

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

EASTERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA,
Plaintiff,

and

JANET A. CALDERO, *et al.*
Plaintiff-Intervenors

-against-

NEW YORK CITY BOARD OF EDUCATION, *et al.*,
Defendants,

and

JOHN BRENNAN, *et al.*
Defendant-Intervenors.

Civ. No. 96-0374
(RML)

Declaration of Andrew Clement in
Support of Motion to Intervene

JOHN BRENNAN, *et al.*
Plaintiffs

-against-

JOHN ASHCROFT, *et al.*,
Defendants

and

JANET A. CALDERO, *et al.*
Defendant-Intervenors

Civ. No. 02-0256
(FB) (RML)

I, Andrew Clement, certify under penalty of perjury that to the best of my knowledge and recollection, the following is true and correct:

1. I am one of the individuals who benefited from the settlement agreement in *United States v. New York City Board of Education*. I am submitting this Declaration in support of the motion to intervene in that case and in *Brennan v. Ashcroft* being filed by Janet Caldero *et al.*

2. I reside at 3462 Howard Boulevard, Baldwin, New York, and am employed at P.S. 743K by the New York City Department of Education as a Custodian Engineer Level I. Custodian Engineers Level I were formerly called Custodians, Custodian Engineers Level II were formerly called Custodian Engineers, and the Department of Education was formerly called the Board of Education. Throughout this Declaration, I will refer to the position of Custodian Engineer Level I as “Custodian” and Custodian Engineer Level II as “Custodian Engineer.” I will refer to the Department of Education as the “Board of Education.”

3. Prior to becoming a Custodian, I was employed by a Custodian as a fireman.

4. On or about January 30, 1995, I became a provisional Custodian. Custodians supervise and are responsible for the physical operation, maintenance, repair, custodial upkeep and care of a public school building and its immediate grounds. I sought the job as a provisional Custodian because another fireman told me that the New York City Board of Education was hiring provisional Custodians.

5. I was lucky that I heard that the Board of Education was seeking to hire provisional Custodians, as the positions were not widely publicized, and recruiting for the positions was done primarily by word-of-mouth.

6. In March 1997, I became a permanent Custodian.

7. Under the settlement agreement, I received approximately two years of seniority, retroactive to my provisional hire date.

8. The number of years in which you have participated in the retirement system determines the ultimate amount of the pension you receive. For instance, an individual who has made contributions to the system for twenty years will receive a pension equivalent to 40 percent of his salary upon retirement, while an individual who has made contributions for twenty-five years will receive a pension equivalent to 50 percent of his salary on retirement.

9. Under the settlement agreement, I was permitted to “buy back” time in the retirement system by making contributions to the system equal to those I would have made had I been employed as a permanent Custodian for the two years for which I received retroactive seniority. I “bought back” one year of time in the retirement system in this way.

10. Based on my “buy back” under the settlement agreement, I will be able to retire at an earlier age or with a larger pension than I otherwise would. I have made future plans based on the retroactive seniority award I received under the settlement agreement.

11. I am currently working in the building in which I was placed when I received permanent employment status in 1997. When the next transfer list is circulated, however, I plan to bid to transfer to a new building. Whether I am successful in this bid may turn on whether I have more seniority relative to other bidders.

12. My building placement will determine my salary, because salary is based on the square footage of the building for which a Custodian has responsibility.

13. Throughout the litigation of *United States v. New York City Board of Education*, I cooperated with and assisted the Department of Justice attorneys working on the case. I understood them to be working on behalf of my interests. I directed all questions about the case or information that I thought would be relevant to the case to them.

14. In August 2002, I learned that the Department of Justice was no longer defending my award of retroactive seniority or the awards made to most of the other individuals under the settlement agreement. No one from the Department of Justice or the Board of Education told me of this development. I was informed of this by Janet Caldero, a Custodian who had also received benefits under the settlement agreement.

Executed this 17th day of October, 2002, in New York, New York.

Andrew Clement