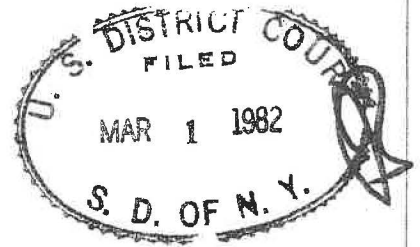


JUDGE SPRIZZO



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

DENNIS P. BRENNAN, as President of the
Detectives Endowment Association of the
City of New York, Inc., and the DETECTIVES
ENDOWMENT ASSOCIATION OF THE CITY OF
NEW YORK, INC.,

AFFIDAVIT IN
RESPONSE TO
PLAINTIFFS' REPLY
AFFIDAVIT
81 Civ. 4770 (JES)

Plaintiffs,

-against-

EDWARD I. KOCH, as Mayor of the City of
New York, THE CITY OF NEW YORK, THE OFFICE
OF MUNICIPAL LABOR RELATIONS OF THE CITY
OF NEW YORK AND THE OFFICE OF COLLECTIVE
BARGAINING OF THE CITY OF NEW YORK,

Defendants.

----- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JAMES HANLEY, being duly sworn, deposes and says:

1. I am an Assistant Director of defendant Office
of Municipal Labor Relations of the City of New York ("OMLR").
I submit this affidavit in response to the reply affidavit of
plaintiff Dennis P. Brennan.

2. In support of their argument plaintiffs assert
that the New York City Transit Authority police and the New York
City Housing Authority police are not subject to section 1173
of the New York City Collective Bargaining Law ("NYCCBL") and
that they have policed labor disputes and "have always performed
this responsibility with complete impartiality." (Reply Affidavit,
¶3a) and "with total impartiality" (¶3b), respectively. The

basis of the affiant's knowledge of these wholly conclusory assertions is not cited.

3. The unions which represent the Transit Authority police and the Housing Authority police are, respectively, the Transit Authority Patrolmen's Benevolent Association and the Housing Authority Patrolmen's Benevolent Association. Neither union is or ever has been affiliated with any other union. Accordingly, the purported past impartiality of these police forces would corroborate defendants' premise that non-affiliation supports police neutrality.

4. Furthermore, although there has been no authoritative determination on the issue, it is the position of OMLR that a union which represents Housing Authority police is subject to the restriction on certification contained in Section 1173 because of the Housing Authority's election to be bound by the provisions of the NYCCBL.

5. Plaintiffs also assert that unions representing members of the New York City Police Department "are affiliating and cooperating with non-police unions on an informal basis" by participating in the Municipal Labor Committee ("MLC"). (Reply Affidavit, ¶4).

6. It is plaintiffs' position that police officer participation in the MLC and the UFC established that police officer impartiality is not undermined by "affiliation" with non-police unions. However, plaintiffs' argument overlooks the essential nature and functions of the MLC and the UFC and the difference between each of them and a public employee organization

which may be certified, pursuant to NYCCBL, as a collective bargaining representative.

7. The Municipal Labor Committee is an association of public employee unions which serves certain statutory and administrative functions. Unlike a union, whose membership is composed exclusively of employees, the MLC has no employee members whatsoever.

8. The MLC has certain statutory functions which are set out in the New York City Charter and New York Unconsolidated Laws (McKinney's). Section 1171 of the City Charter states the MLC designates the two labor members of the tri-partite Board of Collective Bargaining and Section 1174(a) of the City Charter requires the members of the MLC to pay fifty percent of the specified costs of the Boards of Certification and Collective Bargaining. Section 7390(8)(a) of the Unconsolidated Laws, authorized the MLC to designate one member of the Personnel Review Board of the New York City Health and Hospitals Corporation for a period of five years after the creation of the Health and Hospitals Corporation.

9. As can be seen from its statutory functions, the MLC fulfills a distinct need by facilitating the coordination of certain activities by its numerous member unions. These activities are primarily administrative in nature. Similarly, the non-statutory functions of MLC are also largely administrative and include distributing information and reviewing procedures established pursuant to NYCCBL.

10. Unlike unions, the MLC, which does not represent its member unions, does not collectively bargain with the City concerning wages, hours and terms and conditions of employment, nor does it enter into labor contracts with the City nor prosecute grievances pursuant to labor contracts. In addition, the MLC does not demand loyalty from its member unions and does not have authority to discipline member unions. In contrast, unions do demand loyalty from and do discipline their employee members.

11. Since the enactment of the NYCCBL, various uniformed forces unions have met on an informal basis to negotiate with the City, particularly over economic issues, as there have been long-standing salary relationships among these groups. The City has often established pattern bargaining, i.e. uniform levels of salary increases. The composition of these uniformed union groupings has varied greatly over the years.

12. In the 1980-82 round of bargaining, some of the unions representing uniformed employees of the City came together in an informal coalition to negotiate only an economic package, including wage increases. They came to be known as the Uniformed Forces Coalition. Plaintiff Detectives Endowment Association was not a member of UFC.

13. The City has not yet been notified as to whether there will be a Uniformed Forces Coalition for the 1982-84 round of bargaining, and, if there is, what its composition will be.

14. The UFC unions did negotiate as a group concerning a pattern of wage increases and other economic conditions of employment. This voluntary joint effort was only a part of the negotiations for 1980-82 agreements with these unions. Each union then negotiated separately with the City over working conditions and other non-economic issues. Each union had to separately sign and ratify the terms negotiated with the City for the 1980-82 period. These terms were separately submitted to and ratified by the employee members of each union.

15. The UFC was not certified as a collective bargaining representative of public employees. Accordingly, the UFC enjoyed none of the rights and had none of the duties of certification established by NYCCBL. For instance, a certified collective bargaining representative can petition for a determination as to whether a matter is a mandatory subject of bargaining, can petition for a determination that the City is not bargaining in good faith and can invoke the binding impasse resolution procedures. The UFC had none of these privileges.

16. The limited and voluntary functions of the UFC were established as a matter of convenience to the UFC member unions. The City raised no objection to proceeding in this manner. Traditionally, a pattern of economic increases had been uniformly applied to employees in the City's uniformed services.

basis of the affiant's knowledge of these wholly conclusory assertions is not cited.

3. The unions which represent the Transit Authority police and the Housing Authority police are, respectively, the Transit Authority Patrolmen's Benevolent Association and the Housing Authority Patrolmen's Benevolent Association. Neither union is or ever has been affiliated with any other union. Accordingly, the purported past impartiality of these police forces would corroborate defendants' premise that non-affiliation supports police neutrality.

4. Furthermore, although there has been no authoritative determination on the issue, it is the position of OMLR that a union which represents Housing Authority police is subject to the restriction on certification contained in section 1173 because of the Housing Authority's election to be bound by the provisions of the NYCCBL.

5. Plaintiffs also assert that unions representing members of the New York City Police Department "are affiliating and cooperating with non-police unions on an informal basis" by participating in the Municipal Labor Committee ("MLC"). (Reply Affidavit, ¶4).

6. It is plaintiffs' position that police officer participation in the MLC and the UFC established that police officer impartiality is not undermined by "affiliation" with non-police unions. However, plaintiffs' argument overlooks the

essential nature and functions of the MLC and the UFC and the difference between each of them and a public employee organization which may be certified, pursuant to NYCCBL, as a collective bargaining representative.

7. The Municipal Labor Committee is an association of public employee unions which serves certain statutory and administrative functions. Unlike a union, whose membership is composed exclusively of employees, the MLC has no employee members whatsoever.

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9. As can be seen from its statutory functions, the MLC fulfills a distinct need by facilitating the coordination of certain activities by its numerous member unions. These activities are primarily administrative in nature. Similarly, the non-statutory functions of MLC are also largely administra-

tive and include distributing information and reviewing procedures established pursuant to NYCCBL.

10. Unlike unions, the MLC, which does not represent its member unions, does not collectively bargain with the City concerning wages, hours and terms and conditions of employment, nor does it enter into labor contracts with the City nor prosecute grievances pursuant to labor contracts. In addition, the MLC does not demand loyalty from its member unions and does not have authority to discipline member unions. In contrast, unions do demand loyalty from and do discipline their employee members.

11. Since the enactment of the NYCCBL, various uniformed forces unions have met on an informal basis to negotiate with the City, particularly over economic issues, as there have been long-standing salary relationships among these groups. The City has often established pattern bargaining, i.e. uniform levels of salary increases. The composition of these uniformed union groupings has varied greatly over the years.

12. In the 1980-82 round of bargaining, some of the unions representing uniformed employees of the City came together in an informal coalition to negotiate only an economic package, including wage increases. They came to be known as the Uniformed Forces Coalition. Plaintiff Detectives Endowment Association was not a member of UFC.

13. The City has not yet been notified as to whether there will be a Uniformed Forces Coalition for the 1982-84 round of bargaining, and, if there is, what its composition will be.

14. The UFC unions did negotiate as a group concerning a pattern of wage increases and other economic conditions of employment. This voluntary joint effort was only a part of the negotiations for 1980-82 agreements with these unions. Each union had to separately sign and ratify the terms negotiated with the City for the 1980-82 period. These terms were separately submitted to and ratified by the employee members of each union.

15. The UFC was not certified as a collective bargaining representative of public employees. Accordingly, the UFC enjoyed none of the rights and had none of the duties of certification established by NYCCBL. For instance, a certified collective bargaining representative can petition for a determination as to whether a matter is a mandatory subject of bargaining, can petition for a determination that the City is not bargaining in good faith and can invoke the binding impasse resolution procedures. The UFC had none of these privileges.


16. The limited and voluntary functions of the UFC were established as a matter of convenience to the UFC member unions. The City raised no objection to proceeding in this manner. Traditionally, a pattern of economic increases had been uniformly applied to employees in the City's uniformed services.

Group bargaining on the economic issues therefore appeared to be an efficient and expedient procedure. By contrast, certified bargaining representatives are required to bargain on all mandatory subjects of bargaining which includes a large number of non-economic issues as well as economic issues.

WHEREFORE, deponent respectfully requests that City defendants' cross-motion for summary judgment be granted and that the complaint be dismissed.

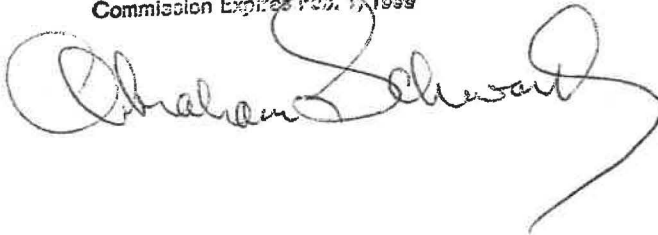
Sworn to before me this

1st day of March 1982



JAMES HANLEY

ABRAHAM SCHWARTZ
Commissioner of Deeds
City of New York No. 4-1157
Certificate filed in New York County
Commission Expires Feb. 1, 1983



is assigned to _____

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MAR 1 REC'D *ky.*

(18)

Your reference to the above File Number on all documents and correspondence would be appreciated.

AFFIRMATION OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

Marilyn Richter, an attorney admitted to practice before the Courts of the State of New York, affirm, pursuant to Rule 2106 of the CPLR and subject to the penalties of perjury, that on the 1st day of March, 1982, I served the annexed responding affidavit upon Steven DeCosta, Esq., the attorney for defendant Office of Collective Bargaining inclosed in a postpaid wrapper in a post office box regularly maintained by the United States Postal Service, directed to the said attorney at No. 100 Church St. in the Borough of Manhattan, City of New York, being the address within the State theretofore designated by him for that purpose.

Dated: March 1, 1982

Marilyn Richter

AFFIRMATION OF SERVICE ON ATTORNEY BY MAIL

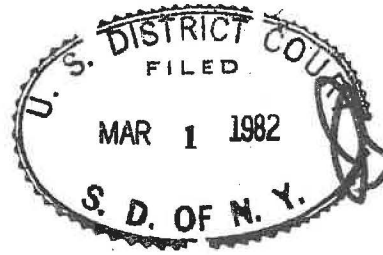
State of New York, County of New York, ss.:

Marilyn Richter, an attorney admitted to practice before the Courts of the State of New York, affirm, pursuant to Rule 2106 of the CPLR and subject to the penalties of perjury, that on the 1st day of March, 1982, I served the annexed responding affidavit upon Charles Goldberg, Esq. the attorney for plaintiffs inclosed in a postpaid wrapper in a post office box regularly maintained by the United States Postal Service, directed to the said attorney at No. One State St. in the Borough of Manhattan, City of New York, being the address within the State theretofore designated by him for that purpose.

Dated: March 1, 1982

Marilyn Richter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X

DENNIS P. BRENNAN, as President of
the Detectives Endowment Association
of the City of New York, Inc., and
the DETECTIVES ENDOWMENT ASSOCIATION
OF THE CITY OF NEW YORK, INC.,

Plaintiffs,

-against-

EDWARD I. KOCH, as Mayor of the
City of New York, THE CITY OF NEW
YORK, THE OFFICE OF MUNICIPAL LABOR
RELATIONS OF THE CITY OF NEW YORK AND
THE OFFICE OF COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK,

Defendants.

----- X

AFFIDAVIT IN RESPONSE
TO PLAINTIFF'S REPLY

Docket No.
81 Civ. 4770 (JES)

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

ARVID ANDERSON, being duly sworn, deposes and says:

1. I am the Director of the defendant Office of Col-
lective Bargaining (hereinafter "OCB"), and the Chairman
of OCB's two constituent adjudicative boards, the Board
of Collective Bargaining and the Board of Certification.
I submit this affidavit in response to certain factual
allegations raised in the reply affidavit of plaintiff
Dennis P. Brennan.

2. Plaintiff alleges that police unions "... are
already affiliating and cooperating with non-police
unions on an informal basis." (Reply affidavit ¶4).

Plaintiff cites, as examples of such informal "affiliation", the involvement of the Detectives Endowment Association (hereinafter "DEA") and other police unions in the Municipal Labor Committee (hereinafter "MLC") and the Uniformed Forces Coalition. Plaintiff concludes that the existence of the MLC and the Uniformed Forces Coalition demonstrates that the impartiality of police officers is not comprised by their "affiliation" with non-police unions.

3. I believe that plaintiff's argument is based upon a misconception of the purpose and function of both the MLC and the Uniformed Forces Coalition. Moreover, plaintiff fails to note the clear distinctions which exist between the rights and duties of these two bodies, and those of a public employee organization which has been duly certified as a collective bargaining representative by defendant OCB's Board of Certification.

4. The action before this Court raises a question of the constitutionality of the limitation on eligibility for certification contained in §1173-10.0(b) of the New York City Collective Bargaining Law (hereinafter "NYCCBL"). It is important to note, initially, that neither the MLC nor the Uniformed Forces Coalition possesses the status of a certified collective bargaining representative under the NYCCBL. Neither body possesses the statutory rights incident to certification under the NYCCBL and the New York State Public Employees' Fair Employment Act (commonly known as

the Taylor Law). In fact, it appears that neither body is a "public employee organization" as that term is defined in NYCCBL §1173-3.0(j); thus regardless of their status under §1173-10.0(b), neither could qualify for certification as a collective bargaining representative.

5. The Municipal Labor Committee is a voluntary association of representatives of qualified organizations of public employees. It was created pursuant to a memorandum of agreement, dated March 31, 1966, which was signed by representatives of the City and certain employee organizations. This memorandum of agreement was drafted, at the request of the Mayor of the City of New York, by a tri-partite panel made up of representatives of the City, the municipal unions, and distinguished neutrals. The memorandum served as the basis for what was enacted into law by the City Council as the NYCCBL. The existence of the MLC and of the memorandum of agreement is expressly recognized in §1173-3.0(k) of the NYCCBL.

6. The existence of the MLC is also recognized in §1171 of the New York City Charter, which provides that the MLC is to designate the two Labor Members of the seven-member tri-partite Board of Collective Bargaining. Section 1174(a) of the City Charter further provides that

fifty per cent of the salary, fees, and expenses of the three Impartial Members of the Board of Collective Bargaining shall be paid by the members of the MLC.

7. In addition to these statutory responsibilities, the MLC plays a role in such areas as the dissemination of information among the member unions, the adoption of policy statements regarding particular labor relations issues, and the formulation of general collective bargaining strategies. The MLC also participates, with the City, and the staff of OCB, in periodic reviews of the effectiveness of procedures under the NYCCBL and the Revised Consolidated Rules of the OCB.

8. The MLC does not engage in collective bargaining with the City concerning wages, hours, and terms and conditions of employment. It does not act as the bargaining representative of its member unions. It does not enter into a labor contract with the City, nor does it prosecute grievances to enforce any labor contract. Upon information and belief, it does not demand loyalty from its constituent member unions and it possesses no power to discipline members whose actions are inconsistent with MLC policy.

9. The MLC serves statutory, informational, and administrative functions which differ greatly from the

function of an employee organization certified as an exclusive collective bargaining representative. For this reason, I submit that the membership of both police and non-police unions in the MLC creates no potential for compromising the integrity and impartiality of the police force.

10. The Uniformed Forces Coalition is an informal, voluntary coalition of several labor organizations representing certain of the uniformed employees of the City of New York. The membership of the Coalition may vary from year to year; for example, upon information and belief, it is uncertain whether the union representing the City's uniformed sanitationmen will be included in the Coalition this year.

11. The member unions of the Uniformed Force Coalition have agreed to bargain as a group with the City concerning a pattern of wage increases and other economic terms of employment. The constituent member unions each negotiate separately with the City concerning hours, working conditions, and all other terms and conditions of employment which are of special concern to the particular units of employees. The Coalition is not certified as a collective bargaining representative by OCB's Board of Certification, and does not possess any of the rights incident to certi-

fication. The member unions are separately certified to represent particular bargaining units.


12. While the members of the Coalition cooperate in bargaining with the City to establish a mutually acceptable pattern of economic increases, they each separately sign any agreement reached, and each submits the terms of such agreement to its own bargaining unit for ratification. Moreover, each member union separately negotiates a collective bargaining agreement on behalf of the bargaining unit for which it is the certified representative. These individual unit agreements are the means by which the pattern established in Coalition bargaining is actually implemented, and, significantly, they are also the expression of the parties' agreement on matters of hours, working conditions, and other terms and conditions of employment of unit employees which are beyond the limited scope of the Uniformed Coalition's functioning. It is pursuant to these individual unit contracts that employees receive benefits and enforceable rights.

13. Since it is not a certified representative, the Uniformed Forces Coalition cannot avail itself of rights and procedures existing under the NYCCBL. As a body, it cannot petition for a determination of the scope of mandatory collective bargaining, and it cannot petition for

a determination that the City is not bargaining in good faith. If an impasse arises in the course of bargaining, it cannot, as a matter of right, invoke the binding impasse resolution procedures of the NYCCBL.

14. The Uniform Forces Coalition is able to function and to engage in limited bargaining only because both the City and the members of the Coalition have found it mutually advantageous to bargain on a group basis for a pattern of economic increases which traditionally has been uniformly applied to all employees in the City's uniformed services. This limited, voluntary bargaining structure differs sharply from mandatory bargaining by certified representatives under the NYCCBL. Accordingly, I submit that plaintiff's attempt to analogize a certified representative's formal affiliation with another union to a union's participation in the Uniformed Forces Coalition, is inapposite.

15. For these reasons, I respectfully urge the Court to grant the defendants' motions for summary judgment.


 ARVID ANDERSON

Sworn to before me this 1st
 day of March, 1982.

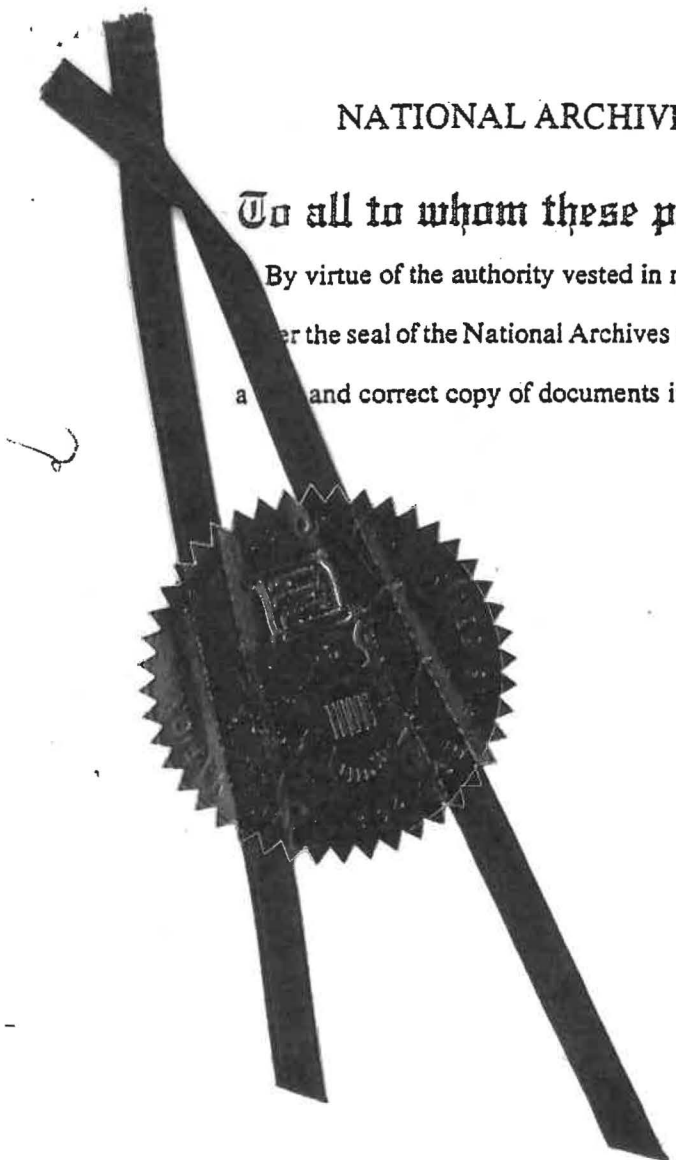

 Notary Public

STEVEN C. De COSTA
 Notary Public, State of New York
 No. 30-4616151
 Qualified in Nassau County
 Commission Expires March 30, 1983

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf,
under the seal of the National Archives and Records Administration, that the attached reproduction(s) is
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SIGNATURE <i>Theresa Mellon</i>	
NAME THERESA MELLON	DATE 7-23-01
TITLE SUPERVISORY ARCHIVES SPECIALIST	
NAME AND ADDRESS OF DEPOSITORY NARA - Office of Regional Records Services 200 Space Center Drive Lee's Summit, MO 64064	