

Introduction and Summary

This second Confidential Report Concerning Discrimination, Harassment and Intimidation in the County Workplace for the Schoharie County Board of Supervisors (“Second Report”) is presented to the Schoharie County Board of Supervisors (the “Board”) with much appreciation to Chairman Philip R. Skowfoe, Jr., and Vice-Chairman D. Michael Brandow for their guidance through the second phase of this enquiry. As with our Confidential Final Report Concerning Discrimination, Harassment and Intimidation in the County Workplace for the Schoharie County Board of Supervisors (the “First Report”) we received all of our instruction from the Chairman and Vice-Chairman. We also thank the employees of Schoharie County that assisted us with the voluminous collection of documents many of which have been attached hereto as exhibits. Finally, we again thank all of the employees of Schoharie County who willingly took time out of their busy workday, participated in our interviews, and offered words of hope and encouragement that our reports would change the divisive atmosphere that pervades Schoharie County government.

As required by the Request for Proposal (“RFP”), the First Report identified acts of discrimination, harassment, and/or intimidation by Board members and County department heads against County employees; Board members and department heads against other Board members and department heads, and Board members and/or department heads against outside agencies and municipalities. Since the RFP referenced generic and unlawful acts of discrimination, harassment and intimidation, the questionnaire we used during the first phase of the inquiry was designed to elicit information about both forms of the unwanted behavior.

Following the parameters outlined in the RFP, our First Report, which is incorporated herein by reference, was divided into five separate sections. Part I described the scope of the evaluation and methodology used to implement the evaluation. Part II dealt with the major issues of the report and Part III indexed acts of discrimination, harassment and intimidation that were relayed to us during approximately 400 interviews of current and former county employees. Since the RFP anticipated acts of illegal and generic discrimination, harassment and intimidation, we listed both types of unwanted behavior in Part III. Part III is divided into separate County departments. Some of the acts listed may seem commonplace when compared to the larger issues facing the County, however we tried to include as many examples of this unwanted behavior as possible. It would have been impossible to include all of the instances in one report. Part IV of the First Report addressed the RFP’s Statement of Need section, which required the firm to evaluate budgetary issues surrounding the “2012 Budget Process.” To that end we reviewed the Article 78 petitions that were filed with the State Supreme Court on behalf of the petitioners. Finally, Part V explained our recommendations for amendments to the Schoharie County Policies and Procedures and Ethics sections.

As described in the First Report, the RFP described a linear evaluation of all current and former county employees for acts of discrimination, intimidation and harassment. The linear evaluation allowed for the interview of county employees, not an investigation of the employees’ allegations. Once we interviewed an employee, it was almost impossible to investigate his or her allegations unless we backtracked and re-interviewed employees about the allegations. Given the scope and schedule of the evaluation this investigational aspect of the interviews was not

feasible. To accomplish the investigation of every allegation of discrimination, harassment and intimidation would have required ten law firms, not one.

Although the RFP cast its net extremely wide, it allowed the County to pare down and narrow its focus on several main issues that were continually brought to our attention during the interviews. Our methodology allowed every county employee to be interviewed and to make a statement at the end of their interview on any topic they wanted as long as it was relevant to the Schoharie County workplace. At the end of the interview it was evident that a majority of employees found the interviews cathartic. That is not to say that all county employees were thrilled to participate in the evaluation.

At the Board's May 2013 meeting, the supervisors voted to continue the inquiry and have the firm "consider any deviation/discrepancies in the original report." The Board's description allowed the firm an extremely wide latitude when considering which areas of the First Report to focus our attention. We sought and received further instruction from Chairman Skowfoe and Vice-Chairman Brandow during the course of the investigation. On more than one occasion, Chairman Skowfoe and Vice-Chairman Brandow reminded the firm that the second phase of the inquiry had fiscal boundaries. The firm went far beyond these economic boundaries during the second phase of the inquiry, contributing numerous unpaid hours to stay within the County's fiscal limitations. There were also investigational limits set on the firm. For example, the County would not pay for a forensic computer analyst to search for relevant county documents and emails. As a result, that burden of searching for documents and emails fell again to the attorneys of the firm.

Although accused otherwise by one supervisor, attorneys of the firm came to Schoharie County with absolutely no preconceived notion relating to the causes of intimidation, discrimination or harassment in the Schoharie County workplace. None of the attorneys who participated in the inquiry had ever met any of the Board's supervisors or County employees.

When questioned about acts of discrimination, intimidation and harassment, a majority of the complaining county employees pointed to Cassandra Ethington, the Personnel Officer, as the problem. Almost all of the Health Department employees described acts of intimidation by the Personnel Officer when asked the objective standardized questions relating to discrimination, harassment and intimidation in the workplace. In addition to the interviews, the Article 78 petitions focused on two individuals and the role they played in the 2012 layoffs. One of those individuals was Ethington. In light of the evidence presented in the First Report, one of the main focal points during the second phase of the inquiry had to be the Personnel Officer.

The second phase of the investigation concentrated on a review of the affidavits attached to the Article 78 petitions, a review of thousands of county emails provided by the Information Technology Services Department ("ITS"), a review of Ethington's documents provided by ITS, and a second round of interviews of select county employees. Although Chairman Skowfoe and Vice-Chairman Brandow anticipated a shorter investigational period for the second phase of the inquiry, when we searched county emails it became obvious that we would have a challenge eliminating topics to be included in the report.

As shown more fully below, the evidence suggests that Ethington had developed close relationships with a small group of supervisors. It appears this group attempted to downsize county government in whatever manner they could. For example, positions were regularly combined during the budget process. While the cuts appeared a good idea on paper and seemed to eliminate positions with the commensurate salaries, in reality the person who was assigned the second position simply could not perform the second job no matter how hard they tried.

This practice of downsizing government went even further. The first section of the Second Report describes Ethington's attempt to downsize the Health Department, despite having no competence or experience in the area of Public Health. [REDACTED]

The second part of the Second Report is the Inconsistencies section, which deals with statements made by Ethington and Shipp-Hilts during the Article 78 litigation. [REDACTED]

[REDACTED] If Ethington had simply admitted that she had erred when recommending the layoffs of Grimes and Gigandet, both of these reports would have been unnecessary. [REDACTED]

The third section of the Second Report reveals evidence that Ethington [REDACTED] when she arranged for the Department of Public Works ("DPW") Commissioner to appoint the head of the Conservative Party, William Hanson to a position within DPW, and is described in the second section.

The fourth section of the Second Report describes the statements made by Shipp-Hilts during her October 9, 2013 interview. [REDACTED]

I. The Dismissal of Kim Euler

The First Report has already reported that Cassandra Ethington, the Schoharie County Personnel Officer and (on the evidence) the *de facto* Director of the Schoharie County Department of Health, [REDACTED], dismissed Kim Euler from her position as Accounting Supervisor (Grade B), which was a grade 17 civil service position. Facts discovered during the second phase of our investigation supports our initial conclusion [REDACTED]

An understanding of the manner in which Ethington acquired authority within the Department of Health and of Euler's work history within that department is helpful in understanding Ethington's dismissal of Euler.

In 2004 Euler was hired to work in the Department of Health. Initially, her direct supervisor was the department's director, Carl Stefanik, and, after his retirement, it was his successor, Kathleen Strack. Strack assigned Euler to supervise four individuals, Mary Maier in the Environmental Division, Anne MacCuish in the administrative unit, Joan Chase in purchasing and Diane Fisher in the Community Home Health Agency (the "CHHA"), and to complete the complex State Aid billing claims which provided the department's revenue and expenditures (Exhibit 1, the Hamilton Report at p. 4). Euler performed the duties of an Accounting Supervisor (Grade B) from March 3, 2009 to October 7, 2011. Euler's job performance for the period 2004 through November 2010 was consistently rated "Highly Effective".¹ (Ex. 2)

On or about December 1, 2010, Strack resigned her position as director, but even before her resignation, as recounted in the Inconsistencies section below, Ethington was engaged in undermining and criticizing Strack to the Board of Health, the Board of Supervisor's attorney, department heads and county employees, subverting Strack's authority while seeking a position in the anticipated interim administration of the Health department from a member of the Board of Supervisors. On November 1, 2010, Ethington sent an email to Supervisor Dennis Richards:

I was thinking this weekend and was going to see if I could be considered as part of the interim team if Katie [Strack] does leave? I am already doing so much for the closure of the CHAA and will continue to do so until it is closed. (Ex. 3).

Despite being warned by Mary Roach, the Board's attorney and Supervisor Richards to stay away from the "Strack situation" (See Strack section below), Ethington actively sought a managerial position within the Department of Health even before the director resigned.

After actively monitoring negotiations between Strack and the County through Roach, on November 24, 2010, at 10:28 a.m., Ethington sent an email entitled "Any word" to the attorney for the Board of Supervisors inquiring whether settlement negotiations between the county and Strack had been finalized. At 1:29 p.m. the same day, Roach replied that Strack had agreed to a settlement agreement but was in North Carolina and had not signed yet. Within approximately one and one-half hours Ethington spread the news, sending Roach's email to select supervisors and department heads. (Ex. 4).

Later that same day, at 4:38 p.m., Ethington emailed Supervisor Bill Goblet a draft she had created for his signature granting her authority as the *de facto* head of the Department of Health. The email, placed on the Public Health Committee letterhead by Ethington was issued on November 29, 2010, with Goblet as author and distributed to the staff of the department, declaring, "Mrs. Ethington has been directed by the Board of Supervisors and has the full

¹ Euler was re-hired by the County Department of Social Services at a lower grade.

support of the Board of Supervisors during this period.” (Ex. 5). The meeting minutes of the Board of Supervisors from September through December 2010 reveal no discussion or support for this statement. Although without any apparent academic qualification or any experience in the field of public health, Ethington sought the position of what she described in her June 7, 2012 affidavit, included in an Article 78 proceeding, as the *de facto* head of the Department of Health. On November 29, 2010, in an email to Tom Fignani, the then DPW Commissioner, Ethington stated that she had been put in charge of the Health department “to do what needs to be done.” (Ex. 6). [REDACTED]

The January 21, 2011, Board of Supervisors meeting minutes reveal that the Chairman of the Public Health Committee made a motion “to request Mrs. Ethington continue in the capacity of managing the health department with the stipend of \$150.00 per week retroactive to January 3, 2011 to be reviewed monthly by this committee until an Interim Director is appointed.” (Ex. 7). The motion was carried. Based on the facts described in our First Report at pages 52 through 62 and below, Ethington was clearly running the Health Department in January 2011.

Shortly after Ethington assumed power in the Health Department, on December 2, 2010, after Euler sent an email repeating questions posed by the New York State Department of Health regarding the proposed management and billing structure of the CHHA, Ethington responded to Betsy Bernocco, president of the Board of Health:

This is a concern at this point the Fiscal person [Kim Euler] is asking these basic questions and is not able to answer them. I am going to sit with her today so I can cover this with her. [REDACTED]

Ethington’s criticism needs to be placed in its proper context. Ethington possessed an associate’s degree from the State University of New York at Cobleskill, no experience in the Public Health field, and no experience in the complex field of State Aid or Medicare and Medicaid billing, yet she criticized Euler, who was consistently rated “Highly Effective” at her duties for the past six years by two different directors, to the president of the Board of Health.

Despite her overt criticism to the president of the Board of Health, Ethington, in late December 2010, assigned Euler the additional duties of Medicare billing in the CHHA. (Ex. 9). Before the additional assignment, Euler had never been involved with the CHHA billing. (Ex.1, p. 4). This change fulfilled Ethington’s November 2, 2010, prediction to Strack that Euler would have to perform “double duty.” (Ex. 10). Euler was now assigned responsibility for the department’s complex State Aid billing, as well as her regular supervisory duties of department staff and the additional duties of Medicare billing. The additional duties were assigned to Euler in violation of Section 61(2) of the Civil Service Law, which states:

Prohibition against out-of-title work. No person shall be appointed, promoted or employed under any title not appropriate to the duties to be performed and, except upon assignment *by proper authority* during the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any position unless he has been duly appointed, promoted, transferred or reinstated to such position in accordance with the provisions of this chapter and the rules prescribed thereunder.

This action effectively began the dismantling and restructuring of the department by an individual who was not competent in the field of Public Health and did not have the authority to assign such duties. The attempt to downsize and consolidate positions left the department with an inadequate number of staff to perform the department's day-to-day functions. According to [REDACTED] problem that still plagues the department today.

From December 2, 2010 to April 12, 2011, Euler performed the complex billing for State Aid claims and Medicare billing, as well as her supervisory duties, although she did not possess any special expertise or experience in billing Medicare for patients of the CHHA and had received no instruction in this complex area of billing. As appears below, Ethington cast Euler in this dual position in the hopes that she could perform more than one job at a time, in violation of Civil Service Section 61(2). In light of the November 24, 2010 letter drafted by Ethington and issued by Goblet informing the staff that Ethington's decisions had the full backing of the Board, Euler could do very little except try to perform both jobs. Euler's predicament, similar to Grimes' and Gigandet's, as referenced at page 74 of the First Report, illustrates why the Department of Civil Service informed Ethington that holding the position of Personnel Officer and Interim Director of Health were incompatible and a violation of Section 27 of the Civil Service Law. Section 27(1) of the Civil Service Law states:

A member of a municipal civil service commission or personnel officer, appointed on or after the effective date of this act, shall not hold any other public office or employment under the political subdivisions or subdivision over which such commission or personnel officer exercises jurisdiction, for which he shall receive compensation other than necessary travel and other expenses incurred in the performance of the duties of such office or employment.

According to Section 4.13 of the Schoharie County Policies and Procedures Manual, if Euler wanted to file a grievance against Ethington for violating Civil Service Section 61(2), it would have been impossible. Steps 1 and 2 of the grievance procedures demand the department head and Personnel Officer meet and attempt to resolve the issue. Since Ethington was the department head and Personnel Officer at the same time, it would have been impossible to follow the grievance procedures, demonstrating the incompatibility argument advanced by Maria Kenneally of the New York State Civil Service Department in her 2012 audit. (Ex. 11 at p. 5). These grievance procedures were collectively bargained for between CSEA Local Union 1000 and the County when they entered into a collectively bargained for agreement ("Agreement").

The incompatibility of Ethington's positions rendered the grievance procedures in the Agreement useless.

In a February 16, 2011, email to Ethington Bernocco stated that she was concerned with Euler's being in the position of "chief fiscal person for BT". Ethington replied, "I feel that way with Kim in any position that includes finances right now." Ethington pondered, "I do not know what I am going to do with her." (Ex. 12).

On March 3, 2011, after the Board refused to pay Bernocco for her services, she emailed Ethington, "Please let staff know I will not be coming in as I was and not to email me on issues." Ethington responded, acknowledging she already handled the day-to-day issues for the department. (Ex. 13).

On April 12, 2011, in a series of emails between Ethington and Euler, Ethington asked for the reason why Medicare revenues were behind compared to the prior years. Euler answered that two individuals had been doing the Medicare billing during the past year and now Euler was the only one performing the work. Ethington responded by relieving Euler of her supervisory duties: "Right now I will take supervision off of your plate so you can focus on billing with [REDACTED] since the month is flying by." (Ex. 14). This was the second change in the Health Department's structure imposed by Ethington and another apparent violation of section 61(2) of the Civil Service Law. Ethington lacked the education, experience and authority to change Euler's duties or to supervise Health staff. Significantly, Ethington's unauthorized assignment to duties relating to the CHHA were disingenuously proffered by Ethington and Shipp-Hilts during our interviews as the ultimate reason for Euler's dismissal. Shipp-Hilts originally stated that Euler was layed-off as a result of her inclusion in the CHHA, a component she initially claimed was outside the Health Department. She also claimed she had nothing to do with Euler's dismissal. After further questioning Shipp-Hilts changed her story and admitted that Euler performed the crucial and technical State Aid billing for the entire department, not simply the Medicare billing in the CHHA. As such, Shipp-Hilts, according to her account would have been Euler's director. When confronted with her omission of Euler's State Aid duties Shipp-Hilts initially stated that she did not know what duties Euler held but later [REDACTED]

Q. And I apologize because I don't recall as well as I used to. Kim Euler was responsible for doing -- for state aid, and that meant the revenue and expenditures for the health department, correct?

A. Yes.

Q. Okay. And you omitted to tell us that on our first interview, correct?

A. Yes.

Q. You said, I didn't have anything to do with the Kim Euler layoff because she was in the CHHA department, right?

A. Right.

Q. That wasn't true. She wasn't necessarily just in the CHHA department. She was also performing the revenue and expenditures of the department, correct?

A. Right.

Q. That's a big job, right?

A. Correct.

Q. And she was a Grade 18, an account supervisor, correct?

A. Correct.

Q. And you never told us that, right?

A. That she was a Grade 18 account supervisor?

Q. Any of that. You told us that she was in the CHHA, and Cassandra Ethington handled the whole matter and laid her off, right?

A. Right.

Q. That was incorrect, right?

A. Cassandra did lay her off. That wasn't on my --

Q. Right. But you were the department head, and you didn't want her laid off, did you?

A. I had nothing -- I didn't even have a chance to look into her job to know if she needed to be laid off or not.

Q. You had been there for, what, three months, and you didn't have a chance to look into her job?

A. No, because I was told she was a part of the CHHA.

Q. So you didn't know who was doing the revenue and expenditures for three months when you came into the health department? You had no idea who was doing it?

A. I'm not going to say that. I'm not going to conclude that, no.

Q. Okay. Then why wouldn't you come forward with the major part of her [Euler's] duties and tell us, not only was she in the CHHA, she was doing the state aid billing?

A. I don't know. (Ex. 15, pgs. 94-96).

[REDACTED]

[REDACTED]

[REDACTED]

In fact, Euler was performing the extremely complex function of State Aid billing. Shipp-Hilts knew this because she admitted that Ethington had provided her with a copy of the Bonnie Hamilton Report. Hamilton described Euler's duties as the following:

The Accounting Supervisor Grade B is responsible for the Public Health revenue, which is primarily State Aid. State Aid claiming is very complex and complicated as evidenced by the 3 inch notebook sent by the State Department of Health on what is claimable and how to claim. Over \$500,000.00 annual revenue comes from State Aid. It is difficult to have someone cross trained to this, however, it is still a recommendation. (Ex. 1 at p. 4).

Shipp-Hilts had, according to her, altogether only twelve staff members, which included clerical staff, in the Health Department. For her to omit the State Aid portion of Euler's duties from her description of Euler's duties, which accounted for \$500,000 in department revenues, while maintaining she was the "Head of the Health Department," [REDACTED]

According to Euler, Ethington authorized overtime for Euler to come in on Saturdays to perform the additional Medicare billing. This was corroborated by a May 3, 2011, email from Ethington to Euler. (Ex. 16).

On June 17, 2011, Ethington and Euler exchanged a series of emails regarding Euler's desire to attend Medicare and Medicaid training seminars in the near future. In her email, Ethington approved Euler's attendance at the July 6, 2011, Medicaid training seminar in Herkimer, New York. This decision is inexplicable since Ethington had already informed [REDACTED] whom she was aggressively trying to recruit on a part-time basis to take over Euler's Medicare duties, and William Cherry, the County's Treasurer, that she was going to dismiss Euler in August 2010. According to her Form 426s [REDACTED] the Department of Health from [REDACTED] when she transferred to the [REDACTED] office. While employed in the Health department her duties included Medicare billing for the CHHA.

In August 2010 Ethington approached [REDACTED] and Cherry in the Treasurer's office at the front counter, telling them that she was mad at Euler and blamed her for falling behind on the Medicare billing. Cherry stated that Ethington said she was going to get rid of Euler whether Euler fixed the billing problem or not and that she wanted [REDACTED] to return to Health on a part-time basis to do the Medicare billing.² (Ex. 17).

[REDACTED] corroborated this conversation, and in a July 5, 2011, email Ethington told her:

[P]lease keep this between us for right now. I am looking at laying off Kim in the near future. She is not getting done on the billing at all and she has no supervisor skills at all. I am sure you already know that part. I am looking at creating two grade 12 or 13 positions, either office manager or Dept. Business manager. Would you be interested in one of those. I thought of you first because you are SOOO good! Also the supervisors are thinking of approaching Bill Cherry to see about

² This conversation was reported in the First report at pages 64-65.

borrowing you to help get the billing wrapped up after I lay off Kim.
(Ex. 18).

The July 5, 2011, email demonstrates, of course, Ethington's willingness to disclose employment plans she had for subordinates to other county employees, even to those outside her own department, an apparent violation of General Municipal Law Section 805-a, which states in relevant part:

No municipal officer or employee shall: b. disclose confidential information acquired by him in the course of his official duties. (Ex. 19).

The email also reveals Ethington's unilateral decision to dismiss Euler because of a claimed failure to perform her job and a lack of adequate supervisory skills, not because of workforce reduction. Indeed, Euler's position was funded until the end of the year 2011. [REDACTED]

[REDACTED] said she did not want to return to Health; she suspected she would be required to perform two jobs, her own job in the Treasurer's office as well as Medicare billing in Health. [REDACTED] told Cherry that under no circumstances did she want to return to Health. After repeated email requests from Ethington to take on the Medicare billing, a meeting was held between Supervisor Harold Vroman, then Chairman of the Board of Supervisors, Cherry, Ethington and [REDACTED]. During that meeting Cherry explained that he could not afford to lose [REDACTED] on a part-time basis and that she would not take over the Medicare billing duties in the Department of Health.

On July 27, 2011, Ethington selectively emailed Supervisors Robert Mann and Daniel Singletary about her intentions to dismiss Euler. She told them that she had asked Vroman if he would approach Cherry about sharing [REDACTED] with Health on a part-time basis because "Kim is not cutting it." She ended her email by stating, "As soon as I know I have [REDACTED] I will be laying Kim off." (Ex. 20). The statement "Kim is not cutting it" is another indication that Euler was dismissed because of Ethington's perception that she was not performing her duties, not because of workforce reduction. [REDACTED]

As reported in the First report, Asante Shipp-Hilts said during her first interview that she had nothing to do with the dismissal of Euler. Shipp-Hilts reaffirmed that statement during her second interview. In Bernocco's interview, she said that she had had no input in Euler's layoff. Neither the minutes of the Public Health, Finance, or Personnel Committees meetings nor those of the Board of Supervisors for the period August 2011 through November 2011 contain any statement concerning Euler's dismissal or report that her position was to be abolished. (First Report, pages 64-65). Indeed the Form 426 report attached to each Personnel Department committee meeting minutes between May and December 2011, include no indication that Euler was dismissed. An inspection of the original meeting minutes in the Board's clerk's office reveals a notation that the Form 426 reports were attached to the October and November sub-committee meeting minutes. An inspection by [REDACTED] an employee of the Board, and myself revealed no corresponding Form 426 reports for the October and November meeting

minutes and no staple marks in the paper on which the October and November meeting minutes were printed, indicating there was never a Form 426 report attached to those meeting minutes.³ (Ex. 21).

On October 8, 2013, this firm received Ethington's May 9, 2012 response to the April 27, 2012 Civil Service Audit. (Ex. 22). On page six of the audit, Maria Kenneally pointed out that Civil Service found no documentation explaining Euler's dismissal, "However, there was no notation or source document indicating the reason for the abolition of the position of Accounting Supervisor (Grade B) in the Health Department which occurred on 10/7/2011 and predates the 2012 Budget." (Ex. 22). In Ethington's response on page six entitled, "Personnel Officer's Response:" she insisted, "There was documentation. This was not a layoff due to budgetary reasons; it was a layoff as a result of the sale of the CHHA." No documentation was attached to the response. That is the only comment Ethington proffered for the absence of any documentation justifying Euler's dismissal.

On October 16, 2013, this firm requested the "documentation" Ethington referred to in her May 9, 2012 response to Civil Service from the Personnel Office.⁴ We received a copy of Euler's August 22, 2011 layoff letter as the only "documentation" for the dismissal from the Personnel Office. Later that same day, the firm asked [REDACTED] an employee in Personnel, to confirm that the August 22, 2011 Euler layoff notice was the only documentation for the dismissal. In an email later that day, [REDACTED] responded:

I've provided you with what I could find. The letter to the employee gives the reasoning based on "downsizing and restructuring". I'm not sure what other documentation you would be looking for. As far as any discussion in meetings regarding the layoffs, it would all be done in executive session, but if there was discussion in meetings regarding this topic the Clerk of the Board's office would have all minutes from all meetings, as they are the keeper of the minutes. (Ex. 23).

As stated above, we found no indication in any of the Personnel, Public Health, Finance or Board of Supervisors meeting minutes that referred to the dismissal of Euler.

When [REDACTED] refused to return to the Department of Health Ethington began to look elsewhere to get the Medicare billing completed. In a series of emails from August 11, 2011 through August 19, 2011, between Ethington and Delta Health Technologies, LLC, project manager Ronald Skvir, it is apparent that Ethington was confused about the billing information she had received from Euler and asked Skvir's opinion about whether Euler was telling the truth. Skvir outlined his concerns with the abysmal state of the CHHA billing going back to 2008 and proposed to perform all billing for a percentage of the gross receipts billed. Ethington then brokered an agreement between Delta and the County to perform the Medicare billing from the CHHA for a fee of ten percent of the total gross. (Ex. 24).

³ It is unlikely that Euler's position would have been included in the October or November meeting minutes since she was laid off in August.

⁴ Since Ethington was represented by counsel we could not speak to her without her attorney, choosing to address the Personnel Office staff for the documents.

From November 2010 Ethington had supervised Medicare/Medicaid billing in the CHHA. She had criticized and undermined the former director about the billing and now was faced with the inevitable conclusion that she was failing to get the complex billing done. Against this backdrop Euler was dismissed.

On or about August 22, 2011, Euler was summoned to an office in the Health department and dismissed by Ethington. At the time of Euler's dismissal her budgetary line was funded through the rest of the year, the Medicare billing was performed by Delta until approximately six months after her dismissal, and [REDACTED] performed the State Aid claims. More importantly, in Euler's layoff letter, Ethington claimed that her dismissal was due to the downsizing of the Department of Health and in accordance with Section 80 of the Civil Service Law's Reduction of Positions. (Ex. 25). [REDACTED]

In response to Ethington's acknowledgement to Euler that Delta, an outside agency, was going to displace a CSEA employee, Euler emailed Ethington on August 23, 2010, asking her to confirm that she was being dismissed because Delta was assuming her duties. (Ex. 26). Euler's request was followed up by a letter from [REDACTED], a representative of CSEA, on August 30, 2011, requesting confirmation that Euler was being dismissed so that Delta could replace her. (Ex. 27). We found no email from Ethington to [REDACTED] responding to Euler's request. A search of emails between Ethington and Euler revealed no admonitions, reprimands, rebukes or criticism of Euler or her work by Ethington.

A review of Euler's Form 426 reveals that the purported reason for her layoff was a "Lack of Work or Funds." Ethington signed Euler's Form 426 as the Appointing Officer, Interim Public Health Director, and certified that "the above employment is in accordance with Law and Rules made in pursuance to Civil Service Law." (Ex. 28). Based in part on the statements made by Shipp-Hilts in her October 9, 2013 interview, there is substantial evidence to believe that the claim of "Lack of Work or Funds" is false.

Shipp-Hilts admitted that the term "Lack of Work or Funds" as created by Ethington and used in Euler's Form 426 was "incorrect". When Shipp-Hilts was asked if an outside company was contracted to perform the Medicare and Medicaid billing for the CHHA, she said:

Q. Okay. Let me rephrase that question. In August of 2011 Delta took over the billing, the Medicare and Medicaid billing, that Kim Euler had previously been doing, right?

A. Right. (Ex. 15 at p. 105).

Shipp-Hilts admitted that all of Euler's work still existed when she was laid off. (*Id.* at p. 111). In light of the fact that Euler's work still existed and other employees or companies had to take over Euler's duties, Shipp-Hilts, as the "Head of the Health Department", was asked why Euler was laid off, to which she responded, "I don't have an answer for you for that" (*Id.* at p.

111). More importantly, Shipp-Hilts was shown a copy of Euler's Form 426 and directed to the reason that Ethington included in the form for Euler's dismissal, "Lack of Work or Funds":

A. Okay. In any event, the term "the layoff", the reason that is checked off is layoff, lack of work or funds. That's incorrect, right?

A. Right.

Q. There was work there.

A. Right.

Q. The state aid was still there?

A. Yes.

Q. And so was the need for the Medicare and Medicaid billing, right?

A. Right. (*Id.* at p. 118)

Shipp-Hilts' admission that Euler's work still existed substantiated Euler's and Bywater's suspicion that Euler's job was being contracted out [REDACTED] and corroborates Cherry's and [REDACTED] statements, and Ethington's email that she dismissed Euler because she felt she was not performing her billing or supervisory duties, not because of a lack of work.

Shipp-Hilts' statements provide substantial evidence that Euler's duties and responsibilities still existed even after her dismissal and Ethington's purported reasons for Euler's dismissal were false.

Section 80 of the Civil Service Law states in relevant part:

Suspension or demotion. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter;

Ethington's statements to Cherry and [REDACTED] and corroborated by her admissions in her emails provide substantial evidence that the reason she laid off Euler was not for "economy, consolidation or abolition of functions, curtailment of activities or otherwise", Ethington laid-off Euler because she felt she was not performing her duties. Euler was placed into the administration of the CHHA's billing by an individual who had neither the authority nor the competence to manage a Public Health Department. Shipp-Hilts admitted that Euler's responsibilities and duties remained after Euler was dismissed. [REDACTED]

[REDACTED] In fact, the nurses from the CHHA were laid-off months before Euler

and the Delta contract resulted in 10% of the CHAA's gross revenues being paid to Delta instead of the County. [REDACTED]

Ethington's statements made under oath in her June 7, 2012 affidavit claimed that she was never "appointed interim or acting director of the Department after Strack's departure, officially or unofficially." (Ex. 29, para. 38). In fact, as highlighted in the Inconsistencies Section below, Ethington claimed Shipp-Hilts was "the *de facto* head of the Department." (Ex. 29, para. 56). If Ethington was not the Interim Public Health Director or Appointing Authority as she claimed in her affidavit, then Ethington's claims that she was the Interim Director of Public Health made in Euler's Form 426 is false. [REDACTED]

More importantly, documentary and testimonial evidence indicates that Ethington did not dismiss Euler because she was in the CHHA and the CHHA was downsized, she dismissed Euler because she believed Euler was not getting the billing done. [REDACTED]

II. Inconsistent Statements

A review of the Personnel Officer's email's corroborate incidents of intimidation and harassment initially reported by county employees during our interviews for the First Report. The emails also support conclusions reached in the First Report with regard to Ethington's and Shipp-Hilts' sworn affidavits included in the litigation surrounding the 2012 layoffs. (First Report pgs. 55-80). The emails provided in this report are illustrative not exhaustive.

The county has a firm policy regarding emails that every county employee is required to observe. Section 5.8 of the Schoharie County Policies and Procedures states: The county email system shall be used for county business only. It shall not be used for personal matters.

That policy, introduced to each employee during their orientation by the Personnel Department, informs all employees that they have "no expectation of privacy while using county-owned or county-leased equipment. Users should also understand that Schoharie County maintains the right to monitor and review Internet use and e-mail communications sent or received by users as necessary." (Acceptable Use Policy for Schoharie County at Ex. 30). All emails included in this report were provided by Schoharie County's ITS department in accordance with section 5.8 of the Schoharie County Policies and Procedures. [REDACTED]

[REDACTED]

We draw no conclusions as to the merit of the court's decision in the *Grimes* and *Gigandet* matters. However, as the emails, statements from county employees, sworn statements of Ethington and Shipp-Hilts, as well as, correspondence with outside agencies show,

[REDACTED]

[REDACTED]

The section below addresses the inconsistencies in statements made during the course of our first inquiry. There are three main sections dealing with these inconsistencies: Ethington's sworn allegation that she was never appointed Interim Director of the Health department, officially or unofficially; Ethington and Shipp-Hilts' sworn allegation that Shipp-Hilts was the *de facto* head of the Health Department from the first day she was employed by the County, and Ethington's allegation that she had a good relationship with the Director of Health, Kathleen Strack, with no reason to penalize Strack's friends.

[REDACTED]

A. Appointment as Interim Director of Health

In her June 7, 2012 affidavit, Ethington addressed the claims made by the petitioner Penny Grimes, in Grimes' Article 78 petition to re-instate her employment with the County.

In her April 9, 2012 affidavit, Grimes claimed that, after Strack resigned her position as the Schoharie County Director of Public Health, Ethington "assumed the duties of the Public Health Director." (Ex. 31, para. 7). Grimes noted that Ethington was not qualified to assume the duties of Public Health Director." (*Id.* para. 7). Further, Grimes alleged that as the interim Director of Public Health in December 2011, Ethington recommended her position be eliminated to the Board of Supervisors. (*Id.* para. 32).

In an attempt to rebut Grimes' claim that she assumed the position of Director of Public Health and recommended her layoff, Ethington asserted that she was never "appointed" interim or acting director of the Department of Health, "officially or unofficially". (Ex. 29, paras. 28, 31, and 38). In an attempt to defeat the claim that Ethington was the interim Director of Health, Ethington and Shipp-Hilts claimed that Shipp-Hilts was the *de facto* head of the health department since Ethington had never been appointed, and it was Shipp-Hilts, acting as the *de facto* head of the Health Department, not Ethington, who recommended the elimination of Grimes' position.

[REDACTED]

Ethington has attempted to cast herself in a sympathetic role portraying herself as an unwilling victim of the Board of Supervisors who made her accept additional responsibility to manage the Health Department. In a February 17, 2012 email to Maria Kenneally, Office of Commission Operations & Municipal Assistance for the New York State Department of Civil Service, Ethington explained how she was cast into the role of managing the Health Department, "Then about two months later they had me run the Health Depart. with no additional money." (Ex. 32). Further, during her January 2, 2013 interview, Ethington claimed, that she pleaded with certain supervisors that she could not keep working at the level she was working.

A review of the emails from 2010 until December 2012, reveal that Ethington was not simply a willing victim of the Board but rather interposed herself in the affairs of the Health Department long before she was asked by the County Attorney to handle the closure of the CHHA. In fact, the emails reveal that Ethington actively sought a managerial role within the Health Department even before the director's resignation.

After continually imposing herself in the discussions for the sale of the CHHA's license and management of the department, in anticipation of Strack's demise, on November 1, 2010 Ethington emailed Supervisor Dennis Richards and asked:

Since I have been doing all of this work already, I would like to be considered for the interim health department team. (Ex. 3).

This request was made in light of the fact that she was not competent to serve in a managerial position within the Health Department since she possessed neither a four-year college degree, master's degree or any experience or education in the field of Public Health. As shown below, her request to be considered for a managerial position within the Health Department was granted when she was appointed the Interim Director of the Health Department. The email also refutes Ethington's intimation to Kenneally and the Civil Service Department that the Board of Directors "had" her manage the Health Department.

Even before the County received Strack's resignation, Ethington created her own grant of authority within the Health Department. In our first report we noted that Ethington received a grant of authority from the Chairman of the Public Health Committee, William Goblet, in a November 29, 2010 letter, received by all members of the Department of Health's staff. (Ex. 5). Despite our January 2, 2013 interview with Ethington and our December 18, 2012 interview with Goblet, it was not until we reviewed county documents provided by ITS that we discovered that Ethington had actually ghost written the November 29, 2010 letter on November 24, 2010, placed it on Public Health Committee letterhead and emailed it to Goblet for inspection and distribution to Health staff. Ethington cemented her authority within the Department of Health, including the statement, "Mrs. Ethington has been directed by the Board of Supervisors and has the full support of the Board of Supervisors during this period." A review of the Board of Supervisors meeting minutes between September and December 2010, reveals no discussion or vote on the Board's support for Ethington.

On the same day, Ethington emailed DPW Commissioner, Tom Fignani and wrote, "Katie has been reassigned [*sic*] from the Health Department and I have been put in charge to do what needs to be done." (Ex. 6). This statement contradicts Ethington's sworn statement that she was never appointed the Interim Director of Health, "officially or unofficially."

The January 21, 2011, Board of Supervisors meeting minutes reveal that the Chairman of the Public Health Committee made a motion "to request Mrs. Ethington continue in the capacity of managing the health department with the stipend of \$150.00 per week retroactive to January 3, 2011 to be reviewed monthly by this committee until an Interim Director is appointed." (Ex. 7). Clearly, Ethington was running the Health Department in January 2011. The motion was carried.

Perhaps the most compelling evidence of Ethington's appointment as Interim Public Health Director is provided through a January 7, 2011 Form 426, Report of Personnel Change and Supplementary Payroll Certification completed by the Personnel Officer and filed with the Treasurer's office. The form is made retroactive to January 6, 2010. (Ex. 33). The form appointed Ethington as the Interim Public Health Director with the signatures of Betsy Bernocco, the president of the Schoharie County Board of Health as the Appointing Officer and Chairman of the Board of Supervisors, Harold Vroman, who certified that "the above employment is in accordance with Law and Rules made in pursuance to Civil Service Law." The Form 426 provides substantial evidence that Ethington was indeed appointed as Interim Public Health Director. [REDACTED]

Section 97(2) of the Civil Service Law requires the Personnel Officer to maintain an official roster record detailing the employment history of each employee. Schoharie County Rule XX requires each appointing authority to provide the Personnel Officer with a report documenting significant employment changes such as; appointments, declination of appointments, vacancies, positions abolished, changes in salaries, promotions, transfers and leave of absences. All Form 426's are included in a monthly report to the Personnel sub-committee, and attached to the meeting minutes. A review of the Form 426 report, created by Ethington and attached to the February 9, 2011 Personnel Committee meeting minutes reveal that she was temporarily appointed Public Health Director on January 4, 2011, supporting Grimes' claim that Ethington was indeed appointed Interim Director of Health.

During Ethington's January 2, 2013 interview, she insisted she was never appointed the Interim Director of Health. However, when asked if she ever used the title Interim Director of Public Health, she responded in the affirmative. When asked to approximate the number of documents she had created with the title Interim Director of Public Health she responded, two. During the same interview, Ethington admitted that she realized it was wrong to include the title Interim Director of Public Health next to her signature on a Health Department document specifically referring to a June 14, 2011 disciplinary letter to Eva Gigandet. (Ex. 34). Even though she admitted she knew it was wrong to include the title Interim Director of Health next to her name, she also admitted she kept using the title to describe herself as the interim director in later documents. [REDACTED]

On April 26, 2011, Ethington created another Form 426. (Ex. 35). Ethington, acting as the Appointing Officer, provisionally appointed Shipp-Hilts to the position of Epidemiology Coordinator. Her signature appears as the Appointing Officer with the title of Interim Public Health Director typed under her signature. Ms. Ethington's signature appears next to the certification that the employment conforms to the law and rules of the Civil Service Law. Civil Service Law Section 65(1) states in relevant part:

Provisional appointments authorized. Whenever there is no appropriate eligible list available for filling a vacancy in the competitive class, the appointing officer may nominate a person to the state civil service department.

An appointing authority provisionally appoints an employee to a position. Ethington's provisional appointment of Shipp-Hilts is substantial evidence that she acted in the role of the appointing authority despite her June 7, 2012 statement denying she was ever appointed as the Interim Director of the Health Department.

Likewise, on the October 7, 2011, Form 426 dismissing Euler for the purported reason, "Lack of Work or Funds", Ethington's signature appears as the appointing officer. Her name is hand-written next to her signature with the title "Interim Public Health Director" hand written below her signature. Ethington also certified that Euler's employment had been terminated in accordance with Civil Service law by signing her name below the certification "the above employment is in accordance with Law and Rules made in pursuance to Civil Service Law." (Ex. 28). Bernocco, the president of the county Board of Health and Shipp-Hilts admitted they did not have any input into the decision to dismiss. The form offers substantial evidence that Ethington was appointed and acted in conformance with the appointment as the Interim Director of the Public Health Department. [REDACTED]

On December 8, 2011, Ethington certified that she was the Appointing Officer and Interim Public Health Director when she filed a Form 426 with the Department of Personnel and Civil Service and Treasurer's office, for the lay-off of Grimes and Gigandet. (A copy of the Grimes and Gigandet Form 426s are attached as Exs. 36 and 37, respectively). In December 2011, Shipp-Hilts had been employed by Schoharie County for approximately seven (7) months. Since Ethington signed as the Appointing Officer and Interim Director of Health, Shipp-Hilts could not possibly have been the *de facto* head of the Health Department. [REDACTED]

On January 19, 2012, Ethington again stated that she was the appointing authority and the Interim Director of the Health Department when she signed Shipp-Hilts' Form 426 due to a change in Shipp-Hilts address and her "removal" due to a change in job with the notation "1/20/12" handwritten next to the removal designation. (Ex. 38). Ethington signed the form certifying the personnel change was performed in accordance with Civil Service law. Ethington's designation as the Appointing Authority and Interim Public Health Director, [REDACTED]

Once her appointment and authority had been solidified within the Health Department by her November 29, 2010 Goblet letter, a series of emails demonstrated Ethington's exercise of that authority in the Health Department. These emails are illustrative not exhaustive.

After learning that Eva Gigandet, a Health Department employee had attended a Public Health committee meeting, on January 11, 2011, in an email entitled, "Eva IS HERE again" Ethington told Bernocco, "WTF [apparently initials for "What The Fuck"]...I am not paying comp she was told not to come. This is on her own time. What is it with her" (Ex. 39). The next day in an ominous email from Ethington to Bernocco, Ethington told Bernocco she would cc her on Ethington's new time usage guidelines" Later in the email, referring to herself as the author of the time usage memo, Ethington stated "I guess this memo will let them know who is in charge now." (Ex. 40). In an email to Bernocco later the same day, Ethington suggested they contact the New York State Health Department so that they could show a contact person for the Health Department that would also be visible to the staff. (Ex. 41). Bernocco refused to come to the Health Department after she was refused a stipend by the Board in March 2011. This left Ethington as the visible head of Health and the only contact point for the State.

Further demonstrating her authority to the Health staff and Board of Health, on February 9, 2011, Ethington emailed Bernocco and stated "Eva needs to be reigned in...I am done with her. She is out of control." (Ex. 42). Four minutes later on the same day in a breach of confidentiality, Ethington emailed [REDACTED] another Health Department employee, and responding to departmental gossip stated, "She is something...they all are and it is time for me to drop the hammer." (Ex. 43). On February 15, 2011, Ethington emailed Bernocco criticizing Gigandet for the amount of time Gigandet spent with Bonnie Hamilton during her evaluation for the Hamilton report. Ethington concluded the email by stating, "I can not wait to pick her [Bonnie Hamilton's] brain about EVA". (Ex. 44). Apparently a reference to the fact that Ethington intended to speak with Hamilton about the content of Gigandet's interview. Two minutes later, Ethington emailed Bernocco and stated, "OMG [apparently initials for "Oh My God"] I just sent this [email] to EVA instead of you. Oh well I am done with her..." Apparently this email is a reference to the fact that Ethington mistakenly addressed her criticism of Gigandet to Gigandet instead of Bernocco. (Ex. 45).

The Form 426 appointing Ethington as the Interim Director of Public Health, her signatures depicting herself as the Interim Public Health Director on five personnel changes filed with the state and County Treasurer's office, and her email that she had been put in charge by the Board, corroborate information provided in the first report. Namely, statements by Paul Brady, Commissioner of Social Services and co-budget officer, that when dealing with the Health Department on budgetary issues, Ethington was in charge (p. 53), the Health staff's collective opinion that after Strack left Ethington was in charge at the Health Department (pgs. 56-60), members of the Public Health Committee's statements that Ethington was in charge of the Health Department (pgs. 55 and 56), and Supervisor Singletary's statement during a December 2011 meeting that the Public Health subcommittee had placed Ethington in charge, support the conclusion that Ethington was the appointed, however irregularly, Interim Director of the Health Department and functioned as such, and as such, [REDACTED]

B. Shipp-Hilts' as the De Facto Head of the Health Department

In Grimes' April 9, 2012 affidavit she claimed that Shipp-Hilts did not make the recommendation that her position be eliminated but that Ethington, in her assumed capacity as the head of the department, recommended the elimination of her position. (Ex. 31 at paras. 33 and 38).

To refute the Grimes' allegations, on June 7, 2012, Ethington, in a sworn statement, affirmed she was never appointed department head and that in May 2011, upon her appointment as the Epidemiologist Coordinator, Shipp-Hilts became the *de facto* department head and as such recommended the elimination of Ms. Grimes' position:

In May 2011, Assante Shipp-Hilts was appointed Epidemiology Coordinator for the Department, which was the highest ranked position within the Department. Ms. Hilts' [*sic*] official job specification makes her the *de facto* Department head in the absence of a director or deputy director. (Ex. 29, paras. 55 and 56):

In an attempt to bolster Ethington's statement and rebut Grimes' claim, Shipp-Hilts' June 7, 2012 affidavit echoes and expands the language contained in the Ethington affidavit:

Once I arrived at the Department, I was the immediate supervisor of all staff in the Department, plain and simple. I know of no rationale basis why petitioner would have as she seems to contend, believed Ms. Ethington was to [*sic*] holding herself out as head of the Department even after my arrival.
(Ex. 46, para. 16).

Perhaps the most persuasive piece of evidence demonstrating that Shipp-Hilts was not the *de facto* head of the Health Department was provided by Ethington on January 2, 2013, during her interview and with her attorney William Ryan present. Ethington was asked if Shipp-Hilts was the *de facto* head of the Health Department from the time she started in May until the flood hit Schoharie on August 27, 2011. Ethington answered, "No". This answer contradicts Shipp-Hilts' and Ethington's sworn statements that Shipp-Hilts was the *de facto* head of the health department.

After the horrific flood of August 2011, and four months after Ethington, acting in her capacity as Interim Director of Public Health, appointed Shipp-Hilts to her position as

Epidemiologist, Shipp-Hilts submitted a request to be paid overtime for the work she performed during and after the flood. Barbara Schaffer, President of CSEA local 1000, questioned the payment of overtime since she thought that Shipp-Hilts was deputy director of the Health Department. In a December 9, 2011 email from Ethington to Schaffer, Ethington wrote:

ASH is CSEA. She is not a deputy she was hired as an epidemiologist.
(Ex. 47).

Shipp-Hilts was paid for the overtime. The collective bargaining agreement negotiated between CSEA Local Union 1000 and the County does not provide for overtime payment to Directors or Deputy Directors. Ethington's two statements contradict her and Shipp-Hilts' sworn statement that Shipp-Hilts was the *de facto* head of the Department of Health. Further, Ethington's description of Shipp-Hilts as a member of CSEA and an epidemiologist corroborates several members of the Health Department's statements that Shipp-Hilts refused to attend Board of Supervisors meetings since she told them she was simply an epidemiologist, not the director of the department.

During her December 10, 2012 interview, when Shipp-Hilts was asked if Ethington was the interim director of the Health department, she said:

That set up was a little bit confusing, in that, the New York State Department of Health recognized Cassandra as the point of contact for them, I was not their point of contact. It was Cassandra. (Ex. 48 at p. 76).

This statement contradicts her June 7, 2012, affidavit, wherein she stated, "I know of no rationale [*sic*] basis why petitioner would have as she seems to contend, believed Ms. Ethington was to [*sic*] holding herself out as head of the Department even after my arrival."

Shipp-Hilts June 7, 2012 declaration is even more troubling when compared to her acknowledgement that she was aware that Ethington used the title Interim Director of Public Health and included the title in her correspondence with outside agencies during her December 10, 2012 interview.

During her interview, [REDACTED] told us that she read the Shipp-Hilts affidavit included in the *Grimes* and *Gigandet* litigation. [REDACTED] referred to the sections in the Shipp-Hilts' affidavit wherein she referred to herself as the *de facto* head of Health and made the decision to layoff employees in the Health Department. (Ex. 46, paras. 4, 8 and 16). [REDACTED] told us that when Shipp-Hilts was in her office, they had a frank discussion about the claims in the affidavit. [REDACTED]

During her October 9, 2013 interview, Shipp-Hilts stated that she was the current probationary head of the Health Department and the Appointing Authority. As the Appointing Authority and department head Shipp-Hilts admitted that she was the only individual authorized to sign a Form 426, memorializing significant events in civil service employees work history

within her department. (Ex. 15 at p. 11-12). As an example of her current authority, Shipp-Hilts was handed a copy of Ian Feinstein's February 6, 2012, Form 426 and admitted that she signed that form because she was the "head of the Health Department and the appointing authority." (*Id.* at p.13). By December 13, 2011, Shipp-Hilts had been the epidemiology coordinator for approximately seven months. Shipp-Hilts was then shown a copy of Penny Grimes' December 13, 2011, Form 426 and asked, if she had been the appointing authority and the department head since May 2011, why was the Form 426 signed by Ethington as the Interim Director of Health and the appointing officer. (*Id.* at p. 18-19). Shipp-Hilts stated that she had never seen Grimes' Form 426 before. (*Id.* at p. 21). She had no explanation why, given her statement that she was the appointing authority and Head of the Health Department, Ethington would have signed the document as the "Interim Director of Health" and as the appointing officer. Shipp-Hilts admitted that had she seen the Grimes Form 426 signed by Ethington as the Interim Director of Health and appointing authority she would not have made the statement, "I know of no rationale basis why petitioner would have as she seems to contend, believed Ms. Ethington was to [*sic*] holding herself out as head of the Department even after my arrival." (*Id.* at p. 22). The Grimes' Form 426, signed by Ethington as the Interim Director of Health and appointing officer without any notice to the epidemiology coordinator offers substantial evidence that Ethington acted as the Interim Director of the Health Department, not Shipp-Hilts.

During the same interview, Shipp-Hilts admitted that Eva Gigandet's December 13, 2011, Form 426 had been signed by Ethington as the appointing officer and Interim Director of the Department of Health. (*Id.* at p. 24). Shipp-Hilts maintained she never saw the document before despite her claim she was the "Head of the Health Department." Shipp-Hilts admitted that Ethington certified that the Form 426 was completed in conformance with the rules of Civil Service:

And who certified that that particular layoff
was done in conformance with the civil service law?

A. Cassandra Ethington.

Q. Okay. And is that Cassandra, in your mind,
acting as the appointing authority?

A. Yes. (*Id.* at p. 24).

Since only an appointing authority may recommend a lay-off, Gigandet's Form 426 provides further substantial evidence that Ethington acted as the Interim Director of Health and the appointing authority and contradicts Shipp-Hilts statement that she knew of no rational basis as to why Grimes could believe that Ethington held herself out as the Interim Director of Health.

As described in more detail above, Shipp-Hilts and Ethington claimed that Euler had been dismissed because of her position in the CHHA. Shipp-Hilts initially attempted to adhere to this story however, during her October 9, 2013 interview, Shipp-Hilts admitted that as the "Head of the Health Department" she did not know why Euler was dismissed since her duties and obligations still existed. The October 2011 Form 426 for the elimination of Kim Euler's employment was created and executed by Ethington as the appointing authority and the Interim Director of the Health Department. In October 2011, Shipp-Hilts was simply an epidemiologist in the Health Department and as Ethington stated in her December 9, 2011 email, a member of

CSEA Local Union 1000. As such, it would have been impossible for Shipp-Hilts to recommend Euler's layoff or execute the Form 426 as the appointing authority.

Likewise, on January 18, 2012, when Ethington signed and executed Shipp-Hilts' Form 426 for a change of address and position, she executed that document as the Interim Director of Public Health and the appointing authority, making it impossible for Shipp-Hilts to be the *de facto* head of the Health Department between May 2011 and January 2012, and contradicting Ethington's and Shipp-Hilts' sworn statements filed with the New York State Supreme Court in the *Grimes* matter.

We reviewed the Board of Supervisors meeting minutes from December 16, 2011. During the meeting, Supervisor Van Wormer asked about the Health Department, "Who is officially in charge?" Supervisor Singletary responded, "We put Mrs. Ethington in charge." (Ex. 49). Singletary's statement placing Ethington in charge of the Health Department contradicts Ethington's and Shipp-Hilts' claim that Shipp-Hilts was the *de facto* head of the Health Department.

In a February 17, 2012 email, from Ethington to Maria Kenneally, Office of Commission Operations & Municipal Assistance, New York State Department of Civil Service, Ethington admitted she managed the Health Department:

Last August the Board of Supervisors on suggestion from the County Attorney asked me to be the point person on the closure of our CHHA and to make sure things got completed as required by Public Health Law. For this the Board paid me a stipend of \$150 weekly for the extra hours to copy the documents, write the closure plans etc. Then about 2 months later they had me run the Health Dept. with no additional money. While they recruited for a permanent Health Department Director. (Ex. 32).

Statements in the February 17, 2012 email contradict Ethington's and Shipp-Hilts' sworn statements that Shipp-Hilts was the *de facto* head of the Health Department. Moreover, the statement, "Then about 2 months later they had me run the Health Dept. with no additional money", contradicts Ethington's statement made during her January 2, 2013 interview, that she didn't run the Department of Health.

In addition to the Form 426 appointing Ethington as the Interim Public Health Director, Ethington's January 2, 2013 denial that Shipp-Hilts was the *de facto* head of the Health Department, her December 9, 2011 email declaring Shipp-Hilts an epidemiologist and CSEA member, not a deputy director, her email to the DPW Commissioner that she was in charge of the Health Department, her signatures on the Department of Health Personnel Change forms as the Interim Public Health Director and appointing authority, Supervisor Singletary's statement that Ethington was in charge at the Health Department during a Supervisor's meeting, and her admission to the Department of Civil Service that she "ran" the Health Department while they interviewed for a "permanent" Director of Health, we uncovered a catalogue of documents whereby Ethington declared herself the Interim Public Health Director and contradicted her and Shipp-Hilts' sworn statements that Shipp-Hilts was the *de facto* head of the Health Department

[REDACTED]

These documents appear below.

Gigandet received a disciplinary memorandum from Ethington on June 14, 2011. In the June 14th memo, Ethington instructed Gigandet to improve her communication skills and follow the Health Department's chain of command. Ethington proceeded to define the chain of command, "Assante Shipp-Hilts is your immediate supervisor and I am in charge administratively over the health department on a day to day basis until further notice." The memorandum concludes, "Most importantly the communication needs to be there between you and your supervisor and Director. Improvement needs to happen on the above items or future disciplinary action will be the result." The memorandum is digitally entitled, "Cassandra R. Ethington, Interim Director, Public Health Department." Ethington's hand written signature appears next to her title as "Interim Director." Further, Ethington refers to herself as the "Director" in the body of the memo and asked Gigandet to improve her communication with her as "Director". (Ex. 34). As described in the first report when Gigandet was disciplined by Ethington, Ethington's actions as Personnel Officer and Interim Head of the Health Department were incompatible and resulted in the violation of Section 27 of the Civil Service Law. The functional result created by Ethington serving in both positions was that Gigandet had a disciplinary letter placed in her personnel file and had no one to appeal to for assistance since her next level of appeal under the Grievance section of the Policies and Procedures Manual would be an appeal to the Personnel Officer. Lastly, it was Ethington's decision to include the disciplinary memo in Gigandet's file. Only the department head may place a letter in an employee's file, providing further evidence that Ethington acted as the Interim Director of Health.

On May 19, 2011, Ethington sent an email to all employees of the Health Department. The instruction stated in part, "For those of you that may have confusion on the chain of command within the department I would like to clarify the following: As per the Board of Supervisors I am still in charge on a daily administrative basis of the Health Department and the CHHA until its closure." The email continues by defining roles and persons in charge of each unit. Shipp-Hilts' role is limited to, "Environmental, Preparedness, and Public Health Programs." Linda Stiles is in charge of Early Intervention. This definition of roles and responsibilities contradicts Ethington's and Shipp-Hilts' statements that Shipp-Hilts was the *de facto* head of the Health Department once she arrived at the Health Department. (Ex. 50). The email also contradicts Shipp-Hilts' statement "Once I arrived at the Department, I was the immediate supervisor of all staff in the Department, plain and simple. I know of no rationale [*sic*] basis why petitioner would have as she seems to contend, believed Ms. Ethington was to [*sic*] holding herself out as head of the Department even after my arrival."

On September 9, 2011, Ethington sent an email to Eva Gigandet requesting reports for a meeting Ethington had with New York State later that morning. The digital signature created by Ethington at the bottom of the email read, "Interim Public Health Director". (Ex. 51).

On October 7, 2011, Ethington sent an email to the co-budget officers, Brady and Alicia Terry, wherein she made budget request transfers for medical supplies and Bio-Terror Equipment and described herself as, "Acting Director, Public Health Department." (Ex. 52). This email was sent after Gigandet's June 14, 2011, disciplinary memo, when Ethington first

admitted it was wrong for her to refer to herself as the Interim Director of Health.

On January 17, 2012, Ethington wrote Ian Feinstein a letter extending the provisional position as Deputy Director of Public Health/Director of Weights and Measures. Ethington signed the letter as the "Interim Public Health Director" with a "cc:" to "Assante Shipp-Hilts, Epidemiology Coordinator". (Ex. 53). The letter contradicts Ethington's and Shipp-Hilts' sworn statements that Shipp-Hilts served the Health Department as the *de facto* head upon her appointment as epidemiologist.



C. The Harassment of Kathleen Strack

To refute Grimes' allegation that the elimination of her position was caused in part by her relationship with the former Director of Public Health, Kathleen Strack, Ethington, in her June 7, 2012 affidavit, declared, "But for the most part, Strack and I had a good relationship and I, probably more so than anyone else, attempted to defend her to the Board of Health." Ethington continued in the next sentence, "In short, I had no significant problems with Strack and therefore had no reason to seek to penalize others who also had a good relationship with Strack." (Ex. 29, paras. 92 and 93).



A history of Strack's and Ethington's relationship is necessary to place Strack's harassment in its proper context.

Based in large part on statements made by Health staff and corroborated by emails, Strack and Ethington initially had a good relationship. Strack was appointed the Director of Public Health in December 2010, while Ethington had been employed as the Personnel Officer since January 2006.

It is difficult to determine when the relationship soured. However members of the Health staff informed us that the relationship began to deteriorate with the decision to sell the largest component of Strack's department, the CHHA. Strack disagreed with the decision to sell the CHHA.

Based on emails and Ethington's documents, Ethington and Supervisor Dennis Richards concluded that the CHHA license should be sold and the Health Department significantly downsized as early as June 2009. That conclusion and the information on which it was based was distributed between a few hand-picked supervisors who were in Ethington's favor. To these few supervisors' Ethington was indispensable, scheduling meetings, creating charts that supported their issues, ghost writing letters on their behalf, collecting information from sources within different departments, and making that information available to these supervisors regardless of the role the supervisors had on any sub-committees. Perhaps the real damage to county governance was caused not by the dissemination of information to a select few, but the purposeful exclusion of information from most of the Board, the Board of Health and the

Director of the Health Department, Kathleen Strack. The exclusion of select information from anyone but Ethington's group of supervisors allowed the group to exert greater influence within the Health department, at first marginalizing Strack's authority and later completely eliminating any vestige of authority she may have possessed.

Based on emails below, it appears that in late 2009, Ethington decided to negotiate with Rochester Home Health Care ("HCR") for the sale of the CHHA's license. Those who opposed the negotiating process were criticized and maligned inside Ethington's group. Foremost among those who objected to the process of the negotiations and sale of the CHHA was the Director of the Health Department, Kathleen Strack, then chairman of the Public Health Committee Larry Phillips, and president of the Board of Health, Betsy Bernocco.

On September 17, 2009, Supervisor Larry Phillips was the chair of the Public Health oversight committee, when he complained in an email that he was being excluded from negotiations regarding the CHHA. Likewise, the Board of Health complained that it was not involved in decision-making conversations about the sale of the CHHA, when Bernocco stated at an August 31, 2010 Board of Health meeting:

Ms. Bernocco feels that the BOH should be the lead in assembling the required documentation addendums, schedules, provider information, etc., with the point person being the Public Health Director not human services. (Ex. 54).

Obviously the president of the Board of Health felt that someone with knowledge in the field of public health should handle the closure of the CHHA, not the Personnel Officer. In 2010, the chair of the Public Health oversight committee became Supervisor William Goblet. As shown below, Goblet readily bestowed apparent authority on Ethington to perform certain functions within the Health Department. Ethington interpreted that grant of authority liberally to include her management of the Health Department despite the Director's presence.

To complicate matters, in February 2010, [REDACTED] was provisionally hired as the Director of Patient Services (DPS) in the Health Department. [REDACTED] worked for the County for approximately four months before resigning. When [REDACTED] resigned, she wrote a memo criticizing the operation of the Health Department then turned in vouchers documenting unauthorized overtime she felt the County owed her⁵. When the County refused to pay the overtime, Ethington blamed County Attorney Michael A. West, County Treasurer Bill Cherry, and Strack.

Richards and Roach, the Board's attorney, instructed Ethington to stay away from the "Strack situation". As seen below, Ethington refused to comply with these directives and used her position to advocate for the payment of her mother's overtime pay.

This section outlines how the harassment of Strack initially began and escalated upon Ethington's perceived disrespect for her mother by Strack, progressed during Ethington's

⁵ The overtime amount was later increased by [REDACTED] ultimately paid.

exclusion of Strack during the negotiation and sale of the CHHA, and culminated with Ethington's request to retain a managerial role within the Health Department even before Strack's resignation.

Examples of emails below serve to corroborate these facts. More importantly, the emails attest to the fact that Ethington resented Strack, criticized her management of the Health Department, and disparaged her character to supervisors and Bernocco, individuals in positions that required the judgment of Strack. It is with these facts in mind that Ethington's statement, "In short, I had no significant problems with Strack and therefore had no reason to seek to penalize others who also had a good relationship with Strack" [REDACTED]

As early as April 26, 2010, Ethington made herself the channel by which Richards received information regarding the sale of the CHHA, "I wanted to get back to you with updates on two items that I was tasked with by the oversight committee: 1) CHHA-HCR they responded back and they are interested in purchasing the CHHA." (Ex. 55). A search of the Public Health Committee meeting minutes from January through April 2010 reveals no indication that the subcommittee gave Ethington a task related to the potential sale of the CHHA.

In a June 2, 2010 email to Richards, Ethington described how she handed Strack the Board's resolution to allow Strack six months before her termination. Included in the report of the delivery of the resolution is a detailed description of Ethington's harassment of Strack. Ethington suspected Strack was in the building and had her staff continuously call Strack until she answered the phone. When Strack answered the phone she was summoned to Ethington's office and given the Board's resolution. Ethington told Richards that when she delivered the Board's resolution she told Strack the extension of time by the board was "courteous." (Ex. 56). In the same email, Ethington also complained that she did not think she should have been the one to "sit down with Katie nor should i [sic] have been the one that Mike [West] said would be responsible to write up the charges on Katie." In an October 14, 2013, email, County Attorney West informed us that he never gave Ethington the tasks of delivering a resolution to Strack or drafting charges on Strack. In fact, West told us that despite allegations by Bernocco and Ethington, he saw no actions on Strack's part that would justify her removal, corroborating Ethington's statement in the email, "Each time Mike has called me and one time acted as if this were all the Board of Health and I." (Ex. 57).

The same day, Ethington informed Bernocco by email that [REDACTED] had resigned as the Director of Patient Services in the Health Department and that Strack was on a "witch hunt". Later in the email, Ethington surmised:

Due to the recent attacks against my husband, family and I lately I can only believe that certain people are allowing this to take place because they were never happy that [REDACTED] got the DPS and they are allowing Katie [Strack] to be out of control towards her to see how I will respond.

At the conclusion of the email, Ethington stated "I will let you know at this time I am removing myself from the Katie Strack situation. I am not sure why I was brought in with [sic]."

(Ex. 58). As shown later, Ethington's statement "at this time I am removing myself from the Katie Strack situation" proved to be false. Ethington intervened through select supervisors by advocating [REDACTED] position at the expense of Strack on several occasions despite the warnings received from Roach.

On June 3, 2010, at approximately 12:40 p.m., in an email from Ethington to Richards, Ethington informed him that Roach "told me that she does not want me to be within 100 ft. of this situation with Katie nor should I have been." Ethington continued, "She [Roach] does not want me to breathe about this out loud." (Ex. 59). The conflict is apparent as are the instructions from the Board's attorney but does not dissuade Ethington from promoting [REDACTED] arguments while undermining Strack.

On June 3, 2010, at approximately 2:07 p.m. after being instructed by Roach and Richards to stay out of the Strack situation, Ethington emailed Bernocco and explained [REDACTED] of the disagreement between Strack and [REDACTED]

Since Katie was told on the 24th at 4:45 p.m. that she was not getting renewed and then Katie confronted [REDACTED] about it on 5/26 blaming her I guess it was all out war.

Ethington continued, "Please do not let on that I sent you this since Mary [Roach] told me to stay out of it. So this will be the last I can say about it. (Ex. 60).

Even after being instructed by Roach and Richards to stay away from the Strack situation, presumably because of the conflict of interest created by [REDACTED] resignation, Ethington continued to undermine Strack to Bernocco, the president of the Board of Health and the very same person who would partially decide Strack's fate. Ethington's statements are inconsistent with the statement included in her affidavit "In short, I had no significant problems with Strack and therefore had no reason to seek to penalize others who also had a good relationship with Strack."

On June 4, 2010, at approximately 9:16 a.m., Ethington sent Richards an email and asked, "There are some scared people in the Health Dept. can I send this or could you send something like this to them???" The email then offered an explanation of the current situation with the sale of the CHHA and ended with Ethington's legal opinion that before the CHAA could be sold "It is my understanding per Public Health Law there would have to be a Public Hearing but the County Attorney is going to look into that." (Ex. 61). The email demonstrates Ethington's willingness to take the lead in the sale and management of the Health Department even before her limited grant of authority or Strack's resignation. Further, Ethington's request to substitute her opinion on Public Health law for the Director's demonstrates the undermining of Strack's authority. As Bernocco stated in the Board of Health meeting minutes, Strack should have been the person to make these decisions, not the Personnel Officer.

Ethington's very next email was sent to a Greene County government email address wherein Ethington asked for an opinion as to whether they needed a public hearing on the sale of the CHHA "Can you tell me your present position and if you had a public hearing or not in order

to get rid of your CHHA?" It is unclear if Ethington knew the qualifications of the person she emailed but it is clear that when she gave Richards her opinion and requested it be distributed in the previous email she had not researched the issue. (Ex. 62).

Shortly after giving her Public Health Law opinion to Richards, Richards emailed Ethington, "I am on the road and I think it is Earl's [Van Wormer] call. Suggest you talk to Karen Miller and let Earl decide." (Ex. 61). Ethington agreed to stand down on the situation.

On June 10, 2010, at approximately 11:31 a.m., despite being told by Roach not to become involved with the Strack situation, Ethington emailed Richards and asked, "2) Mary Roach - Katie is here today. Do you want me to still call Mary to talk to Katie???" To which Richards responded, "On the 2nd question. No. Let this one run it's course." (Ex. 63). This email provides evidence of Ethington's eagerness to become involved with the "Strack situation" and be the conduit by which Roach addresses Strack despite being told by Roach and Richards to remove herself from the "Strack situation". As seen below, Ethington refused to comply and ignored Roach and Richard's suggestions.

On February 8, 2010, [REDACTED] was provisionally hired by the County as the Director of Patient Services in the Health Department and resigned June 3, 2010. Upon her resignation, [REDACTED] requested to be paid for unauthorized overtime she believed she was owed. At first, the County refused to pay the overtime resulting in a bigger rift between Ethington and Strack.

[REDACTED] claim for the overtime pay became a source of contention among board members and department heads. Ethington refused to remove herself from this situation and continually advocated for [REDACTED] while arguing that the County should pay the overtime despite no clearly delineated policy. On June 11, 2010, at approximately 9:21 a.m., she sent an email to Richards. At approximately 9:26 a.m. and 4:04 p.m. she then sent two more emails to Richards. In all three emails Ethington advocated that [REDACTED] should receive the overtime payments that Ethington claimed she was owed. (Exs. 64 & 65).

The resignation and perceived slight of [REDACTED] contributed to the animosity between Strack and Ethington, but Ethington's decision that the CHHA must be sold, her forceful involvement in the sale of the CHHA, and her [REDACTED] exclusion of Strack from the sale and management of the CHHA was the major issue contributing to the usurpation of Strack's authority. The emails below serve to corroborate what most Health staff told us already, that the overt hostility between Ethington and Strack was caused in large part by Ethington's intrusive actions in the Health Department. For Strack, the situation could not have been any worse. The Board of Health had apparently refrained from reappointing her to another term as Director of Health and two of her staff actively violated the chain of command and provided Ethington with confidential departmental information. Ethington used this information to discredit the lame duck Director to her chosen group of supervisors and the Board of Health through Bernocco.

On June 14, 2010, at approximately 9:15 a.m., Ethington responded to Richards request for an opinion on the sale of the CHHA:

The CHHA will break even if not make [sic] a little bit this year (that was pending getting the Long Term up and going by Sept. '10) 2011 will be a good year...2012 we will be lucky if we break even and by 2013 & 2014 we will be diving again. Gov't is not cut out to do this. With our union commitments and now with the State changing the reimbursement rates etc. We need to get out. (Ex. 66).

It is not clear what factual or statistical basis Ethington used for this opinion, especially since [REDACTED] and Bernocco reported to the Board at the March 19, 2010 Board meeting:

Billing from past years is caught up. Currently 60 days out and working to get lower. Current rate revenue will exceed budgeted revenue considerably. (Ex. 67).

After expressing her opinion on the CHHA, Ethington returned to the subject of undermining Strack by praising [REDACTED]

I told [REDACTED] no more helping out with the CHHA or giving her opinion. [REDACTED] called our house the other day looking for [REDACTED] so she could go over some things at the CHHA with her and then on Friday they had a 2 hour meeting going over what still needs to get done. Not the Director but the DPS that is no longer getting paid. This is seriously messed up. (Ex. 66).

After denigrating Strack to Richards, the Chairman of the Personnel Committee, Ethington turned her attention to the forbidden subject of [REDACTED] overtime pay:

....oh and she [REDACTED] went through her time sheets and it is a mess. She had only put in for like half of it and then after Bill [Cherry] & Mike [West] stopped her from getting paid she pulled all of the records from Payroll and the computer system that logs their hours and she realized Katie [Strack] had not processed some of her time and in fact it is more. Oh Bill [Cherry] is not going to be happy at all. (Ex. 66).

Notwithstanding the warnings from Roach and Richards, Ethington continued to advocate [REDACTED] position while demeaning Strack's management abilities. Ethington's constant disparagement of Strack when compared with her statement that she had a "friendly" relationship with the director [REDACTED]

Ethington's email from June 17, 2010, at approximately 5:20 p.m., to Richards revealed another example of the usurpation of Strack's authority. The email described Ethington's

request to Geraldine Bunn, of the New York State Department of Health, to obtain a copy of the CHHA closure plan for supervisors Richards and Earl Van Wormer. Ethington continued:

....Betsy told mike [sic] she wanted him to go into executive session to discuss this at 1 p.m. She did not seem to know HCR was coming back nor did I let her know.

It appears from emails between Ethington and Bernocco, the Board's March 19, 2010 meeting minutes, and statements made during Bernocco's first interview, that initially, Bernocco was not in favor of the sale of the CHHA. In fact, three months before this email, Strack, [REDACTED] and Bernocco strongly urged the Board to retain the CHHA. (Ex. 67). Ethington purposely omitted telling not only Strack of the continued negotiations with HCR, but excluded Bernocco and the Board of Health. Bernocco's exclusion ultimately led her to complain two months later to the Board of Supervisors that the Board of Health was being excluded from negotiations. (Ex. 54).

A June 22, 2010 email from Ethington to Richards described Ethington's hopes that Bernocco was "coming around to the selling of the CHHA." The last line of Ethington's email described how the County should package the sale of the CHHA to the public, "We need to market this.....not just release information." (Ex. 69). Subsequent emails reveal Ethington aggressively marketed the sale of the CHHA to HCR, willing to risk breaching the confidentiality of county employees [REDACTED] while alienating and excluding Director Strack, the County Board of Health, and CSEA Local Union 1000.

A July 1, 2010 email to Richards at approximately 10:30 a.m., demonstrated Ethington's conviction to the sale of the CHHA. Ethington started her email by telling Richards, "I was up until midnight thinking of how to contain this situation and in by 7:55 a.m. to be in before the nurses." Ethington then told Richards that she unilaterally decided to "empower" the nurses by providing them with a copy of the proposals from the two companies attempting to purchase the CHHA's license, HCR and At Home Care. She continued, "I know this could back fire on me but I feel that this is how I had to handle the situation." The email ended with an apology to Richards,

"Sorry for going rogue on this but I am doing what I think is the best for all involved." (Ex. 70).

There is no indication that the Union was informed of this decision, which in and of itself may have been an unfair labor practice. More importantly, the Board had not voted if they were going to sell the CHHA's license on July 1, 2010. The email displays Ethington's willingness to substitute her opinion for that of the full Board of Supervisors. Moreover, a review of emails between Strack and Ethington reveal that Strack was excluded from Ethington's efforts to facilitate the sale of the largest component of her department, the CHHA. In fact, except for a small group of supervisors privy to Ethington's back door dealings with HCR, the Board knew little of Ethington's usurpation of Strack's authority and aggressive promotion of the sale of the CHHA.

On July 1, 2010 at approximately 1:45 p.m., Richards returned Ethington's email and stated, "I agree with everything you are doing..." To which Ethington responded to Richards in a string of emails, "Thank you but.....if it all comes back to bite me you can deny it, I will not be offended. *Save yourself!*" To which Richards responded, "We are on the same ship, if you go down we both do!!" (Ex. 70).

When Richards attempted to contact Ethington later that day, she informed him that she was on the phone with HCR and the nursing staff. [REDACTED]

[REDACTED] As Mary Roach had warned Ethington in past emails, the Union should have been included in the impact negotiations to sell the CHHA. Subsequent emails reflected the Unions concerns that they were being excluded from the bargaining table and a victim of unfair labor practice.

On July 8, 2010 at approximately 5:02 p.m., Ethington emailed Bernocco and attempted to arrange a lunch meeting between the nurses and HCR. Barbara Schafer, president of Local 1000 stated that she was not informed of these negotiations by the County and found out about the meeting from the nurses. The next day, the Union responded when Schaffer told Ethington:

I have been told by the nurse's [*sic*] that they want to fight for their jobs here, they are not interested in selling the CHHA right now? I am not sure there is any reason for HCR to come out on Monday and Tuesday. Let me know what you think. (Ex. 71).

A search of emails between Ethington and Strack reveals no emails. Subsequent emails suggest that Ethington did not put the Director of Health on notice that she was organizing the sale of the largest component of her department.

On July 12, 2010, at approximately 11:30 p.m., the unauthorized attempt to arrange a lunch meeting between HCR and the CHHA nurses failed when Ethington told [REDACTED] "At this point I think it [the lunch] will be canceled because I have heard that none of the nurses are going either." (Ex. 72). The attempt to facilitate a meeting between the nurses and HCR appears to be an attempt by Ethington to "market" the sale of the CHHA to the nurses. In attempting this aggressive marketing strategy Ethington ignored the Union's impact bargaining rights while isolating Strack from the situation.

The emails we reviewed from May 2010 through July 8, 2010, corroborate Health staff statements included in our first report; that Ethington was involved in managing the Health Department long before Strack's resignation. Caused in part by [REDACTED] resignation and in spite of being told by the Board's attorney and Richards to avoid the "Strack situation" Ethington excluded the Director of the Department of Health from negotiations and decisions regarding the sale of the largest component of her own department, the CHHA. Although Strack had been having problems with the Board of Health, the County Attorney told us these problems did not provide cause for removal. Strack was still the Director of Public Health and, according to the president of the Board of Health, should have been the person in charge of decisions made pertaining to the CHHA based on her experience and education. In light of the statements in the

paragraphs below, it is difficult to believe Ethington's June 7, 2013 sworn statement "In short, I had no significant problems with Strack and therefore had no reason to seek to penalize others who also had a good relationship with Strack."

It is against this backdrop that the emails we reviewed reveal that Ethington cultivated staff in the Health Department who provided significant departmental information to Ethington behind their Director's back. Ethington in turn used this information to successfully undermine Strack's authority in the Health department and stature at the Board of Health. Examples of these emails appear below.

On July 14, 2010, at approximately 10:57 a.m., Ethington emailed Bernocco:

Oh Katie, Katie, Katie.....One of the nurses came upstairs to warn me that Katie made a stink about the fact she is being cut out of the loop when it comes to HCR. Oh she does not want to go there tonight.....But I will be ready when she does. (Ex. 73).

The email demonstrates Ethington's contempt for Strack. Ethington was simply the Personnel Officer and had no position or authority within the Department of Health. Ethington was allowed to substitute her incompetent and unlearned opinion on Public Health issues for that of the Director of Health's opinion.

True to her word, Ethington sent an email admonishing, intimidating and harassing Strack about her desire to take part in the sale of the largest component of her own department. On July 16, 2010, at approximately 10:12 a.m., Ethington emailed Richards, Bernocco, and another Supervisor Marie Campbell. The email accused Strack of removing "herself from having anything to do with the CHHA." Ethington continued the email by providing examples of alleged neglect supplied by two nurses in the Health Department. Accepting the nurse's allegations as true, Ethington continued:

Above are just a few examples of how Katie herself has removed herself from anything to do with the CHHA. Not I, not the Board of Health or the Board of Supervisors has done this. This is how Katie has chosen to handle the CHHA situation. Therefore I have been in contact with HCR on behalf of requests from nurses of the CHHA. The nurses asked me to reach out to HCR so they could hear from them. (Ex. 74).

In view of the June 8, 2010 unequivocal statement by the union that the nurses "want to fight for their jobs here, they are not interested in selling the CHHA right now?" and the nurses' July 12, 2010 decision to forego a lunch paid for by HCR and organized by Ethington without the knowledge of the union, the claim put forth by Ethington to the Board of Health and two supervisors is likely misleading. Ethington, in accordance with her statement "we must market this" [sale of CHHA license] aggressively attempted to bring about a meeting between HCR and the nurses in the hope that HCR would convince the nurses to take positions with HCR, otherwise the CHHA sale would not take place. Again, it is difficult to understand why the two

supervisors and Bernocco did not admonish Ethington for her intrusive email by one department head openly attempting to appropriate another department head's authority.

The July 14 and 16, 2010 emails [REDACTED]
[REDACTED] "In short, I had no significant problems with Ms. Strack and therefore had no reason to seek to penalize others who also had a good relationship with Ms. Strack," [REDACTED]
[REDACTED]

On July 21, 2010, at approximately 11:53 a.m., Ethington emailed Supervisor Robert Mann and told him of the union's intentions to prosecute Ethington's facilitation of a meeting between the CHHA nurses and HCR without their knowledge:

The Union apparently wants to go after me legally for allowing HCR to come in and have sit downs with the nurses. (Ex. 75).

The email concluded with Ethington's claims that Barbara Schaffer knew about the conference call between the nurses and the HCR. Schaffer informed us that eventually she did find out about the back door negotiations from the nurses not from the County.

As described in our First Report, before Ethington was granted any form of authority by the Board she intimidated Strack, even before budget negotiations, to give Ethington names of Health staff employees to be laid-off should the CHHA be sold. Between July 28, 2010 and August 11, 2010, Ethington emailed Strack three times and demanded to know Strack's recommendations for titles of positions to layoff if the CHHA were sold, "I need to know what titles you are looking at with justifications as to what you will or will not need if the CHHA leaves your department." The three emails from a fellow department head with no more authority than any other department head is evidence of the continued harassment of Strack. There is no authority within the Civil Service Law that allows a Personnel Officer to demand the justification for layoffs from a fellow department head and the appointing authority.

On August 11, 2010, at approximately 2:46 p.m., Ethington responded to [REDACTED] August 5, 2010 email request to find out if a layoff list had been created. Ethington responded:

I still [*sic*] not heard from her [Strack] so I am going to begin a list on my own. I will let you know the outcome. (Ex. 76).

Again, Ethington goes "rogue" and substitutes her opinion for that of the appointing authority and department head. For Ethington to tell an employee of another department that she will "begin a list of my own" completely subverts Strack's authority within her own department. There is absolutely no authority anywhere in the Board of Supervisors meeting minutes granting Ethington that type of authority.

Shortly thereafter on August 11, 2010, Strack sent her potential layoff list to Supervisor Goblet. (Ex. 77). The potential layoff list is marked "CONFIDENTIAL" across the face of the document and provides the names and positions of Strack's recommendations for potential layoffs.

On August 11, 2010, at approximately 5:25 p.m., in a breach of confidentiality, Ethington emailed ██████ that she had just received Strack's potential layoff list and that Shaver's name was not on it, "Just got her list.....you are not on it. Please do not let that out. [sic] or everyone will be up here for the list and it will only make matters even more unbearable down there." (Ex. 78). General Municipal Law Section 805-a, states in relevant part:

No municipal officer or employee shall: b. disclose confidential information acquired by him in the course of his official duties.

This immediate breach of confidentiality by the County's Personnel Officer, charged with insuring compliance with the Civil Service Law, is further evidence of Ethington's subversion of Strack's authority in the Health Department.

In a hopeless attempt to salvage some authority within her own department, on August 25, 2010, at approximately 4:09 p.m., Strack emailed Richards and requested a role in the CHHA transition, "The vote is done. The closest playbook for what happens next comes out of Genessee (Randee) and Orleans (Paul). Both have advised that the Dir. of Public Health has a role in the next phase(s). To that end pending direction it is proposed that my involvement occur." (Ex. 79).

On August 31, 2010, at approximately 8:42 a.m., Ethington emailed Roach and requested an opinion regarding the disclosure of Health staff's confidential information:

Looking for an opinion on the following: HCR is the company that the BOS sold the CHHA to: HCR would like to take a peek at the employee files from a compliance standpoint, just to get the lay of the land in terms of what the process is and where the employees are tracking. They are only interested in the files of those who will transfer over to them. I already had the nurses sign releases allowing me to give HCR copies of their applications, resumes, trainings and or licenses. So HCR could put together offers for them. (Ex. 80).

The fact that the officer charged with ensuring compliance with Civil Service Law for the County is asking the Board's attorney if an outside agency can "take a peek" at civil service employee's personnel files is incomprehensible. It violates the most basic tenets of Civil Service and General Municipal Law. It is unlikely that HCR wanted to "take a peek" at the nurses' personnel files to offer them a higher salary. We found no emails from Ethington informing the union, nurses or Strack, that the Personnel Officer intended to allow an outside agency to "take a peek" at the nurses confidential personnel files. Likewise, the absence of emails between Ethington and Strack when the County was contemplating the sale of such a large component of the Health Department which effected a large amount of County residents is an indication of the overall dysfunction among the County government, the Public Health Committee and the Board of Health. Perhaps more importantly, Ethington's purposeful exclusion of Strack from the negotiations and sale of part of her own department is evidence that the phrase, "In short, I had

no significant problems with Strack and therefore had no reason to penalize others who had a good relationship with Strack” included in a sworn affidavit was not true.

On October 1, 2013, in response to our request for a copy of the nurses’ releases from the Personnel Office, [REDACTED] an employee in the Personnel Office, responded with the following statement:

Our office is allowed to give out an employees title, salary, and length of service. Other than this, if any of the nurses wanted their personnel information to go to HCR, they would have to sign a release form. We never received any release form from any of the nurses, so no information was given to HCR from our office. (Ex. 81).

On October 8, 2013, [REDACTED] clarified where she had received her information about the nurses’ release forms:

I'm so sorry I did not finish your questions. It was a long time ago, but both Cassie [Ethington] and [REDACTED] had said they do not recall seeing any release forms from any of the nurses. (Ex. 82).

We spoke telephonically with five of the seven nurses who were layed-off as a result of the sale of the CHAA’s license. None of the nurses could recall signing releases. Apparently there was no release forms authorizing Ethington to release union members’ confidential information to HCR, as she reported to Roach. It is not known if confidential information was released to HCR. Ethington’s assertion that she had already obtained the nurses signature on the releases calls into question her credibility.

On September 24, 2010, Ethington resumed her emails to Strack demanding information regarding recommendations for titles to be included in a potential layoff list. (Ex. 83). Strack responded to Ethington’s demands in a September 24, 2010 email:

The positions/staff needed for sound operation essential for maintaining/expanding service delivery and promoting the agency mission have [to] be enumerated. Workforce analysis of the impact on agency programs and services, the effect on the remaining staff and whether the remaining employees have the ability to carry out and expand mandates of the agency has occurred. Referencing: “Reduction In Force A Manager’s Guide form NYS Department of Civil Service...reducing the workforce-laying off employees-is a decision made by agency management ...the reduction in force (RIF) process is governed by State law and by provision in the collective bargaining agreements between the State and employer unions. (Ex. 83).

In a responsive email, Ethington replied that it was the union and two supervisors that requested information pertaining to Strack’s proposed layoff list. Ethington then criticized

Strack's potential layoff list, substituting her knowledge and experience in the field of Health for the Director's:

Unless there is a different list than the one you submitted to me in August, your list that was given to the supervisors and myself made no sense and that was a concern. You requested the following: Director of Patient Services Supervising Public Health Nurse...and somewhere over here you want to include a Public Health Educator II??? Yet she only got reallocated as an Educator II because she was to be equal to a Supervising Public Health Nurse...so that would mean 3 Supervisors to 3 Nurses???? That does not make a lot of sense to me??? (Ex. 83).

Ethington concluded her email by asking the Director of Health why she needed so many clerical workers.

A September 29, 2010 email reveals that an informant/employee within the Health Department supplied Ethington with information designed to impugn Strack's management of the department and keep tabs on the Health staff. In an effort to justify positions within her own department, the employee secretly emailed Ethington and stated:

Hi Cassie-Remember that memo I gave you yesterday regarding Katie [Strack] asking for all our duties. I wanted to let you know that she has told the support staff to put down everything that they had done in the past and present so that it looks like we will need a lot of support staff for the Public Health program. (Ex. 84).

After identifying specific examples of Strack's instructions to her staff, the informant concluded the email with:

Also, Penny [Grimes] was asking for the minutes to the Professional Advisory. She has never asked for them before we only meet quarterly. She said there were a couple of items that needed to be followed up on (that policy and procedure I had given you). I just don't trust them. (Ex. 84).

Minutes later, Ethington responded,

Hmm interesting...thank you for the update. Thank you for the heads up...I will make sure to bring this up when she [Strack] finally gives us the justification. I explained to Bill Goblet yesterday that Katie was making more out of this than *[sic]* what was needed. (Ex. 84).

On October 4, 2010, [REDACTED], a Health Department employee, sent Ethington an email and told her she had reserved a room for an October 6, 2010 meeting between HCR and the CHHA nurses and office staff. She also told Ethington that she had informed Bernocco and

Schaffer at the union, "in case they wanted to attend for informational reasons." Ethington responded in an email:

Since I have answered most of the questions I think that HCR should meet just with staff. No union etc. The questions they have for HCR are employment questions and how HCR does things is not the union's business. i [sic] just do not want this to turn into a multi-level meeting where the Union feels they have input or the employees feel they have union support. once they go to HCR there is no union. I really feel there are County questions-HCR questions and then Board of Health questions. I do not want HCR dragged into some of the issues that the employees may have with the County. If this does not sound right call me. (Ex. 85).

The nurses were represented by the local Union and possessed impact bargaining rights. As reported above, the Union was already concerned with Ethington's failure to inform them of potential impact bargaining issues. In fact, Roach had also warned Ethington about keeping the union aware of impact bargaining issues. Despite these warnings, Ethington continued to facilitate the sale of the CHHA.

On October 7, 2010, at approximately 1:54 p.m., Ethington sent an email to Roach and requested an update on the negotiations between the County and Strack. Apparently, Roach was unaware of any negotiations and responded:

When the BoS found out that her term did not expire until October 2011, the BoS lost interest in a buy out and I have not pursued the idea of a buy out further. As you may be aware, some of the BoH are interested in finding a way to terminate Katie but the BoH lacks the resources to do so. (Ex. 86).

Apparently, in early October 2010 the Board had not pursued a buyout of Strack since her term was not up until October 2011. A few minutes later, Ethington stated:

That clarifies a little bit except for the call you gave me in Sept. you said you heard from Ron Dunn in reference to a buyout. What is your opinion on Katie's [Strack] last day she is now telling everyone she is here until 2013??? (Ex. 87).

Despite being told to stay out of the Strack situation, Ethington continued to closely monitor Strack, gather and disseminate destructive information, and impugn Strack to individuals that would ultimately decide her fate within county government.

As reported in the First Report, an October 12, 2010, email sent by Ethington at approximately 3:13 p.m., revealed that after Strack created her own layoff list, Ethington was not satisfied with her decision and demanded additional immediate cuts:

I want this to come to rest as of this week. You have come in closer but bottom line is you are still clerical heavy. As for your safety assessment there was a complaint because your clerical staff did not understand nor do they still understand why [REDACTED] sits out there and cannot be bothered to greet people??? They were complaining because they hoped this would get you to do it not create another position for someone. (Ex. 88).

Ethington instructed Strack that she had to choose between two employees named, [REDACTED]. [REDACTED] Ethington continued the email by stating, "We are leaving the department more then [sic] manageable you need to learn to manage it better by better utilization of your staff...I am done and I am not beating around the bush anymore." Clearly, the tone in the email is threatening, not "friendly".

As seen in the next email, Ethington questioned her own bullying tactics when she contemplated whether she was "out of line" in chastising a fellow department head. The email provides evidence of intimidation, harassment and bullying on the part of Ethington when she suspected Strack was a lame duck department head. Certainly, this is not the tone Ethington would use if she had "a good relationship with Ms. Strack" as she claimed in her sworn affidavit.

One minute later, at approximately 3:14 p.m., Ethington emailed fellow department head Joseph Patterson with a copy of the email just sent to Strack and rhetorically asked, "So do you think this was out of line???" (Ex. 88). As evidenced in her actions in the prior two emails, Ethington's claim in her June 7, 2012 affidavit that she had a good relationship and was "friendly" with Strack [REDACTED]

On October 14, 2010 at approximately 5:41 p.m., Ethington wrote in an email to Richards:

I spoke with [REDACTED] to see what help I could get the LHCSA application complete if Katie [Strack] does not come through by the end of the month as requested. Here is the kicker. [REDACTED] said that if [REDACTED] and I pulled together the items that are needed for the application she could come out and in a day, to a day and a half we could have it completed and ready to be submitted. Katie has been given 30 days in writing from her oversight committee chair & co-chair along with the vice chair of the BOS to get this completed and as of the 12th she has not even started it. The other item that was brought to my attention by one of the nurses when I was down there today that Katie did not bring forward to anyone is billing for the CHHA. It is at a stand still. Katie never approved or signed the contract (She has known about it since May) for the new upgrade that was needed due to billing changes and so since Oct. 1st No work can be done in the delta system for billing. I have [sic] having the employee document this for me in writing. I let Paul [Brady], Alicia [Terry] and Bill Goblet know. (Ex. 89).

This email provides evidence that Ethington was apparently in direct competition for the management of the Health Department with Strack months before Strack resigned. It is further evidence of Ethington's willingness to accept third hand information from Health staff and pass it along to a supervisor within the Board as the truth without any investigation. A practice that led to Strack's resignation and is evidence that Ethington did not have a "good relationship" with Strack.

On October 19, 2010, at approximately 4:13 p.m., Ethington received a timeline she had requested from a nurse in the Health Department. The detailed timeline outlines Strack's management of the Delta contract. The email provides evidence that Ethington monitored the management of the Health Department secretly by cultivating a group of employees willing to violate the chain of command and report to Ethington instead of their direct supervisor Strack. This practice completely subverted Strack's authority. This email is just one of many emails usurping Ethington's authority in the Health Department by another department head, apparently with the backing of at least one supervisor. To allow Ethington this type of divisive authority violated the democratic structure of County government and had a chilling effect on employees in county government as well as, other department heads. Certainly, these were not the actions of a friend who had a good relationship.

On October 21, 2010, at approximately 5:33 p.m., Ethington drafted a memo to Roach on the issues that the Board has on Katie. In the memo Ethington referred to Strack as "clueless" and provided a conclusory list of charges against Strack which included, Insubordination, Poor Contract/No Contract management, missing deadlines, Lack of Budget knowledge, No Administration or leadership, Employee Retaliation and Poor Communication. (Ex. 90). Few facts are alleged to substantiate the charges, which are based in large part on hearsay allegations provided by members of the Health staff violating the chain of command and included in the above emails. Ethington ended her email by letting Roach know that the Board is "looking at their options with her [Roach] and I want them [sic] know what they are up against so if you could let them know that would be great." In light of the above emails and her instant email to Roach, Ethington's statement, "But for the most part, Ms. Strack and I had a good relationship and I, probably more so than anyone else, attempted to defend her to the Board of Health" which was included in the section of her sworn statement entitled, "My Alleged Dislike of Petitioner and the Former Director" [REDACTED] into believing Ethington had a good relationship with Strack and therefore had no reason to penalize Grimes for her association.

As indicated in the Euler section above, on November 1, 2010, even before Strack's resignation, Ethington asked to be considered for a managerial position in the Health Department interim team. (Ex. 3).

On November 3, 2010, Ethington emailed Barbara Schaffer, president of CSEA Local 1000, about [REDACTED] grievance for the outstanding overtime owed. Ethington stated, "I have to forward this to Dennis because of [REDACTED] being included in this conversation. I have removed myself since the beginning and will continue to do so." (Ex. 91). This statement was

also disingenuous. As the emails above reflect, Ethington complained about the treatment of [REDACTED] to Richards from the very beginning of the situation.

Continuing to keep tabs on negotiations between Strack and the County, on November 10, 2010, Ethington emailed Bernocco and told her that she had not heard back from Roach with a status update on the negotiations of Strack:

I have not heard anything back from Mary on Katie. I can let you know she acts as if she is not going anywhere. [REDACTED]

The undermining of Strack with claims of [REDACTED] to the president of the Board of Health is evidence that Ethington did not have a "good relationship" with Strack as she claimed in her sworn statement. Ethington concluded the email by telling Bernocco:

The Board is going to have to go with discipline if they want her gone. I still think that someone from the Board is telling her it will blow over and not to worry about it. When we talk next I will tell you why.

On November 16, 2010, at approximately 11:14 a.m., Ethington emailed Bernocco about the status of the Strack negotiations:

I will not believe it until Katie has signed the papers and is walking out of the building with her belongings. [REDACTED]

Ethington's statements to the president of the Board of Health that Strack [REDACTED] is further evidence that Ethington did not have a good relationship or was friendly with Strack as she asserted under oath to the court. In fact, these statements reveal resentment and animosity towards Strack.

On November 17, 2010, at approximately 10:29 a.m., Ethington emailed Roach and gave unsolicited advice to the Board's attorney regarding the best scenario for getting rid of Strack:

The best bet is to have Katie's last day in the building be November 24th. Then pay her vacation time between then and the end of Dec.. Her last day on the payroll would be December 31st. That would give her medical until Jan. 31st. There is no way the Board will give her anything more than that. Then she would be cut a payout from January 1st to whatever her last day is in October 2011. If that is not good enough then we will seek termination. We have enough and I can not believe that that would cost us more then [sic] \$76,500 to get done. (Ex. 94).

Ethington continued to give advice to the Board's attorney on the Strack negotiations the

next day:

I know that it took a lot to get the Board to agree to full pay up to a year for her. To add her sicktime in on that will be harder to sell. However this is my opinion. Since Katie has cleaned out her office I think that maybe we should hit somewhere in the middle with them if that is possible. She is the one that cause [sic] this situation I do not see how we can reward someone for not doing there [sic] job. After everything that I have been put through this last year I still managed to come to work do my job and hers as well. So now she has not come into work, has left the department without letting anyone know, is home being paid in full just sitting back and is not losing a thing out of this. Really having a hard time swallowing this one.” (Ex. 95).

During Ethington’s January 2, 2013 interview, she stated that she did not know when the Strack negotiations started. Ethington’s tone in the email is resentful and angry. It is perplexing why she would inject herself and her opinion into the negotiation process of a fellow department head. Even more confusing is why her interjection is tolerated by certain supervisors. Certainly her tone and the content of the email lead to the conclusion that she was not friendly with Strack as she stated in her affidavit.

On November 22 and 24, 2010, Ethington emailed Roach for updates on the Strack negotiations. Finally, at 3:19 p.m., on November 24, 2010, Ethington emailed a select group of supervisors and the budget officers that Strack’s attorney advised Roach that Strack was prepared to resign. (Ex. 96).

Grimes’ April 9, 2012 affidavit accused Ethington of having forced out or eliminated any employees that had been supportive of Strack. (Ex. 31 at para. 35). In an attempt to disprove this argument, Ethington claimed “But for the most part, Strack and I had a good relationship and I, probably more so than anyone else, attempted to defend her to the Board of Health.” Ethington continued, “In short, I had no significant problems with Strack and therefore had no reason to seek to penalize others who also had a good relationship with Strack.” (Ex. 29 at p. 92). In light of the substantial evidence above, Ethington’s statements that she had no “significant problems” with Strack, had a “good relationship” with her, and “attempted to defend her to the Board of Health” are material to Ethington’s argument that since she was friends with Strack she would have no reason to penalize Grimes. If Ethington was friends and had a good relationship with Strack she would not have cut her out of the sale of the largest component of Strack’s own department, diminishing Strack’s authority and stature within her own department.

If she had a good relationship with Strack, she would not have proposed unsolicited baseless charges be brought against Strack while referring to her as clueless.

III. The Appointment of [REDACTED]

Cleaner is a grade 5 Civil Service position within the DPW. The Cleaners clean the county office buildings at night. During our initial interviews, we spoke with three cleaners who had interviewed at the beginning of 2011 for the Lead Cleaner position. The Lead Cleaner, a grade 8 Civil Service position, was an upgrade in salary and grade level for the Cleaners. Responsibilities for the Lead Cleaner position consisted of supervising the Cleaners in their cleaning performance, as well as some cleaning duties. During our initial interviews, two of the three Cleaners who interviewed for the Lead Cleaner position complained of discrimination in the hiring process and claimed the Lead Cleaner job description was changed to exclude them.⁶ One Cleaner told us that the only opportunity Cleaners had for advancement was the Lead Cleaner position. It is against the weight of these statements that our investigation continued into the appointment of the Lead Cleaner position to [REDACTED]

[REDACTED] was interviewed on November 26, 2012 at the DPW garage. [REDACTED] was asked the same objective standardized questions we posed to all county employees, did they feel they had been victimized by acts of discrimination, harassment or intimidation, or did they know of anyone else being subjected to this type of unwanted behavior. In response to this question [REDACTED] stated:

[REDACTED]

MR. FITZMAURICE: Okay.

[REDACTED] So my question is, when you ask me about unlawful this or that, where does the politics stop and the discrimination start?

MR. FITZMAURICE: Did you understand my question?

[REDACTED]: I understand it. But where does the politics stop and discrimination start?

MR. FITZMAURICE: I don't understand your question. But you've answered a question with a question. (Ex. 97 at p. 9-10).

It is unclear why [REDACTED] insisted we understand he was the [REDACTED] when asked about acts of discrimination, harassment or intimidation. It should be noted that during the course of our inquiry, no County employee was asked about his or her political affiliation unless the employee chose to supply the information.

Based on our review of County emails and the Cleaner's allegations, [REDACTED] was asked to appear for an interview on October 9, 2013. [REDACTED] appeared on October 9, 2013 with CSEA Representative Angelique Bywater. The interview was extremely short. When [REDACTED] was

⁶ This was not the only claim of job tailoring from DPW employees and the practice, especially in the DPW, was confirmed by a number of Supervisors during their interviews.

asked if Ethington ever helped him get a job with the County [REDACTED] said, "Goodbye" and walked out of the room refusing to answer any more questions. (Ex. 98 at p. 11).

[REDACTED] and Ethington, also a member of the conservative party, met and worked together on an election campaign to elect Anthony Desmond as Sheriff of Schoharie County⁷. According to Hanson it was his sole decision to give the Conservative line to Desmond.

On March 15, 2010, [REDACTED] emailed Ethington and asked her for a job, "PS did you find me a job yet". (Ex. 99).

On March 18, 2010, [REDACTED] emailed Ethington and again asked her to find him a job, "Did you find me a job yet?" to which Ethington responded, "I am working on it...if the cleaner gets fired, I will back fill you there. I already talked to Tom about it." In March 2010, the DPW Commissioner was Tom Fignani. (Ex. 100.)

During his November 26, 2012 interview, [REDACTED] said he was granted an interview for the job of Lead Cleaner approximately three months prior to his hiring in February 2011. Present in the interview was Fignani, [REDACTED], and [REDACTED], all members of the DPW.

According to [REDACTED] the interview lasted for approximately forty (40) minutes. After the interview was over, [REDACTED] discussed with Fignani whom he believed would be the best choice for the lead cleaner position. He told Fignani that he believed the best choice for the position would be a woman who had interviewed from outside county service and had cleaning experience working in a hospital. He could not remember the woman's name. [REDACTED] claimed that Fignani stated, "Yeah, but Cassandra wants [REDACTED] [REDACTED] then told Fignani that he was "asking for trouble bringing someone like that in.

Another individual in the [REDACTED] interview was [REDACTED] [REDACTED] said that while he did not remember if he had been present for the statements by Fignani to [REDACTED], he did recollect that he recommended someone from within the DPW rank and file for the job of Lead Cleaner. [REDACTED] recollect that Fignani said that because [REDACTED] [REDACTED] he could get more out of the appointment and that Ethington wanted

We spoke with former Commissioner Tom Fignani about the [REDACTED] interview on October 21 and 22, 2013. During our first conversation, Fignani told us that Ethington had told him to hire [REDACTED]. When asked about the hiring of [REDACTED] he stated that there was a group bullying their way in and Fignani thought [REDACTED] was a part of "that whole scenario". When asked if he had taken part in changing the Lead Cleaner job qualifications he said he did not recall making any changes in the job description. The next day Fignani again confirmed that Ethington told him to hire [REDACTED]. We asked Fignani to explain what he meant when he used the term bullying the day before. He said that certain people tag onto the Supervisor that has the power at the time. By way of example, he provided the names of Ethington and [REDACTED] among others. Initially, Fignani said that politics played no role in the hiring of [REDACTED] but at the end of

⁷ Ethington stated that she was an Independent during the Desmond campaign.

the interview he said he could not remember if Ethington said anything about [REDACTED] affiliation with the Conservative Party.

With regard to the changes in the job qualifications, Fignani said that he left the job descriptions up to Ethington. She was the personnel officer and he believed that she knew what she was doing. When asked if he was concerned that Ethington may tailor the job description to certain individuals he said he was not concerned because he did not know how or if the Lead Cleaner job qualifications were changed. He also told us that Personnel handled the job descriptions by performing desk audits. At the end of the interview Fignani told us that it was possible that the Personnel Office had changed the job description without him knowing it. Despite, being told by Ethington to hire [REDACTED] and allowing personnel to deal with the changes in the job description, Fignani told us he felt he picked the right individual for the job.

On October 8, 2013, [REDACTED] an employee in the Personnel Department provided us with copies of the Lead Cleaner job descriptions before and after January 7, 2011. A comparison of the documents show that the Lead Cleaner's Minimum Qualifications section was revised on January 6, 2011, by adding the requirement of "five years of cleaning experience, with one year of supervisory experience." (Exs. 101 and 102). Two of the Cleaners complained that the supervision qualification was added to exclude them because they did not have any supervisory experience.

According to [REDACTED] Form 426, he was appointed lead cleaner on February 22, 2011. At the bottom of the Form 426 appears the certification, "This certifies that the above employment is in accordance with Law and Rules made in pursuance to Civil Service Law." Ethington signed the certification. (Ex. 103).

During his November 26, 2012 interview, [REDACTED] claimed he learned about the position of Lead Cleaner from the County website. The very next question asked was, "So Cassandra Ethington did not tell you about the job", to which [REDACTED] replied, "No." (Ex. 97 at p. 39). A review of [REDACTED] job application reveals that he completed the application for "Head Cleaner" on September 16, 2010. (Ex. 104). Copies of documents created by the Personnel Officer and stored on the county's central server were made available to this firm by the county's ITS department. A review of these documents reveals a copy of a Notice for a Lead Cleaner with a post date of January 7, 2011. The notice states that "Candidates interested in being considered for this position must submit an application to the Personnel Office by the close of business on January 18, 2011." (Ex. 105). The Lead Cleaner position was not posted until January 7, 2011, ten months after the March 18, 2010 email and four months after [REDACTED] application for "Head Cleaner" was completed.

Further, a review of [REDACTED] job application reveals that at the time of his appointment he signed a form entitled "Release Authorizing Check of Applicant Credentials & Certification of Accuracy". (Ex. 106). Attesting to the accuracy of the statements in his employment application, [REDACTED] declared, "I am aware that willfully withholding information or making false statements on this application may be the basis for dismissal from County Service. I agree to these conditions and hereby certify that all statements made by me on this application are true and complete to the best of my knowledge." [REDACTED] below the jurat, "I understand that

by signing below I am acknowledging that I have read and understand the above statement.” On the same form, below [REDACTED] signature appears the question, “HOW DID YOU FIND OUT ABOUT THIS POSITION?” Hanson placed an “X” in the box next to “Friend or Family.” This statement contradicts [REDACTED] statement that he discovered the Lead Cleaner position from the County’s website.

Based on the allegation made by County employees in the First and Second Report, Ethington was asked to come in and be interviewed. Since Ethington was represented by counsel we made the request through her attorney’s office. On September 19, 2013, we offered to conduct her interview on October 5, 2013, giving her and her attorney two weeks preparation. On September 23, 2013, I was contacted by Ethington’s attorney’s secretary and alerted to the fact that October 5, 2013 was a Saturday. I then offered to conduct the interview on October 4 or 7, 2013. I was told that Cassandra did not want to conduct the interview until the end of the month and that Tuesdays and Thursdays were no good also. I then offered October 1, 2, 3, and 8, 2013 as alternate dates. When I did not hear from Ethington’s attorney, on September 27, 2013, I sent another correspondence asking for a date so that accommodations could be made for a stenographer. Ethington’s attorney informed me that he was busy with other trial ready matters and the interview would have to wait until the end of the month. The Chairman and Vice-Chairman believed that six different dates with twenty days notice was sufficient for an employee and determined to move on with the other interviews.

[REDACTED] request for a County position followed by an assurance from the Personnel Officer that she would backfill him in the position and had in fact already arranged it with the Commissioner before the position had been posted, coupled with the confirmation of Fignani that Ethington told him to give [REDACTED] the position is evidence that Ethington arranged for [REDACTED] to be hired by the County government. The fact that the job descriptions were most likely changed by the personnel office shortly before [REDACTED] appointment, effectively disqualifying at least two of the Cleaners [REDACTED]

[REDACTED] refusal to participate in his scheduled interview and Ethington’s unavailability for a timely interview prevented them from being questioned on this point. Furthermore, although it is not clear that any other DPW employee’s rights were violated by the events surrounding [REDACTED]’s appointment, the Board may wish to refer this matter to the New York State Department of Civil Service for its review and determination of whether a violation of Civil Service Law occurred. [REDACTED]

IV. Asante Shipp-Hilts

Shipp-Hilts was interviewed on two separate occasions, December 10, 2012 and October 9, 2013. [REDACTED] This section summarizes her explanations to three issues, some of which have been discussed above; the purported reasons and ramifications for Kim Euler’s dismissal, the decisional basis upon

which Shipp-Hilts determined to layoff Health staff at the end of 2011, and her lack of knowledge as the "Head of the Health Department".

A. Kim Euler

As reported in the Inconsistencies section, Shipp-Hilts clung to the statement that she was the head of the Health Department while trying to distance herself from Euler's dismissal:

Q. Okay. Kim Euler, explain to me what subcommittee you went in front of and explained how Kim Euler was going to be laid off.

A. I did not go in front of a committee for that. (Ex. 107 at p. 87).

After claiming that Ethington had appeared in front of the sub-committee and explained Euler's dismissal, Shipp-Hilts was asked to describe how Ethington recommended Euler's dismissal if Shipp-Hilts was the Director of Health as she claimed in her affidavit. Shipp-Hilts responded that Ethington dismissed Euler because she was in the CHHA (*Id.* at p. 88). When Shipp-Hilts was asked how she could let that happen given her position as the overall department head and immediate supervisor of all staff she responded, "That's the way that things happened here." (*Id.* at p. 88).

When asked what Euler's duties and responsibilities were within the department, Shipp-Hilts' statements were implausible. At first, she attempted to maintain her story that Euler's dismissal occurred as a result of her position within the CHHA:

A. You interviewed Kim Euler once you came to the Department of Health, right?

A. Did I interview her?

Q. Yeah. You wanted to find out what she did.

A. I don't remember.

Q. So you may not have interviewed Kim Euler?

A. I have to think about that. I don't remember if I interviewed her or not.

Q. Okay. Kim Euler was doing the state aid billing, right?

A. Right.

Q. That's not in the CHHA, is it?

A. It's one -- I mean, the CHHA is a piece of the state. State aid is for the whole department.

Q. The state aid was for the whole department, correct?

A. Yes.

Q. And that would mean that Kim Euler wasn't just in the CHHA; she was doing state aid billing. She was doing state aid billing for the entire Department of Health, right?

A. Right.

Q. And you knew that, right?

A. Not really. I mean --

Q. Not really? You didn't know she was doing the state aid billing?

A. I guess. I mean, it was pretty early on.
Q. You're telling us that you did not know that.
A. At the time that she was laid off, you're asking me?
Q. At any time.
A. Yeah, I did know that she was performing it, yes.
Q. Okay. At the time that she was laid off?
A. At the time that -- I can vaguely remember -- at the time that she was laid off, if I knew exactly everything that she was responsible for? I don't know that.
Q. How many things was she responsible for?
A. I don't know.
Q. She was responsible for Medicare and Medicaid billing.
A. Okay.
Q. And what else was she responsible for? You were the head of the health department; you tell me.
A. That doesn't mean, if you're the head of a department, that you know every single thing that happens in the department at every moment in time. It just doesn't. It's a matter of opinion. Maybe you have higher expectations of a department head than I do.
Q. Did you know, and you've told us that -- well, let me ask you the question again. When did you become aware that Kim Euler was doing the state aid billing in the health department?
A. I don't remember.
Q. But she was doing the state aid --
A. Yes, she was.
Q. -- billing in the health department.
A. Yep.
Q. And, as such, you were their direct supervisor because you were the director of the health department, right?
A. Right.
Q. Okay. So how did you not inform either the Board of Supervisors or the public health subcommittee that you were laying Kim Euler off?
A. I don't know. (*Id.* at p. 89).

As the Hamilton Report stated, the State Aid billing was responsible for \$500,000 per year of revenues coming into the Health Department. The Health Department consisted of twelve individuals, five of which were clerical. Shipp-Hilts' statements were evasive because she had been placed in a conundrum. For her to admit that Euler was in the Health Department meant Shipp-Hilts was her Department Head, appointing authority and the only person with the authority to lay off Euler. Since Ethington dismissed Euler while Shipp-Hilts claimed she was the Director, would provide substantial evidence that Ethington not Shipp-Hilts was the Interim Director of Health.

In addition to her difficulty answering questions about Euler's duties, Shipp-Hilts continued to give vague answers about the operation and management of the Health Department after Euler's dismissal.

[REDACTED] replaced Euler in the Health Department and is still performing the State Aid billing function. Shipp-Hilts was asked how [REDACTED] came to the department on a shared basis from Mental Health. (*Id.* at p. 99). Initially she claimed that she could not remember who had the idea to bring over [REDACTED] from Mental Health. (*Id.* at p. 100). Eventually, Shipp-Hilts admitted that it was Ethington who brought over [REDACTED] to do the State Aid Billing. (*Id.* at p. 100). When asked why [REDACTED] did not return to work in the Health Department, Shipp-Hilts said she had never met [REDACTED] and it may have been Ethington's idea to bring over [REDACTED] to the Health Department. (*Id.* at p. 103).

As reported in the Euler section above, when Euler was dismissed she emailed Ethington and attempted to confirm that an outside company was being hired to perform a union member's work. CSEA Representative Bywater followed up Euler's email to Ethington with her own email. When Shipp-Hilts was asked if an outside company was contracted to perform the Medicare and Medicaid billing for the CHHA, she said:

Q. Okay. Let me rephrase that question. In August of 2011 Delta took over the billing, the Medicare and Medicaid billing, that Kim Euler had previously been doing, right?

A. Right. (*Id.* at p. 105).

Shipp-Hilts admitted that all of Euler's work still existed when she was laid off. (*Id.* at p. 111). In light of the fact that Euler's work still existed and other employees or companies had to take over Euler's duties, Shipp-Hilts, as the "Head of the Health Department", was asked why Euler was laid off, to which she responded, "I don't have an answer for you for that" (*Id.* at p. 111). More importantly, Shipp-Hilts was shown a copy of Euler's Form 426 and directed to the reason that Ethington included in the form for Euler's dismissal, "Lack of Work or Funds":

A. Okay. In any event, the term "the layoff", the reason that is checked off is layoff, lack of work or funds. That's incorrect, right?

A. Right.

Q. There was work there.

A. Right.

Q. The state aid was still there?

A. Yes.

Q. And so was the need for the Medicare and Medicaid billing, right?

A. Right. (*Id.* at p. 118)

Shipp-Hilts' admission that Euler's work still existed substantiated Euler's and Bywater's suspicion [REDACTED] corroborates Cherry's and [REDACTED] statements, and Ethington's email that she dismissed Euler because she felt she was not performing her billing or supervisory duties, not because of a lack of work.

B. Justifications for Layoffs

During our First Report we questioned the justifications for Penny Grimes and Eva Gigandet's layoffs. We also made the recommendations that Grimes and Gigandet be reinstated to their jobs. [REDACTED] that Ethington and Shipp-Hilts [REDACTED] the Grimes and Gigandet litigation that the time logs and Hamilton Report formed a decisional basis for the restructure of the Health Department and attendant layoffs. Shipp-Hilts confirmed that the entire Hamilton Report was not provided to the court in *Grimes*. Moreover, the third section of the Hamilton Report dealing almost exclusively with Eva Gigandet was never submitted in *Gigandet*.

On February 15, 2011, at approximately 5:21 p.m., in an email from Bernocco to Ethington, Bernocco asked, "I do wonder if we can justify any downsizing with a need for cross training? What do you think?" (Ex. 108). The email suggests that Ethington and Bernocco were considering downsizing the Health Department even before Shipp-Hilts was hired by the County or the Hamilton Report was completed and calls into question Shipp-Hilts assertion that the decision to restructure the Health Department was her idea based on the Hamilton Report.

The final section of the Hamilton Report described Delaware County's Epidemiologist, [REDACTED]'s interview of Eva Gigandet. The third and likely the most relevant section to the *Gigandet* litigation was completed on April 11, 2011, and never made known to the court.

In the third section, [REDACTED] described Gigandet as, "Eva is a very smart, thorough individual." (Ex. 1). [REDACTED] only criticism of Gigandet is her lack of confidence in her ability to develop preparedness plans. Apparently, [REDACTED] understood Gigandet's lack of confidence was being addressed by the assistance of a consultant. [REDACTED] also recommended that Gigandet be supplied with a clerical person to assist her with the complicated monthly vouchers. This information was never supplied to the court.

During Shipp-Hilts October 9, 2013 interview, she admitted that she only saw seven out of twelve time logs she used to form her layoff decision and restructure of the department:

Q. But you didn't include the fact that you didn't see five out of the 12 time log reports in your affidavit, correct?

A. I did not include that, no. (Ex. 107 at p. 52).

Although Shipp-Hilts told the court that the time logs were destroyed in the flood, she also stated that she had time to study them carefully. (Ex. 46 at para. 13). What she omitted to tell the court was that she did not see five of the twelve time logs. It is difficult to make a determination of that magnitude based on incomplete information.

Shipp-Hilts told the court that she also met with the employees on a weekly basis to review their job functions. (Ex. 46 at para. 15). Yet during our October 9, 2013 interview,

Shipp-Hilts could not initially remember if she had interviewed Euler or what her job functions were.

[REDACTED] by providing only the first section of the Hamilton Report, [REDACTED] only reviewed seven of the twelve time logs, yet led the court to believe Shipp-Hilts studied all of them carefully, and was initially confused about Euler's main function within the department, despite the fact that Euler was responsible for the billing of \$500,000 in revenues, provides evidence that Shipp-Hilts' decisional basis for the layoffs was flawed at best and deceptive at worst.

C. Incredible Answers

During her October 9, 2013 interview, Shipp-Hilts again clung to her allegation that she was the "Head of the Health Department" once she arrived in the department despite substantial evidence that she was not.

Shipp-Hilts started the interview by describing her particular duties as the current probationary Director of the Health Department. She said as the head of the health department she was the overseer of the department. (Ex. 107 at p. 7). She also admitted that she created the budget, handled promotions and layoffs, dealt with discipline and was responsible as the appointing authority to fill out all Form 426 reports. (*Id.* at p. 7-12).

Even though Shipp-Hilts was able to define her duties and responsibilities in 2013, it was evident from statements made by Shipp-Hilts during her October 9, 2013 interview, that during the period from May through December 2011, Ethington "ran" the department.

When asked who filled out the Form 426s from May through December 2011, Shipp-Hilts stated that she was not even sure if she knew what a form 426 was and was not sure if she had filled one of the forms out. (*Id.* at p. 29). While continuing to claim that she was the Director of Health, she admitted that she did not attend Personnel Committee meetings, and could not remember if she had attended Finance Committee meetings or Public Health Committee meetings between May and December 2011. This corroborates Health staff claims considered above and in the First Report.

When asked who currently creates the budget in the Health Department, Shipp-Hilts answered that she creates the budget because she is the Director of the Health Department. (*Id.* at p. 119). Shipp-Hilts was then confronted with a July 11, 2011 email from Shipp-Hilts to Ethington, wherein Shipp-Hilts stated:

Hey Cassie. There was an memo from Alicia Terry and Paul Brady regarding budget amendments and/or transfer requests to be considered by finance on July 12th, 2011. It was due today, but can we discuss this on Monday? Maybe they will still accept things from us?

To which Ethington answered on July 11, 2011, "I took care of this sorry...I forgot to cc you guys..." (Ex. 108). Shipp-Hilts was asked if she was upset that she was never consulted on the budget transfers even though she claimed she was the head of the department. She responded that she could not control Ethington's actions. (Ex. 107 at p. 122).

Shipp-Hilts was confronted with Ethington's May 19, 2011 email, assigning all duties and responsibilities to Health staff and asked if she was the head of the Health Department why was Ethington assigning the duties, to which she initially answered, "I don't know." When pressed to answer the question Shipp-Hilts continued to be evasive:

Q. Because you're telling us that you were the head of the health department, and here's the personnel director coming in and telling your staff who's in charge of what.

A. She's -- I've had plenty of other department heads come in and tell my staff things that have nothing to do with me. It happens every day. (*Id.* at p. 75).

Later during the interview, Shipp-Hilts was asked if she had a contentious conversation with Ethington given Ethington's assignment of duties to her staff, Shipp-Hilts answered that she could not remember.

Likewise, Shipp-Hilts, the purported head of the Health Department, saw no problem with Ethington changing staff in her Health Department without consulting her. An example would be the transfer of [REDACTED] and attempted transfer of [REDACTED] without even asking Shipp-Hilts. (*Id.* at p. 100). The Euler dismissal while Shipp-Hilts was the alleged head of the Health Department has been thoroughly discussed.

In spite of Ethington performing all of the functional management duties within the Health Department for the first seven months of Shipp-Hilts employment, she had to cling to her assertion that she was the head of the Health Department no matter how meaningless. To do otherwise would have admitted that she did not tell the truth in her affidavit.

Still, the question remained, why would Shipp-Hilts want to downsize her own department. Perhaps the answer comes from [REDACTED] while she worked in the Health Department. [REDACTED] told us that, "On two separate occasion [*sic*] Asante stated to me that the only way to have the Department the way she wanted- was to get rid of most of the existing staff. To do this she would do progressive discipline. When I asked her what this was; she commented that she would continue to write up staff until they were forced to retire, quit, or go to another Department." [REDACTED] said that at the time Shipp-Hilts made this statement she did not believe it, but as time has gone by it appears that is the path Shipp-Hilts is pursuing.

[REDACTED]



VI. Immediate Suspension of Ethington

The Board of Supervisors have posed the question whether the Personnel Officer can be placed on administrative leave (presumably with pay) until a determination is made of whether she should be removed from office. We know of no law expressly authorizing the Board to place the Personnel Officer on administrative leave. Section 24 authorizes the appointing authority, and here that would be the Board of Supervisors, to remove such an officer for cause after a public hearing. The same authority of removal is given to the state civil service commission. The commission also has authority, pursuant to section 24, to suspend the personnel officer after the commencement of removal proceedings provided there be a unanimous vote of the members of the commission to do so and the governor give written approval. The statute's express grant of authority to the commission to suspend a personnel officer (and that with the rather stringent condition that the governor concur) and its complete silence regarding any such grant to the appointing authority would seem to indicate that the Board of Supervisors cannot deprive the Personnel Officer either of her office or the exercise of her office except at the conclusion of the publicly held hearing prescribed by section 24.

The Board of Supervisors should be aware that [REDACTED] is reported: "On at least one occasion I recall Cassie telling me that any County employee who spoke to the Fitzmaurice lawyers and spoke/testified against her; trying to ruin her reputation-they would be cross

examined by her attorney. She indicated she would sue any employee if she had to. Note: At that time I did not perceive it as a threat.”

October 24, 2013

Respectfully Submitted,

Mark J. Fitzmaurice