County and the Erie County Personnel

Department established under the laws of New York State and has its principle place of business at 95 Franklin Street, Buffalo, New York.

4. That on August 26, 1991, I was appointed as a Micro Tech Support Specialist at Erie 1 BOCES. (See Exhibit A)

5. That the position of Micro Tech Support Specialist was a full-time position pending jurisdictional classification. (See Exhibit A)

6. That on November 6, 1991 I received a notification that the position of Micro Tech Support Specialist was changed from pending jurisdictional classification to non-competitive class, effective October 2, 1991. (See Exhibit B)

7. That on February 6, 1992 [sic], I passed my probationary period and permanently appointed in non-competitive class, effective April 1, 1992. (See Exhibit B)

8. That on January 25, 1993 my title and position was changed to Senior Microcomputer Technical Support Specialist as a full-time position pending jurisdictional classification. (See Exhibit C)

9. That on July 27, 1995 my position of Senior Microcomputer Technical Support Specialist was changed to the competitive class and I was placed in a provisional role by the Personnel Officer of Erie County.

10. That I received notification from the County of Erie Personnel Department on July 10, 1996 that a competitive examination was being given for Senior Microcomputer Technical Support Specialist on September 7, 1996. (See Exhibit D)

11. That I have attached the Erie County Civil Service Opportunity Announcement for Senior Microcomputer Technical Support Specialist as Exhibit E.

12. That on February 3, 1997 I received a permanent competitive appointment as

Senior Microcomputer Technical Support Specialist. (See Exhibit F)

13. That attached as Exhibit G is my duties as Senior Microcomputer Technical Support Specialist and other senior positions at that time.

14. That I applied for the position of Supervisor, LAN/WAN Telecommunications and Network Engineering on a promotional basis. (See Exhibit H)

15. That on February 22, 2001, I received notification that I was appointed a Supervisor LAN/WAN Telecommunications and Network Engineering in a competitive class on a temporary basis, effective as of December 1, 2000. (See Exhibit I)

16. That attached as Exhibit J is my resume that I submitted in 2001 for the position of Supervisor LAN/WAN Telecommunication Network Engineering.

17. That on November 27, 2001 I was appointed to the position of Wide Area Network Manager in the competitive class on a provisional basis, effective December 1, 2000. (See Exhibit K)

18. That I applied for the position of Wide Area Network Manager on a promotional examination basis. (See Exhibit L)

19. That on August 28, 2003 I was appointed as the Wide Area Network Manager on a permanent full-time basis in the competitive class. (See Exhibit M)

20. That in 2007 and 2008 Erie 1 BOCES created three (3) Chief Microcomputer Technical Support Specialists (field technical support) and one (1) Chief Microcomputer Technical Support Specialist (Voice over Internet Protocol) all as promotional positions from the Senior Microcomputer Technical Support Specialists.

21. That in 2008 as a Wide Area Network Manager, I recommended and was granted the request to post and hire one (1) Chief Microcomputer Technical Support Specialist (Voice

over Internet Protocol). I supervised that position from 2008 until May 2013.

22. That on December 9, 2009 an exam for Chief Microcomputer Technical Support Specialist was offered on a promotional basis from Senior Microcomputer Technical Support Specialist. I did not take this exam because of my prior promotion from Senior Microcomputer Technical Support Specialist in 2003, that I (then) currently supervised a Chief Microcomputer Technical Support Specialist position, and being of the same pay grade as Chief of T1200.

23. That on December 9, 2009 I took an exam for Manager of Systems and Programming which is the next level of positions at Erie 1 BOCES.

24. That in 2012 several staff members I supervised were transferred to the supervision of three (3) Chief Microcomputer Technical Support Specialists (regional field support).

25. In the summer or fall of 2012 Erie 1 BOCES created an additional Chief Microcomputer Technical Support Specialist (core network) position and reassigned a significant amount of my Wide Area Network Manager duties to that position.

26. That with the creation of the fifth position of Chief, all Chiefs were promoted on a promotional basis from Senior Microcomputer Technical Support Specialist and myself as Wide Area Manager, were at the same pay grade in Erie 1 BOCES.

27. That as Wide Area Manager I supervised one of the Chief Microcomputer Technical Support Specialist and several Senior Microcomputer Technical Support Specialist positions.

28. That on August 29, 2014 I was verbally informed the position of Wide Area Manager would be abolished at the Erie 1 BOCES Board of Education September 10, 2014 meeting and I would be demoted to a Senior Microcomputer Technical Support Specialist

position having no other recourse to retain employment at Erie 1 BOCES. In fact that was a retrenchment because I previously held that position and that the retrenchment was effective October 1, 2014.

29. That based upon information and belief, when my position was retrenched there were five (5) Chiefs whose positions were three (3) Field Technical Support, one (1) Voice over Internet Protocol and Unified Communication, and one (1) Core Network and Security.

30. That my salary was reduced from $55.12/hour to $49.13 per hour.

31. That on October 14, 2014 – Erie 1 BOCES presented a proposal to amend the union contract in regards to resolving an ambiguity in revising my pay rate. As part of "consideration" of providing an extra $0.18 per hour in dispute, I would not bring a civil service complaint against Erie 1 BOCES. (See Exhibit N)

32. That I am more senior (with more than 23 years of service in the competitive class) than all of the chiefs as mentioned above and that I should have been transferred to one of the chief's position at the same salary level and not demoted to a senior position, as all of the positions were promotions from the Senior Microcomputer Technical Support positions.

33. That a Collective Bargaining Agreement that applies to me is with AFSCME and Erie 1 BOCES and provides in Article 22(a) that "When it becomes necessary to lay off employees in the competitive class, the lay off shall be conducted in accordance with Section 80 and other pertinent sections of the New York State Civil Service Law." (Exhibit O)

34. That Section 80 of the Civil Service Law Subsection 1 provides as follows: "Where, because of economy, consolidation or abolishment of functions, curtailment of activities or otherwise, positions in the competitive class are abolished or reduced in rank or grade, suspension or demotion, as the case may be, among incumbents holding the same or similar

positions shall be made in inverse order of original appointment on a permanent basis in the classified service in the service of the government jurisdiction in which such abolition or reduction of position occurs, subject to the provisions of Subsection 7 of Section 85 of this chapter..." The position of Wide Area Manager and the five (5) Chiefs are similar positions in the same salary grade. In addition, the test for both the Chiefs positions and the Wide Area Network Manager position were similar in nature as set forth in Exhibit P.

35. That, furthermore, in Section 80 of the Civil Service Law it states in Subsection 2 that "Continuous Service. Except as otherwise provided herein for the purpose of this section the original appointment of an incumbent shall mean the date of his first appointment on a permanent basis and a classified service followed by continuous service in a classified service on a permanent basis up to the time of the abolition or reduction of the competitive class position.

36. That I had the most continuous service of any of the other Chiefs and should have been placed in one of the Chief's position and that the Chief appointed in the summer or fall of 2012 should be demoted to a lower grade position.

37. That all of the chiefs and my position were promotional positions from the Senior Microcomputer Technical Support Specialist position and that I have the qualifications to qualify for all of the Chief's positions. (See Exhibits J and L)

38. That for all of the above reasons, I should be placed as a Chief at Erie 1 BOCES and that the least Senior Chief with continuous service should be demoted.

WHEREFORE, I respectfully request and ask this Court to:

(1) Direct the Personnel Officer of Erie County and Erie 1 BOCES to place me in one of the Chief's positions and Petitioner demands judgment ordering the Respondents to and directing the judgment be entered thereon and such other and further relief this Court deems just

and proper;

(2) That my demotion be withdrawn;

(3) That I receive full back pay and benefits as if I continued in the Chief's position from the date of my demotion effective October 1, 2014;

(4) And other such and further relief that this Court deems just and proper, including but not limited to costs and disbursements of this action.

RICHARD H. WYSSLING
Attorney for Petitioner
375 Linwood Ave.
Buffalo, NY 14209
716-882-2243

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

Mathew Dziuba, being duly sworn deposes and says:

1. That he is the Petitioner in this action;

2. That he has read the foregoing Notice of Petition and Petition and knows the contents thereof;

3. That the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Mathew Dziuba

Sworn to before me this

24th day of December, 2014.

Notary Public

MADONNA YOGERST
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Oct. 1 2018