

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
BEFORE: HON. ANGELA BLASSMAN

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FRANCESCO PORTELOS,

Charging party,

-against-

Case No. U-31942

DEPARTMENT OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK,

Respondent,

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### **PRELIMINARY STATEMENT**

Charging party tenured teacher Francesco Portelos submits this closing brief following a three-day hearing held at the New York State Public Employment Relations Board in Brooklyn, New York, on March 20, 2014, October 9, 2014, and March 17, 2015, stemming from an original PERB charge filed on or about May 23, 2012 (ALJ 1).

Mr. Portelos filed his original improper practice charge in response to retaliatory disciplinary actions taken against him by his school principal, and other New York City Department of Education (NYCDOE) personnel, after over 4 years of well documented stellar performance and service. Specifically, his school principal, Linda Hill, at IS 49R, and District 31 Superintendent Erminia Claudio, in Staten Island, New York, issued false disciplinary letters to his personnel file, made belittling comments about him to staff, initiated approximately three dozen frivolous investigations against him with DOE agencies, exiled him twenty miles away from his school and banished him from his school for two years, and initiated Section 3020-a

disciplinary proceedings against him. All of this occurred *after* Mr. Portelos became active in the union in his school, became United Federation of Teachers (UFT) delegate, and subsequently UFT Chapter Leader at the school. Mr. Portelos now seeks to be returned to his rightful place at IS49R, made whole, and asks for a finding that Principal Hill and NYCDOE administration have taken retaliatory actions against Mr. Portelos based on anti-union animus. Therefore, a finding of liability should be issued against the DOE, with removal of any unwarranted disciplinary letters from Mr. Portelos' personnel file, compensation for exiling him twenty miles away from his school, that he be returned to his school into the same position he had, and an order be issued that further retaliatory actions by the DOE cease and desist against Mr. Portelos.

#### **STATEMENT OF FACTS**

Charging party Francesco Portelos is a science and technology school teacher with the NYCDOE for approximately 8 years. For the first five years, he taught at IS 49R in Staten Island, NY under Principal Linda Hill. He had always consistently received satisfactory annual ratings (CP-14) at the school and even accumulated many commendations and accolades for his efforts in the school outside of the classroom (Tr. at 197, CP-14).

Mr. Portelos' issues with Principal Hill commenced in the end of 2011, when Mr. Portelos decided to become more active with the union in the school and began raising concerns. He had recently become a father in the community of IS 49R and as such attempted to improve the troubled school, his own children eventually would go to, far beyond the walls of his classroom. As of October 2011, Principal Hill wrote a glowing letter of recommendation for Mr. Portelos and recommended him to become an administrator himself (Tr. at 215; CP-16). The very next month, November 2011, Mr. Portelos was elected the UFT Delegate of the school and began to attend more meetings. As he raised concerns revolving around budgets and goals, as

well as became more vocal about the school's issues, things changed for him dramatically at the school. While he initially had over 70 glowing emails documenting Principal Hill's satisfaction with his efforts, they were suddenly replaced with emails to the staff belittling Mr. Portelos while mentioning UFT meetings and politics. By January 2012, Principal Hill was suddenly calling Mr. Portelos "a hindrance to the community" without any basis to back it up (Tr. at 269). By the end of January 2012, just a short time after the principal's October letter of recommendation and Mr. Portelos' election to UFT office, Mr. Portelos had his school email account disabled because, as Principal Linda Hill stated, he sent UFT related emails to UFT members without her "permission." (Tr. 110) On January 30, 2012, Principal Linda Hill called in and started three separate investigations on Mr. Portelos (Tr. 123). These were the first three that would eventually turn into an unimaginable 36 investigations over the next two years (Tr. 13).

By the first two weeks of February 2012, Mr. Portelos also received the first three disciplinary letters of his career (Tr. 92 CP-1). All of the allegations in these letters were dismissed at a subsequent 3020-a hearing. One of the disciplinary letters was about the email to the union members and another alleged that he stayed 27 minutes "too late" without Principal Hill's permission. This letter about lateness was given despite contradicting Principal Hill's statement commending him for working hard and "often staying late" in her October 2011 letter of recommendation. By the middle of February 2012, he also was directed by Principal Linda Hill and Superintendent Erminia Claudio "not to meet with any staff members," making his job as a UFT Delegate more difficult (Tr. 133). By the last week of February 2012, Mr. Portelos was under four separate investigations conducted by the New York City Special Commissioner of Investigation's office (SCI). Mr. Portelos had his NYCDOE computers confiscated on February 28, 2012. In his subsequent 3020-a disciplinary trial, it became known that all evidence found

against him on those confiscated computers was in fact fabricated and planted with SCI issuing a memo stating it was “an error.”

Mr. Portelos filed a grievance about the anti-union animus he felt he was experiencing the first week in March 2012. The following week he was out of school for a jury duty assignment for several days and upon his return to school, he was observed the first two periods of the school day. The rating for that two period informal observation was his first unsatisfactory rating of his career. Two days later, Superintendent Erminia Claudio made a request to have Mr. Portelos reassigned out of IS 49. Her request was denied by NYCDOE Human Resources. By the end of March 2012, Principal Linda Hill had also made inquiries about having Mr. Portelos reassigned again. Those inquiries were also met with denial.

During March 2012, Mr. Portelos had a Step 1 Grievance with Principal Hill regarding the antiunion animus. It was denied. As March progressed into April, word of Mr. Portelos running for UFT Chapter Leader in the upcoming elections circulated around the school. The evidence and testimony show that the former UFT chapter leader, Richard Candia, and Principal Hill were conversing about the elections with Principal Hill stating “I don’t believe for a minute that he [Portelos] won’t run.” (Tr. 162) Within two weeks of that conversation, Mr. Portelos had a false police report filed against him by the school administration and his former UFT Chapter Leader Richard Candia, the number of investigations called in against him had risen to approximately 18, and on April 26, 2012 he was reassigned from the school. When Principal Linda Hill was asked what was the reason that Mr. Portelos was ultimately removed, she stated that he sent an email to union members in the school that was perceived as “menacing.” (Tr. 462) Mr. Portelos was first reassigned just three miles from his home and school, but by the end of April 2012, Superintendent Claudio and DOE Human Resources sent him 20 miles and two

boroughs away. For the next two years, he would spend time reassigned outside of his district in violation of DOE Chancellor's Regulation C-770. Despite this alleged menacing email being the reason he was reassigned, Mr. Portelos testified that at no point in the last three years was he ever questioned by anyone, including investigators, about said email (Tr. 521).

In May 2012, Mr. Portelos spent the month in a small basement storage room with two gated windows. Despite being harassed since taking UFT office and raising concerns, Mr. Portelos continued his role as UFT Delegate from exile, but was prevented from ever participating in the school's School Leadership Team (SLT) meetings or entering the school building again. Mr. Portelos filed grievances regarding his wrongful reassignment and relocation. These grievances were denied and Mr. Portelos was moved to isolation in a conference room with all other employees being kept in other rooms together.

In June 2012, Mr. Portelos nominated himself for UFT Chapter Leader of IS 49, despite his distant reassignment from the membership. On June 13, 2012, Mr. Portelos became the first UFT Chapter Leader to be elected from reassignment in the 50 year history of the UFT. Even though he was duly elected, the NYCDOE continued its anti-union animus treatment of Mr. Portelos for the next two years he held the title. The Collective Bargaining Agreement (CBA) was ignored over and over as Mr. Portelos had to grieve for every right to represent his members, view the budget, be allowed to hold meetings, view safety minutes and a large assortment of other duties connected with his title. He was denied the right to enter the building and represent. He was denied access to important information he was owed as UFT Chapter Leader including a mandatory seat at the SLT at the school.

As the laundry list of CBA items ignored by the NYCDOE grew, so did the number of investigations against Mr. Portelos. A year after his reassignment, Mr. Portelos was not charged

with anything, yet the investigations called in against him had risen to 31, including calling the staff lounge to speak to members. On April 25, 2013, SCI published a lengthy report on its findings of the investigations in the school including against Mr. Portelos. The report was very vague and made no recommendations. The report did indicate that certain real estate related files were found on Mr. Portelos' confiscated devices, but a year later it was admitted that they really were not. It should be mentioned that SCI is funded by the NYCDOE.

Mr. Portelos was called into Superintendent Erminia Claudio's office on two occasions to have a disciplinary hearing based on the SCI report published. Mr. Portelos insisted on recording the conversation, but Superintendent Claudio refused and the meetings never took place. On May 17, 2013, Mr. Portelos was served with Section 3020-a disciplinary charges for termination. In total 38 separate charges were preferred against him.

Arbitrator Jeffrey Tener heard Mr. Portelos' grievance about being denied the right to meet and consult with the Principal and being denied access to records, and in May 2013, Arbitrator Tener ruled in his favor. Despite the arbitration win, the NYCDOE refused to acknowledge such decision and it was appealed in NYS Supreme Court. In November 2013, Supreme Court Judge Joan Lobis confirmed the arbitration award. Still, even after the arbitration award was confirmed by the Supreme Court, Principal Linda Hill and the NYCDOE resisted allowing Mr. Portelos to perform his duties. Efforts to recall Mr. Portelos as UFT Chapter Leader, after Principal Hill told the staff she could not meet with him, proved futile. Mr. Portelos survived four separate attempts at a recall in his two years as UFT Chapter Leader in exile. Even as he tried to enforce the contract and questioned the lack of transparency of mandatory Safety Meetings, the NYCDOE directed Principal Hill to furnish the minutes of past

meetings. Principal Hill then put a stop to the act of taking minutes entirely so she would not have to share them with Mr. Portelos and others.

Mr. Portelos' Section 3020-a hearing began in September 2013 and lasted until February 2014. The hearing consisted of 21 days of testimony, over 3,600 pages of transcript, over 70 exhibits, and almost two dozen witnesses. When Principal Hill was asked who her school's chapter leader was, she stated on record: "We have no chapter leader." All the while Mr. Portelos continued to try to function as the duly elected UFT Chapter Leader while continuing to raise concerns and exercise the rights of the members and even held meetings outside of the school and via webcam. At one UFT meeting in February 2014, where almost two dozen members sat in a room with Mr. Portelos live video projected onto a wall, Principal Hill walked in and disrupted the UFT meeting causing everyone to leave.

In May 2014, Section 3020-a Arbitrator Felice Busto furnished her 107 page decision and award. In it, she dismissed two-thirds of the 38 disciplinary specifications and sustained eleven. Details of the 11 sustained charges have been shared in an April 2, 2015 letter to PERB. The eleven sustained charges involve Mr. Portelos' protected actions as a UFT member and community parent. Arbitrator Felice Busto awarded a substantial \$10,000 fine and that Mr. Portelos be returned to the classroom. Instead of returning him to his rightful place back at IS 49 to resume teaching and his role of UFT Chapter Leader, the NYCDOE instead sent him to the Absent Teacher Reserve (ATR) pool where he was finally stripped of his UFT Chapter Leader title and sent to rotate from school to school on a weekly basis.

Ultimately, as Principal Linda Hill testified in this case, she was found guilty, by the NYCDOE Office of Special Investigations, of the allegations Mr. Portelos raised back in January

2012 about financial fraud at the school. This allegation was made before Mr. Portelos received any negative letters to file, unsatisfactory ratings or investigations were made against him.

## ARGUMENT

### **CHARGING PARTY'S DISCIPLINARY LETTERS, REASSIGNMENT, OVER TWO DOZEN INVESTIGATIONS, THE 3020-A PROCEEDING, AND ASSIGNMENT TO ATR POOL WERE INITIATED IN RETALIATION FOR HIS MANY ACTIONS AS A UNION MEMBER AND LEADER IN VIOLATION OF THE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT.**

The New York State Public Employees' Fair Employment Act expressly prohibits anti-union animus by a public employer against public employees for engaging in union activities:

It shall be an improper practice for public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two of this article for the purpose of depriving them of such rights; ... (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participating in the activities of, any employee organization.

*Civil Service Law*, §209-a, subd. 1, paragraphs [a], [c].

PERB has previously found it improper to retaliate against union members, especially in a leader capacity, when they speak out against acts by their employers and exercise their union rights. *See City of Long Beach, 13 PERB ¶3008 (1980)* (PBA President's written, publicized harsh criticism of Police Chief's actions regarding police officers protected. **Reassignment** of PBA President to foot patrol **improper** and ordered rescinded. Criticism dealt with capricious discipline and inadequate training); *City of Mount Vernon, 14 PERB ¶3037 (1981)* (PBA President **improperly** reassigned to permanent tour from rotating tours in retaliation for publicizing in press complaints about employees' working conditions and criticisms of City Mayor).

In order to show retaliation at PERB, a charging party must prove that he was engaged in protected activity under the Act, that such activity was known to the person who effectuated the adverse action, and that the action complained of would not have been taken but for the protected activity. *City of Salamanca*, 18 PERB 3012 (1985). The third element of unlawful motivation can be proven through direct evidence or circumstantial evidence, which may include disparity of treatment, the timing and context of the employment action, or a pretextual rationale for the adverse actions taken. *Town of Hempstead*, 19 PERB 3022 (1986). Circumstantial evidence must be sufficient to give rise to an inference that unlawfully motivated interference or discrimination was a factor in the employer's conduct. *County of Cattaraugus and Sheriff of Cattaraugus County*, 24 PERB 3001 (1991). If respondent can establish a legitimate, nondiscriminatory reason, the burden then shifts to the charging party to prove that the retaliatory action is pretextual. *Id.* at 3001.

Mr. Portelos having engaged in protected activity under the Act by being elected UFT Delegate, raising concerns at his school, filing union grievances, and running for and winning the UFT Chapter Leader position is not in dispute here.

A pattern of a lack of credibility on the part of Principal Linda Hill toward Charging Party Mr. Portelos has been demonstrated throughout the hearing, and provides a very strong inferential basis to make a finding of retaliatory anti-union animus against Principal Hill. It is also undisputed that Mr. Portelos had a stellar record up to and including October 2011 where Principal Linda Hill wrote the glowing letter of recommendation for Mr. Portelos to enroll in a leadership in education program. This summary of shocking actions by Principal Hill and the NYCDOE after Mr. Portelos was elected UFT Chapter Leader is also undisputed:

1. Mr. Portelos' email account was disabled by Principal Hill after he wrote an email to a UFT member group about UFT matters.
2. Principal Hill called Mr. Portelos a "hindrance to the community" in front of other administration and UFT members.
3. Principal Hill sent an email to the entire staff belittling him and discussing events that took place at a private UFT meeting.
4. Principal Hill called in three separate allegations against Mr. Portelos just on June 30, 2012 alone, with another the next week and over a dozen more over the next two months.
5. Mr. Portelos has been the subject of at least 37 investigations and ultimately found guilty of only one—i.e., that he changed the principal's account access on January 28, 2012 for a website Mr. Portelos owns to this day.
6. Mr. Portelos' NYCDOE computers were confiscated from his class and home, were alleged to have contained real estate related files by SCI, but in actuality did not.
7. Mr. Portelos received a poor classroom rating in March after a week of creating a blog (protectportelos.org) and being out on jury duty for a week.
8. OSI Investigators come to the school to collect time cards and other records and inform Principal Hill that there is an investigation.
9. Principal Hill stated on record that her "diary" on Mr. Portelos was created possibly in October 2011 when a staff member allegedly said Mr. Portelos was menacing by walking by her room, before he was UFT Delegate, but contradictory testimony and evidence from the Section 3020-a hearings show that it was actually created in March 2012 and back dated to events starting in June 2011. In fact, even the write up from the teacher was not done until June 2012, after this improper practice complaint was lodged.

10. Principal Linda Hill and Superintendent Erminia Claudio made inquiries to have Mr. Portelos removed in March 2012 and were denied.
11. Police reports were filed against Mr. Portelos for alleged harassment of administration in early April 2012.
12. Conversations took place between Principal Linda Hill and UFT Chapter Leader Richard Candia about upcoming UFT Chapter Leader elections and Mr. Portelos' role in running.
13. Mr. Portelos was removed from school after an alleged menacing email he sent to UFT members, yet was never questioned or investigated for it.
14. Mr. Portelos was sent two boroughs away to a district office when there were closer locations available including the Staten Island district office.
15. Mr. Portelos was elected UFT Chapter Leader of IS 49 in June 2012 and Principal Hill did not respond to any of his communication requests and made repeated violations to the CBA over the next two years.
16. Mr. Portelos was reassigned and uncharged with any misconduct for over a year.
17. There was no policy in place that allowed the NYCDOE to remove Mr. Portelos from the IS 49 table of organization, after he was not terminated, and strip him of his UFT Chapter Leader title, yet they did so anyway.

The testimony detailed in this hearing shows an improper practice by Principal Hill for Ms. Portelos becoming very union active in his school. A finding of liability should be found under the Act against Principal Hill and the NYCDOE.

## **CONCLUSION**

For the reasons stated above, the Administrative Law Judge should respectfully find violations of the Act, with removal of derogatory materials from his personnel file, issue an order that he be returned to his rightful place at IS 49 with any backpay and per session work paid due to his unlawful reassignments, and an order that further retaliatory actions cease and desist against Mr. Portelos. *See Rodriguez v. New York City Board of Education*, Case Nos. U-30747 and 31421 (February 5, 2013).

Respectfully submitted,

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