



Town of Huntington

Payroll and Legal Services

Report of Examination

Period Covered:

January 1, 2011 — May 31, 2012

2013M- 28



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	2
EXECUTIVE SUMMARY	3
INTRODUCTION	5
Background	5
Objective	5
Scope and Methodology	5
Comments of Local Officials and Corrective Action	5
PAYROLL	7
Time Reporting and Overtime	8
Vacation Leave Accruals	9
Recommendations	12
LEGAL SERVICES	14
Requests for Proposals	14
Recommendations	16
APPENDIX A Response From Local Officials	17
APPENDIX B OSC Comments on the Town’s Response	25
APPENDIX C Audit Methodology and Standards	26
APPENDIX D How to Obtain Additional Copies of the Report	27
APPENDIX E Local Regional Office Listing	28

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

May 2013

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of Town of Huntington entitled Payroll and Legal Services. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Town of Huntington (Town) is located in Suffolk County, has a population of approximately 191,000 and covers approximately 93 square miles. The Town Board (Board) consists of five elected officials, the Town Supervisor and four Board members. The Town Supervisor serves as the chief executive officer and chief financial officer. Total Town expenditures for the year ended December 31, 2011, were \$200 million. These expenditures were funded primarily with revenue from real property taxes, service fees, and State and Federal aid.

The Town employs almost 700 full-time employees and several hundred part-time and seasonal employees. Each Town department maintains its own records of employee time and attendance. All time sheets are kept manually and different forms of time sheets are prepared for different departments.

Scope and Objective

The objective of our audit was to review employee payroll and payments for legal services for the period January 1, 2011, to May 31, 2012. Our audit addressed the following related questions:

- Have Town officials monitored and maintained appropriate records for employees' leave benefits and overtime?
- Did the Town use competitive methods to obtain outside legal services and pay for services rendered based on appropriate written agreements and adequate documentation?

Audit Results

We found that the Town may have higher payroll costs than necessary because Town officials did not monitor and control these costs. Town officials do not require employees to record specific information about hours they worked, so they lack assurance that employees work all the hours in their shifts. Further, the Town routinely pays supervisors for overtime that may not be necessary because overtime is not pre-approved and actual overtime hours are not recorded. For just one month, the Town paid 15 supervisors who reported arriving prior to their normal work schedule a total of \$15,000 in overtime without verifying that the overtime was justified. If earlier starts are actually necessary, the Town could save \$179,000 a year in overtime costs by adjusting the arrival times on supervisors' schedules and by controlling overtime use.

We also found that the Town allowed employees to maintain leave accrual balances that were much higher than those permitted by contract bargaining agreements. Four current employees all had leave balances of more than the 60-day limit allowed by their contract; one worker had a balance of 453

days. When employees retired, the Town allowed individuals with excessive leave balances to take extended time off in their final year and then get paid for remaining leave balances up to 60 days, sometimes spreading these payments over three years. Six individuals who were paid over three years received almost \$55,000 for benefits in excess of contract limits.

In addition, we found that the Town contracted with 23 attorneys, who were paid a total of \$1.9 million during our audit period, without using the request for proposals (RFP) process outlined in the Town's procurement policy. As a result, taxpayers have less assurance that the Town is obtaining these professional services as economically as possible.

Further, although the Town had written agreements with these attorneys, the agreements did not require that invoices for legal services provide detail about the basis for the amounts charged. Our review of payments to nine attorneys found that charges totaling \$20,433 billed by three attorneys were not itemized. As a result, Town officials cannot verify that they are receiving appropriate services for the amounts charged, or ensure that services billed by outside attorneys do not duplicate services already provided by Town attorneys.

Comments of Local Officials

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as indicated in Appendix A, Town officials generally agreed with our findings and indicated they would initiate corrective action. Appendix B includes our comments on issues Town officials raised in their response letter.

Introduction

Background

The Town of Huntington (Town) is located in Suffolk County, has a population of approximately 191,000, and covers approximately 93 square miles. The Town Board (Board) is the Town's governing and legislative body. It determines policy and appropriates funds for various governmental functions and services. The Board comprises the Town Supervisor (Supervisor) and four Board members.

The Supervisor is the Town's chief executive officer and chief financial officer and is responsible, along with other administrative staff, for the Town's day-to-day management. Total expenditures for the year ended December 31, 2011 were \$200 million. These expenditures were funded primarily with revenue from real property taxes, service fees, and State and Federal aid. The Town provides general and administrative, public safety, transportation, citizen and community development, refuse disposal, and recycling services.

Objective

The objective of our audit was to review employee payroll and payments for legal services for the period January 1, 2011, to May 31, 2012. Our audit addressed the following related questions:

- Have Town officials monitored and maintained appropriate records for employees' leave benefits and overtime?
- Did the Town use competitive methods to obtain outside legal services and pay for services rendered based on appropriate written agreements and adequate documentation?

Scope and Methodology

We examined the Town's payroll records and monitoring procedures for payroll, as well as transactions related to professional services for the period January 1, 2011 to May 31, 2012. We extended our analysis to January 1, 2009, to report on separation payments to employees that affected our audit period.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix C of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as indicated in Appendix A, Town officials generally agreed with our findings and

indicated they would initiate corrective action. Appendix B includes our comments on issues Town officials raised in their response letter.

The Town Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Clerk's office.

Payroll

The Town employs almost 700 full-time employees and several hundred part-time and seasonal employees. The Town's full-time employees are covered by one of three collective bargaining agreements (blue collar, blue collar supervisor, and white collar) that limit the balance of leave time employees can maintain or the amount they can be paid for at retirement. Each Town department maintains its own records of employee time and attendance. All time sheets are kept manually and different forms of time sheets are prepared for different departments.

Payroll costs represent a significant portion of the Town's operating budget. To properly control and account for these costs, Town officials should ensure that overtime is both necessary and properly documented, that employees are paid amounts they are entitled to receive under the terms of their contracts, and that payroll payments are authorized by the Board.

We found that the Town may have higher payroll costs than necessary because Town officials did not monitor and control these costs. Town officials do not require employees to record specific information about hours worked (some timesheets show no arrival or departure times), so they lack assurance that employees work all the hours in their shifts. The Town also routinely pays blue collar supervisors for overtime that may not be necessary because overtime is not pre-approved and actual overtime hours are not recorded. For just one month, 15 supervisors who reported arriving early were paid a total of \$15,000 in overtime. If earlier starts are found to be necessary, the Town could save \$179,000 a year in overtime costs by adjusting the arrival times on supervisors' schedules and establishing procedures to control the use of overtime.

We also found that Town officials allowed employees to maintain leave accrual balances that were much higher than those permitted by contract bargaining agreements. Four current employees had leave balances of more than the 60 days allowed by their contract; one worker had a balance of 453 days. When employees retired, Town officials allowed individuals with excessive leave balances to take extended time off in their final year and then get paid for remaining leave balances up to 60 days, sometimes spreading these payments over three years. Six individuals who were paid over three years received almost \$55,000 for leave benefits in excess of contract limits.

Time Reporting and Overtime

An important component of accounting for employees' time worked is maintaining a system that accurately captures the time employees report to work and the time employees' shifts end. Overtime should only be incurred when unplanned or unforeseen circumstances arise and should not be incurred when these circumstances can be avoided. Procedures that require prior written approval and justification of overtime help to minimize overtime costs.

The Town's blue collar supervisor contract states that the normal workday is an eight-hour day. According to the contract, each employee will be paid time and one-half for overtime, defined as time worked before or after the regularly scheduled workday. The contract states that overtime may be required in any emergency, as determined by the Town Supervisor, the Highway Superintendent, or their deputies.

The Town does not maintain a system that accurately records the number of hours employees work each day and allows each department to use its own type of timesheet, so there is no consistency in the way employees record their work time. While one department uses a timesheet that requires employees to show start and end times of their work day, 17 other departments, or the majority of Town employees, use timesheets that do not record employees' actual arrival or departure times. Instead, the department supervisor records the number of hours worked for the day. Employees and supervisors are not required to prepare and sign individual time cards. None of the departments use time clocks to record attendance. Unless the Town requires all departments to use the same form of timesheet that provides a record of employees' arrival and departure times, Town officials cannot be sure that employees Town-wide are working all the hours on their work schedules.

Using timesheets that do not specify arrival and departure times also makes it very difficult to control overtime. While workers were generally required to get supervisory approval of overtime, supervisors were not. Instead, they were reporting either a half-hour or an hour of overtime on each day they worked with no written pre-approval for the overtime, or justification of why the overtime was required. The timesheets generally do not require reporting the actual hours worked, so the supervisors just stated that they worked 30 or 60 minutes of overtime each day. Town officials informed us that supervisors routinely start their shifts early in order to prepare for the shift and receive overtime for doing so. The Town does not have procedures that require this overtime work to be pre-approved or justified, so the Town paid these overtime costs without verifying that the overtime was necessary.

To determine what this practice is costing the Town, we selected 15 supervisors who work in five different departments (parks maintenance, security, bus operations, highway, and refuse) and analyzed the amount of overtime they submitted for two pay periods in one month (May 2012). These 15 supervisors were paid a total of \$20,575 for 330 hours of overtime during this one month; \$14,920 of this amount was overtime paid just for arriving at work prior to the normal work schedule.

Town officials should review supervisor overtime practices to determine whether it is necessary for supervisors to be at work early to prepare for the incoming shift. If earlier arrivals are found to be necessary, the Town could save an estimated \$179,000 a year in overtime costs by adjusting the start times of supervisors' standard shifts to more closely reflect their work requirements. It is also essential that Town officials establish overtime control procedures, including pre-approval of and justification for overtime, to minimize overtime costs.

Vacation Leave Accruals

Based on the terms of the collective bargaining agreements, Town employees may earn between 10 and 30 vacation days a year, depending on years of service. Two of the contracts (the blue collar employee and blue collar supervisor contracts) state that all employees must take the vacation earned each year unless receiving written permission from the department head and at no time may an employee accumulate more than two years vacation time (i.e., a maximum of 60 days) including the current year's vacation. The white collar contract is silent regarding maximum accruals, but states that employees will be paid for a maximum of 100 days of leave at retirement. All the contracts require that accrued vacation days be paid to the employee in the pay period following the retirement/separation date. We found that the Town does not enforce the provisions of these contracts: current blue collar employees are allowed to carry excessive leave balances, retirees were allowed to receive payments for excessive leave accruals over three years, and six retirees were paid almost \$55,000 for leave accrued in excess of contract limits.

The provisions of the blue collar contracts essentially require employees to use their leave in the current year (unless they get permission to carry it forward) and to lose any accruals over the two year limit. However, the Town allows employees to carry leave balances forward without permission, and to accumulate balances far in excess of the 60-day limit. Of the four current blue collar employees (two employees and two supervisors) with the highest leave balances, one employee had a vacation accrual balance of 453 days, or 393 days more than the 60-day maximum accrual allowed. The value of these excess days at his current pay rate is \$88,028.

The other three employees accumulated a total of 414 days over the maximum allowed.

Town officials informed us they believed it did not matter how many days employees were allowed to accrue because the Town paid employees only the maximum allowed in the contract – that is, for 60 days of leave – upon retirement or separation. Therefore, Town officials did not limit the number of days accrued for any employee, as required by the blue collar contracts. The Town also allowed retiring employees to be paid for accrued leave benefits over extended periods rather than in a lump sum at retirement, as required by the contracts.

To determine the effect of this failure to follow the terms of collective bargaining agreements, we examined the retirement payments made to 25 employees (eight white collar and 17 blue collar employees), the carryover of accrued vacation leave for six of the blue collar employees, and the impact of the excessive accruals in the final year of employment.

Retirement Payments - According to the collective bargaining agreements, upon layoff, termination or retirement, all accrued vacation days shall be paid to the employee on the normal pay day at the conclusion of the next full pay period following the last day of employment. However, again, Town officials did not enforce the provisions of the contracts, and used potentially problematic administrative practices to pay some retirees for accrued vacation days over an extended period.

When an employee is about to retire, payroll staff prepare a leave accrual form that shows the employee's total accruals of vacation and sick leave. Once this form is completed and approved by the department head, payroll prepares a retirement payment form that allows the employee to elect to be paid the value of the leave in one lump sum at retirement or over a one-year or three-year period. Although these forms provide support for and documentation of the payments to retirees, the Town's human resources department does not maintain copies of them in the employees' personnel folders.

During the 2009-2011 fiscal years, 103 individuals retired and received payouts totaling \$3.7 million dollars. Of the 103 retirees, 25¹ individuals elected to receive payouts for leave benefits totaling \$1.75 million over a three-year period. Our review of the leave calculations and payouts for these retirees identified the following problems:

¹ We selected individuals who received payments over three years.

- Payroll personnel could not provide us with the employee retirement payment forms for 15 of the 25 employees, although they provided a check history report showing the payments made for all the retirements. It is essential that the Town maintain documentation to support payments it makes to retirees.
- Although we found that the calculations were generally accurate, the payments were not made in accordance with the contract, which states that payments should be made at the conclusion of the next full pay period following the last day of employment. Town officials provided only out-dated Board resolutions (retirement incentive resolutions dated September 1, 1992, July 12, 1994, and December 20, 1994) to support this practice. There was no current resolution to authorize it.
- According to the Internal Revenue Service (IRS), employers must use the Wage and Tax Statement (Form W-2) to report income paid to employees. However, in order to make these payments up to three years after employees were retired, payroll personnel had to reactivate retired individuals on the payroll system and issue W-2s for individuals who were no longer employees.

The Town should not allow employees to select a multiple-year payment options without formal authorization and without ensuring that the income deferral program is in compliance with all IRS regulations. Because the Town failed to enforce the provisions of its collective bargaining agreements, and did not always maintain payment documentation, it made payments to former employees for which it lacks adequate support.

Final Year Vacation Accrual Balances - To assess the financial impact of allowing employees to carry over vacation accruals, we reviewed records for six of the above 25² retirees covered by blue collar contracts who exceeded their accrual allowances. As employees, they had been collectively allowed to carry over 451 accrued vacation days worth a total of \$133,122. There was no written approval authorizing the carryover of vacation leave for any of these employees, and all six employees had balances that exceeded the amounts allowed by the contract. Each of the employees received payments for vacation days

² We tested accrual balances in the final year of employment for the six (of 17) blue collar employees who had most recently retired. Potentially, the remaining 11 blue collar employees also could have carried over excess leave accruals from prior years. None of the eight white collar employees were paid for more than 100 days of leave when they retired.

ranging from 32 days to 60 days. Five of the six³ also took vacation days ranging from 25 to 70 days during the final year. Allowing employees to carry over accrued leave resulted in the Town's paying a total of \$54,623 for 176 vacation days in excess of contract limits.

For example, one retiree was allowed to carry over 121.1 days without written authorization, and then earned an additional 26.5 days of leave in the year of his retirement. Had the employee been allowed to carry forward only 30 days of vacation, and then earn his current year's vacation, the total accruals would have been 56.5 days. The retiree would have been given the opportunity to either take leave in the year of retirement or receive payment for 56.5 days - but not both.

However, the employee had been allowed to accrue 91.1 vacation days (147.6 – 56.5 days) more than the contract allowed. This individual took 70 vacation days off in his final year, and was then paid \$20,970 for 60 accrued days.⁴ Thus, even though the Town did pay this retiree for only 60 days of accrued leave (3.5 days more than he was entitled to), it also allowed this individual to take more than three months off in his last year of employment.

The failure of Town officials to enforce the provisions of collective bargaining agreements has allowed some retirees to receive excess payments for leave accruals and take excessive vacation leave in their final year of employment. Allowing extended time off in the year of retirement can also increase overtime costs because current employees must shoulder the additional workload.

Recommendations

1. Town officials should institute procedures to accurately capture the time employees report to work and the time employees' shifts end.
2. Town officials should review supervisor overtime. If it is determined that it is necessary for supervisors to be at work earlier, Town officials should consider adjusting starting times to better meet work requirements and save taxpayer dollars.
3. Town officials should institute procedures to document pre-approval of overtime and written justification of why the overtime is necessary.

³ One part time worker carried over 108 days but was paid for only 32 days vacation days. This employee retired at the beginning of the year and only took one vacation day.

⁴ After using 70 days of vacation leave, the employee had 77.6 days remaining. He was paid for the 60 days maximum allowed by the contract.

4. Town officials should allow employees to carry over only the number of vacation days that are allowed under the collective bargaining agreements and limit leave accrual balances in accordance with these agreements.
5. Payments for leave accruals should be made at retirement in accordance with contract provisions. The Town should maintain a copy of the separation accrual payment forms and supporting documentation.

Legal Services

The Town's procurement policy identifies a competitive process to use, whenever practical, in procuring services that are not subject to competitive bidding. During our audit period, we found that the Town contracted with 23 attorneys, who were paid a total of \$1.9 million, without using the request for proposals (RFP) process outlined in the Town's procurement policy. If the Town does not solicit competition when obtaining professional services, taxpayers have less assurance that the Town is obtaining these services as economically as possible.

Further, although the Town had written agreements with these attorneys, the agreements did not require that invoices for legal services provide detail about the basis for the amounts charged. Our review of payments to nine attorneys found that charges totaling \$20,433 billed by three attorneys were not itemized. If Town officials pay for legal services that are not supported by properly itemized invoices, they cannot verify that they are receiving appropriate services for the amounts charged, or ensure that services billed by contractors do not duplicate services already provided by Town attorneys.

Requests for Proposals

General Municipal Law (GML) does not require competitive bidding for the procurement of professional services that involve specialized skill, training and expertise; use of professional judgment or discretion; and/or a high degree of creativity. However, GML does require the Board to adopt written policies and procedures for the procurement of goods and services that are not subject to statutory competitive bidding requirements, such as professional services and items that fall under the bidding thresholds. A comprehensive procurement policy should require Town officials to seek competition by other means, such as the RFP process, when procuring professional services to help ensure that the Town obtains such services at the best value.

The Town has adopted a procurement policy that outlines the goods that are subject to bidding requirements, establishes quotation thresholds for goods that are not required to be bid, and identifies the RFP process as the method to use, whenever practical, in procuring services that are not subject to competitive bidding.

The Town Attorney's office employs a staff of 13 attorneys to provide general legal representation for the Town. The Town Attorney's office also retains outside legal consultants, as necessary. During the audit period, the Town contracted with 23 outside legal professionals at a total cost of \$1,942,961 without using the RFP process, or any other competitive method for obtaining these services. If the Town does

not solicit competition for professional services, taxpayers have less assurance that the Town is obtaining these services as economically as possible.

Contractual Agreements – Written agreements for professional services provide the Town, as well as the party furnishing services, with a clearly defined and mutually agreed-upon basis for entitlement to compensation. Written agreements should include the timeframe and description of services to be provided, and may be used to verify that fees charged are in accordance with Board resolutions. The details of the agreement should include a description of the services to be provided, the professionals providing the services, the rates of compensation, and itemization of charges. Further, given that the Town has its own in-house legal staff, legal retainer agreements with outside attorneys should specify the services that will be provided by these professionals to help ensure that the Town does not pay outside attorneys for services provided by in-house staff.

We reviewed the retainer agreements for all 23 outside legal professionals to determine if the services to be provided by the outside attorneys were substantially different than the services described in the job duties of Town Attorneys. We found nine attorneys, who were paid a total of \$487,951, potentially could have provided duplicate services because the generic descriptions of their duties, which were the same for all nine attorneys, closely matched the job descriptions of Town attorneys.

We reviewed the largest cash disbursements made to the nine attorneys in each year of the audit period and found that three attorneys, paid a total of \$98,766, did not itemize their charges on eight invoices totaling \$20,433.

- Two of the three attorneys gave a general description of the legal work they performed (names of cases they were assigned, property sales, and other matters assigned by the Town Attorney’s Office), but did not list how many hours they spent working in each assigned area.
- The third attorney billed the Town for “Professional Services Rendered” without giving any description of work performed or the hours spent doing this work.

Without properly itemized invoices, officials cannot determine if they are receiving an appropriate amount of legal services for the amount charged. There is also an increased risk that the Town may be paying for services already performed by Town legal staff, or services that

were not authorized, received, or included in the scope of the retainer agreement.

Recommendations

6. The Town Board should consider using a RFP process to procure professional service providers.
7. The Town Board should enter into written agreements with each professional service provider that fully detail the services to be provided.
8. The Board should ensure that it does not contract with outside counsel for legal services that duplicate the services being rendered by the Town Attorney's office.
9. Town officials should ensure that invoices submitted by outside attorneys contain an itemized description of the service provided and the time spent providing the service.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following pages.



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FRANK P. PETRONE
Supervisor

May 14, 2013

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Re: Response to Draft Audit Report 2013M-28
Town of Huntington, Payroll and Legal Services

Dear Mr. McCracken:

We have reviewed the draft report of examination of the Town of Huntington for the period January 1, 2011- May 31, 2012. Please accept this letter as our official response to that report.

The Town of Huntington would first like to express its appreciation to the New York State Comptroller's Office for the professional and courteous manner in which your staff performed its audit responsibilities. We appreciate the efforts put forth by the audit team, who interviewed many, many Town employees, and visited our facilities to speak with facility staff throughout this process. We are proud of the internal controls we have in place and have worked diligently to formalize our processes and to safeguard our assets with a Town Board adopted Policy and Procedure Manual. This Manual, adopted in April 2011, includes many policies in the areas of financial oversight, cash receipts and disbursements, purchasing, payroll, personnel services, capital assets, inventories, and information technology, all of which were the focus of your initial assessment and evaluation. We further wish to thank you for recognizing these efforts during our exit interview. We agree that overall, for a Town of this size and number of employees, our controls are good; and thereby minimize risk of fraud, malfeasance, theft and misconduct.

The Town Board is committed to continuing to ensure that the Town of Huntington's financial operations are conducted with the highest level of integrity and that the interests of the Town's taxpayers continue to be properly protected. In helping us to achieve this goal, the Town Board requested that your office perform an audit of the Town as a whole. We understand that the audit team focused on policies and procedures related to internal controls Town-wide, as outlined in your information request dated May 25, 2012, and that the areas of payroll and legal services



contained certain aspects to which findings were issued. We note that a number of your findings differ with existing collective bargaining contract provisions. We address all report findings as follows:

PAYROLL

FINDING:

Town officials do not require employees to record specific information about hours they worked, so they lack assurance that employees work all the hours in their shifts.

RESPONSE

All hours worked by Town employees are reported. Depending upon the department, employee hours are either reported via a timesheet completed by the employee or via a visual inspection by the on-site supervisor who then records the arrival and departure time on a timesheet. Further, all timesheets are reviewed by the Director prior to processing through the Town's electronic payroll system. Finally, once payroll is processed, all Directors received a payroll warrant to review once again for accuracy before payment is authorized.

The Town has developed a uniform sign in sheet for employees to be used on a Town-wide basis. This time sheet requires recording the time of arrival and departure. The Town has explored the use of biometric time clocks with an eye towards implementation in the near future, once any required discussions with collective bargaining units have taken place.

FINDING:

The Town of Huntington routinely pays supervisors for overtime that may not be necessary because overtime is not pre-approved and actual overtime hours are not recorded.

RESPONSE:

Certain blue collar supervisors receive overtime on a daily basis so that they may report to work before their respective crews arrive at the worksite. The Town has had a practice in place for the past 30 years that is based upon efficiency principles, and allows the supervisor to prepare the daily work schedule so that when the crews arrive they can immediately begin the day's assigned work. Although the Town did attempt to halt this practice, the NYS Court of Appeals (in the Matter of Local 342, Long Island Public Service Employees v. the Town of Huntington, 91-08511) ultimately upheld an arbitrator's decision that ruled that the Town does not have the right to eliminate the daily overtime based upon the terms of the collective bargaining agreement. Because it is a term and condition of employment for these supervisors pre-approval is unnecessary; a Director could not refuse to pay the overtime without causing an improper labor charge. To the extent that the Town determines that efficiencies cannot be achieved through this

payment of daily overtime, this matter will be raised with Local 342 during contract negotiations for the next collective bargaining agreement.

FINDING:

The Town of Huntington allowed employees to maintain leave accrual balances that were much higher than those permitted by contract bargaining agreements.

RESPONSE:

The Town, on occasion, has allowed carryover of leave accruals in excess of the amount allowable under the language in the collective bargaining agreement. The carryover is a past practice, in place for over 30 years, which resulted from employees not being able to use their accrued time bank in a given year due to departmental staffing concerns and/or emergency situations (i.e. snowstorms, hurricanes, etc.).

While, by past practice, employees have been allowed to carry over more accrued time than allowable under the collective bargaining agreement, no employee is paid for more accrued time during their career with the Town than permitted by the collective bargaining agreement.

See Note 3 Page 25

The Town will maintain the leave accrual certification and retirement payment form in an employee's Personnel Office file when they separate from service. In addition, the Town will raise the matter of leave accruals with Local 342 during contract negotiations for the next collective bargaining agreement.

FINDING:

The Town should not allow employees to select multiple-year payment options without formal authorization and without ensuring that the income deferral program is in compliance with all IRS regulations.

RESPONSE:

The Town first offered their retirees the option to receive leave payments over a one to three year period when the Health Care Retirement Incentive was adopted by the Town in 1992. Because this had never before been offered before, and because many senior, higher pay grade Town employees were expected to take advantage of this incentive, there was concern regarding cash flow issues and the overall impact to Town finances.

Our initial discussions with the IRS have not revealed any noncompliance issues, however, should the Town wish to continue to offer this extended payout option, we will further explore this and other options with the IRS. Before implementing a plan.

LEGAL SERVICES

FINDING:

The Town of Huntington contracted with 23 attorneys, who were paid a total of \$1.9 million during the audit period, without using the requests for proposal (RFP) process outlined in the Town's procurement policy. As a result, taxpayers have less assurance that the Town is obtaining these professional services as economically possible.

RESPONSE:

The Town Policy and Procedure Manual describes the Town's Purchasing Policy, which includes Professional Services and the Request for Proposal process. The Town is in compliance with this Purchasing Policy which states, "*Professional services are those that require special/technical skills, training and/or expertise not necessarily available from an individual/entity offering the lowest bid*" and further states "*The nature of these services do not readily lend themselves to competitive procurement therefore, do not require a formal bidding process.*" The Town Attorney reviews the procurement of legal services on a case by case basis and emphasis is placed on the professional whose expertise in the particular matter provides for the best representation of the Town's interests in the case. As noted by the auditors, the Town had contracted with 23 different attorneys during the audit period. While the town is not required to do an RFP it routinely conducts and interviews several firms with specific areas of expertise as dictated by cases size, complexity and area of law involved, among other factors before selecting a firm. In many instances of highly specialized litigation; our most recent experience being with the LIPA tax certiorari case against the Town, the field of eligible firms is reduced further, as prior retainers with opposing parties preclude the law firm from working for the Town. The Town however will further define the documentation of that process and amend the Purchasing Policy to reflect this practice.

FINDING:

Three attorneys were paid fees of \$20,433 that were not itemized.

RESPONSE:

The Town concurs that attorney invoices should not be paid unless their billing contains details of time and effort. One of the three attorneys cited in the report, whose non-itemized billing totaled \$10,016 during the audit period, is no longer under contract with the Town. The other two attorneys were immediately advised that their billings must comply with the time and effort details the Town requires for payment.

All outside counsel invoices are approved by the Town Attorney and then forwarded to the Town Comptroller for final approval and payment. Counsel has been advised that non-itemized

invoices will not be processed by the Town for payment. We wish to note that May invoicing for all attorneys is in compliance with this request.

RECOMMENDATION No. 1

Town officials should institute procedures to accurately capture the time employees report to work and the time employee shifts end.

RESPONSE

The Town has developed a uniform sign in sheet for employees, which requires the recording of the time of arrival and of departure, to be used town wide. The Town continues to explore the various electronic options available and will implement a solution that best fits its needs.

RECOMMENDATION No. 2

Town officials should review supervisor overtime. If it is determined that it is necessary for supervisors to be at work earlier, Town officials should consider adjusting starting times to better meet work requirements and save taxpayer dollars.

RESPONSE

In addition to falling under the terms of the collective bargaining agreement, the payment of daily overtime to supervisors provides for work efficiencies and benefits throughout the day, as supervisors are able to plan daily activities, develop required materials and equipment listing for individual jobs, and assign requisite trucks and heavy equipment to appropriate staff members, all prior to the start of the work day. Arriving staff are able to begin their assigned work duties immediately upon arrival, and do not need to wait for assignments as they are developed by the supervisor. While we have concerns with staggering supervisor work hours and the implications of non-supervisory staff left unattended at shift's end, we will look at all cases of scheduled overtime to determine its effectiveness and if deemed unwarranted, will discuss with the union during collective bargaining agreement negotiations.

RECOMMENDATION No. 3

Town officials should institute procedures to document pre-approval of overtime and written justification of why the overtime is necessary.

RESPONSE

Overtime, both scheduled and unscheduled is pre-approved by the Directors. Scheduled overtime is covered under the collective bargaining agreement. The Town will investigate a process to further refine approval procedures for emergency and other unscheduled overtime. The Director and the Supervisor's office review bi-weekly overtime reports issued by the Comptroller to monitor overtime on a continuing basis.

RECOMMENDATION No. 4

Town officials should allow employees to carry over only the number of vacation days that are allowed under the collective bargaining agreements and limit leave accrual balances in accordance with these agreements.

RESPONSE

The accrued time vacation carryover is a long term past practice which resulted from employees not being able to use or take the requisite vacation during the year due to departmental needs, whether work schedule related or staffing related. The Town intends to correct and clarify this issue in future contract negotiations.

RECOMMENDATION No. 5

Payments for leave accruals should be made at retirement in accordance with contract provisions. The Town should maintain a copy of the separation accrual payment forms and supporting documentation.

RESPONSE

The town will insure that accrued leave certifications and retirement payment forms will be maintained in the employee personnel file when they separate from service.

RECOMMENDATION No. 6

The Town Board should consider using an RFP process to procure professional service providers.

RESPONSE

The Town follows the adopted Purchasing Policy with respect to professional services providers. The Town will further document the current process and to the extent practicable, will consider the use of formal RFPs in the instances where specific expertise is not necessarily required.

RECOMMENDATION No. 7

The Town Board should enter into written agreements with each professional service provider that fully detail the services to be provided.

RESPONSE

The Town will fully detail the services to be provided when entering into a written agreement with a professional service provider.

RECOMMENDATION No. 8

The Board should ensure that it does not contract with outside counsel for legal services that duplicate the services being rendered by the Town Attorney's office.

RESPONSE

The Town Attorney's office reviews the contracts with outside counsel. No instances of duplicate services have been found. Assistant Town Attorneys are routinely assigned to work with outside counsel, often providing required in house documentation, and at a lower hourly rate than the Town would otherwise pay outside counsel. The Town attorney will continue to monitor staff and outside counsel assignments to ensure that collaboration on an issue does not lead to duplication of services.

RECOMMENDATION No. 9

Town officials should ensure that invoices submitted by outside attorneys contain an itemized description of the service provided and the time spent providing the service.

RESPONSE

The Town has already implemented this policy. All attorneys' invoices are approved by the Town Attorney and then forwarded to the Town Comptroller for final approval and payment. No outside counsel invoices will be processed for payment if the appropriate invoicing format is not followed.

Once again, we wish to thank you for your recommendations regarding enhancements to established internal controls that will assist the Town with the management of government resources in an even more efficient and effective manner. We have implemented several recommendations put forth by the audit committee, and will continue to work towards implementation of other actions identified herein. Pursuant to Section 35 of the General Municipal Law, a Corrective Action Plan will be forwarded to your office, which will further address the findings and recommendations in your April 16, 2013 report.

Very truly yours,

FRANK P. PETRONE
Supervisor

APPENDIX B

OSC COMMENTS ON THE TOWN'S RESPONSE

Note 1

Our findings do not differ with existing collective bargaining agreements. Our findings highlight areas in need of additional internal controls and procedures to enforce existing collective bargaining contract provisions.

Note 2

At the exit conference, Town officials provided a copy of this decision from 1993 regarding scheduled overtime for highway department forepersons. However, we found that supervisors in at least four other departments were receiving daily overtime without documentation of actual hours worked or pre-approval. Town officials should review supervisory schedules in all departments to determine if this overtime is actually necessary and should require documentation of the actual hours worked by supervisors.

Note 3

Our report highlights the importance of implementing procedures to enforce the provisions of collective bargaining agreements. The existing collective bargaining contract states that all employees must take the vacation earned each year unless they receive written permission from the department head. The contract does not allow an employee to accumulate more than two years' vacation time including the current year's vacation. The failure to implement procedures to enforce these limits resulted in payments for leave accruals and extended vacations in an employee's final year of employment which would not have occurred had the vacation accrual carryovers been limited.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Town assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial oversight, cash receipts and disbursements, purchasing, payroll and personnel services, capital assets and inventories, and information technology.

During the initial assessment, we interviewed appropriate Town officials, performed limited tests of transactions and reviewed pertinent documents, such as Town policies and procedures manuals, Board minutes, and Comprehensive Annual Financial Reports. In addition, we reviewed the Town's internal controls over its computerized financial system to help ensure that the information produced by the system was reliable.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft and/or professional misconduct. We then decided upon the reported objective and scope by selecting for audit those areas most at risk. We selected payroll and legal professional services. To accomplish the objective, our examination included the following steps:

- We interviewed Town officials and staff involved in Town payroll and business operations.
- We reviewed the Town's policies and procedures, Board minutes, and supporting documentation provided by Town officials as they related to our audit objectives.
- We reviewed and compared collective bargaining agreements, payroll registers, timesheets, leave records, personnel folders.
- We analyzed separation payment calculations to verify the Town maintains sufficient documentation and made payments in accordance with written agreements.
- We analyzed leave reports to determine leave taken by employees prior to retirement.
- We selected a sample of 15 supervisors from five different departments and analyzed their overtime for cost savings to the Town.
- We reviewed the retainer agreements and selected invoices of the Town's outside legal service providers.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX D

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